

April 29, 2011

SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL ENGINEERING DESIGN SERVICES FOR PORT JERSEY – CROSS HARBOR FREIGHT PROGRAM (RFP# 24554)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Consultant to provide expert professional engineering design services for Port Jersey – Cross Harbor Freight Program (CHFP). The scope of the tasks to be performed by the Consultant are set forth in Attachment A to the Authority’s Standard Agreement (the “Agreement”), included herewith. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals.

The services contemplated hereby will be funded in whole, or in part, by the Federal Highway Administration (FHWA). The selected Consultant is required to comply with all applicable requirements of FHWA. Anticipated DBE participation, as well as other, FHWA requirements are provided as Exhibit A and Form FHWA-1273 hereto.

I. PROPOSER PREREQUISITES

The Authority will consider proposals only from those firms or teams able to demonstrate compliance with each of the following qualification requirements:

A. Firm Qualifications:

1. Must have completed a minimum of three (3) new track work design contracts of comparable size, type, and complexity similar to those contemplated in Attachment A within the last five (5) years.
2. Must have a minimum of five (5) years of experience in the performance of design and post award services similar to those contemplated in Attachment A.
3. Must have completed a new marine loading bridge design contract of comparable size, type, and complexity similar to those contemplated in Attachment A.
4. Must have completed a new rail barge or vessel design contract of comparable size, type, and complexity similar to those contemplated in Attachment A.

B. Staff Qualifications

1. Principals for each engineering/architectural disciplines (Architectural, Civil, Electrical, Environmental, Geotechnical, Mechanical, Structural, and Traffic), must be licensed to perform Professional Engineering/Architectural services in the State of New Jersey.
2. Principal(s) for naval architecture must be licensed to perform Naval Architecture services in the States of New York and New Jersey.

3. Project Manager/Lead Engineer must have a minimum of ten (10) years of progressively responsible experience in the performance of services similar to those contemplated in Attachment A.

A determination that a Proposer meets the foregoing requirement(s) is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet these requirements shall not be further considered.

II. PROPOSAL FORMAT REQUIREMENTS

To respond to this RFP, the Proposer shall submit a concise Proposal complying with the following requirements:

- A. To be acceptable, the Proposal shall be no more than 30 pages single-sided or 15 pages double-sided using 12-point or greater font size, not including resumes. This limit does not include Section III, items: A.1., A.2., A.3., A.4., A.7., A.10., A.11., A.12., A.13., A.14., B., and Section IV, below nor section and/or tab dividers. Each resume shall be 2-page maximum, single-sided or 1-page double-sided, using 12-point or greater font size. Product brochures and other sales literature will not be accepted as substitutes for written responses to this RFP. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Your Legal Firm Name," and **RFP Number 24554** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated 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. Firm name must be clearly marked on the **outside** of all envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, One Madison Avenue, 7th Floor, New York, NY 10010, **Attention: RFP Custodian**. Do not address your Proposal to any other name. You are required to submit one (1) reproducible original and eight (8) copies, along with one (1) compact disc copy, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc.
- D. In each submission to the Authority, including any return address label, information on the compact disc 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. Your Proposals should be forwarded in sufficient time so that the Authority receives them **no later than 2:00 p.m. on May 24, 2011**. The cover of your submittal must include the RFP Number (as stated above) and the RFP title. The Authority assumes no responsibility for delays caused by any delivery services.
- F. The Authority will not accept Proposals submitted via electronic mail or fax.
- G. If your Proposal is to be hand-delivered, please note that only individuals with valid photo identification will be permitted access to the Authority's offices. Individuals without valid photo identification will be turned away and their packages not accepted.

III. SUBMISSION REQUIREMENTS:

To respond to this RFP, provide two separate sealed envelopes each clearly labeled either A. “Technical Proposal” or B. “Cost Proposal” and containing the following information:

A. Technical Proposal:

1. In the front of your Proposal, a copy of Agreement on Terms of Discussion (Attachment B), signed by an officer of your company. If the Proposer is a joint venture, an authorized representative of each party shall sign the Agreement.
2. Complete a copy of the Company Profile (Attachment C).
3. Demonstrate your compliance with the proposer prerequisites listed above (Proposer Requirements, Section I).
4. Transmittal Letter

Submit a transmittal letter, on letterhead, signed by an authorized representative, demonstrating compliance with each of the aforementioned “Proposer Requirements”. Your transmittal letter shall also include, but not be limited to the following:

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

All the qualification information required for a single entity shall be submitted for *each* participant in the joint venture. 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 joint venture is deemed qualified to receive an invitation to deliver a formal presentation of how it proposes to provide the services outlined herein, the joint venture shall be composed of the same participants as were in the joint venture when it submitted the Proposal. No substitution of participants will be allowed without the express prior written permission of the Authority.

- b) Submit a copy of any written agreement, or understanding, which exists between each party to the joint venture as part of the Proposal. If no written agreement or understanding exists, the Lead Proposer shall be identified and the joint venture shall include in its Proposal a written statement explaining how the joint venture will fulfill the requirements of the Agreement. Such explanation shall fully discuss and identify the responsibility of each party to the joint venture for performing the Work, and for providing the required insurance.

5. Staff Qualifications and Experience

Provide the qualifications and experience of key personnel, including subconsultant(s), if any, as required to demonstrate their ability to perform the tasks required to successfully complete this project. Highlight their experience and technical capabilities. If proposing the use of subconsultant(s), provide their Disadvantaged Business Enterprise (DBE) status.

Attach a detailed resume for each individual that includes educational background, chronological history of employment and any relevant licenses and/or certifications.

The resumes should clearly identify the years of experience in the field related to the tasks for which the individual will be responsible.

Include information on the following:

- a. Principal or lead Project Engineer with a minimum of ten (10) years experience performing services similar to those contemplated in Attachment A
- b. Mechanical Engineer with design experience in at least five (5) major contracts similar to those contemplated in Attachment A.
- c. NACE International certified Corrosion or Cathodic Protection Specialist.
- d. Other Key Personnel Experience.

6. Firm Qualifications and Experience

Firm (including subconsultants) Qualifications and Experience, which includes projects similar in size and scope to that contemplated in Attachment A, shall be presented in a Table prepared by you, to include but not be limited to the following for each project:

- a. Project Title
- b. Other entities assisting in project
- c. Project Manager
- d. Date Started
- e. Date Completed
- f. Construction Cost
- g. Client
- h. A brief project narrative summary. Identify your specific scope of work. Highlight any unique challenges or obstacles and how they were handled. Identify any similarities to this project.
- i. Contact Name and Phone Number (project reference) – the Authority reserves the right to contact such references at any time.

7. Complete and submit a separate project schedule, and staffing analysis (Attachment D: Staffing Analysis) for performance of each of the tasks for each of the project contracts outlined in Attachment A, Exhibit III. Said schedule shall comply with all milestones stipulated therein.

The staffing analysis shall identify the names and titles of specific staff to be assigned to the performance of each task, subtask, and the total number of hours to be spent by each of them in the performance of each such task. Include a staffing analysis for each project contract as referenced above, as well as a project summary sheet. The Excel version of Attachment D is accessible by the following link: [Attachment D – Staffing Analysis](#).

DO NOT INCLUDE ANY COST INFORMATION AS PART OF YOUR STAFFING ANALYSIS. DOING SO MAY RENDER THE PROPOSAL INELIGIBLE FOR AWARD.

8. Technical Approach

Submit a detailed description of the proposed technical approach to be taken in performance of the required services.

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 that the Authority will evaluate in analyzing Proposals. The Authority reserves all rights referred to in the last paragraph hereunder.

9. Management Approach

Submit a detailed description of the proposed management approach to be taken for the performance of the required services. Factors addressed in your management approach shall include, but are not limited to the following: a) your proposed organizational structure to be responsive to the Authority's needs (include organizational chart); b) your proposed approach and schedule for keeping the client apprised of the project status; and c) your proposed approach to ensuring the quality of the services to be provided.

10. DBE Participation

Your attention is directed to Paragraph 22 of the Agreement in which the Authority has stated the goals for DBE participation in this project. Provide your DBE Participation Plan by completing Exhibit B, which shall briefly contain, at minimum, the following:

- a. Identification of DBEs: Provide the names and addresses of all DBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under the Agreement.
- b. Level of Participation: Indicate the percentage of DBE participation expected to be achieved with the arrangement described in the Plan.
- c. Describe the specific scope of work the DBE(s) will perform.
- d. Previous DBE Participation: Describe any previous or current DBE participation, which the Proposer has utilized in the performance of similar services.

11. Federal Highway Administration Requirements (FHWA) (Exhibit A)

In Accordance with FHWA requirements, submit the following forms (included in Exhibit A) as part of your proposal:

- a. Certificate Regarding Lobbying
- b. Disclosure Of Lobbying Activities
- c. Certificate Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

12. Submit a complete list of your firm's affiliates.

Affiliates shall be as defined as follows: 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 50 percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

13. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest; 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, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.
14. The Proposer is expected to agree with the Agreement's 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.

B. Cost Proposal

Pricing and Compensation Proposal (Attachment E – Cost Proposal). The Excel version of Attachment E is accessible by the following link: [Attachment E – Cost Proposal](#).

Submit in a separate sealed envelope labeled “Cost Proposal”.

Submit Attachment E for each of the project contracts outlined in Attachment A, Exhibit III and a summary sheet for the Cost Proposal.

Do not include any cost information as part of your Technical Proposal submission.

IV. FINANCIAL INFORMATION

Proposers shall be required to demonstrate that they are financially capable of performing the required services as outlined in Attachment A. The determination of the Proposer's financial qualifications and ability to perform the required services will be in the sole discretion of the Authority. The Proposer shall submit, with its Proposal, the following:

- A. Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer's most recent fiscal year.
- B. Where the certified financial statements in A above are not available, then reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information shall be provided.
- C. Where the statements submitted pursuant to A or B above do not cover a period which includes a date not more than forty-five days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.
- D. A statement of work which the Proposer has on hand, including any work on which a bid and/or proposal has been submitted, containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these projects.

- E. The Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

V. SELECTION PROCESS

Each proposal will be evaluated by a Selection Committee composed of Authority personnel experienced in the disciplines necessary to make a value judgment and decision regarding the technical qualifications of a proposing firm and oral presentation, if necessary.

The selection process for the performance of the subject services shall include consideration of the factors listed below in order of importance.

- A. The qualifications and experience of the staff, including subconsultant staff, who will be performing services hereunder
- B. The qualifications and experience of the firm
- C. Proposed technical approach
- D. Management approach

Upon identification of the highest technically rated Proposer, in terms of the forgoing criteria, by the Selection Committee, said Proposer's Cost Proposal shall be opened, and the Authority will endeavor to negotiate a fair and equitable compensation for performance of the services outlined in Attachment A.

If negotiations cannot be satisfactorily concluded, said Proposer will be notified by letter that negotiations have been terminated. Thereafter, the Authority may initiate negotiations with the next highest rated firm. This procedure shall be continued until agreement has been reached or the solicitation has been cancelled.

VI. ORAL PRESENTATIONS:

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given short advance notice. Presentations will be limited to 30 minutes, and include the material contained in your Proposal. The presentation will be followed by an approximately 30-minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members proposed to work on this project. Notification of presentation scheduling is made by email. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate in the event that person is unavailable.

VII. SITE VISIT

The Authority has arranged a site visit on May 10, 2011 at 1 PM at Greenville Yards. Additional information and directions will be provided upon confirmation of attendance. The number of attendees is limited to two people per proposer. Proposers are strongly encouraged to take this opportunity to visit the site.

All attendees must be identified in advance as follows:

Submit a written request, via e-mail, to Ms. Tracy Tiernan at ttiernan@panynj.gov, no later than 12 noon, on May 9, 2011, to confirm your attendance. Requests should include the Proposer's name, name(s) of attendee(s), and contact information of one person from the Proposer's team to be notified of any changes.

VIII. ADDITIONAL INFORMATION

No Proposer shall have any rights against the Authority arising at any stage of this solicitation, or arising from any negotiations that take place, or from the fact that the Authority does not select a Proposer.

After an agreement has been reached with the selected firm, the Authority shall 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.

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. Proposers are encouraged to periodically access the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6> for RFP updates and addenda.

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, 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 Consultant shall be deemed to have made the certifications contained therein unless said Consultant 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 contractors, affiliates, subcontractors and subcontractors' 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.

Your attention is directed to Paragraph 23 of the Authority's Standard Agreement regarding non-disclosure/confidentiality agreements.

Should you have any questions, or to request a compact disc copy of information and/or materials referenced in Attachment A, Section VI., that are not available on the Authority's website, please contact Ms. Tracy Tiernan, CPPB, Principal Contract Specialist, by email at ttiernan@panynj.gov. All such emails must have "**RFP #24554**" in the subject line. The Authority must receive all questions no later than 4:00 P.M. seven (7) calendar days before the RFP due date. Neither Ms. Tiernan 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.

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, 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.

Sincerely yours,

Tim Volonakis
Manager
Professional, Technical and Advisory Services Division
Procurement Department

Attachments

P.A. Agreement #
DATE

FIRM NAME
ADDRESS
CITY, STATE ZIP

Attention: CONTACT NAME, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ENGINEERING
DESIGN SERVICES FOR PORT JERSEY – CROSS HARBOR FREIGHT
PROGRAM**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority" or "Port Authority") hereby offers to retain <FIRM NAME> (hereinafter referred to as "the Consultant" or "you") to provide expert professional engineering design services for Port Jersey – Cross Harbor Freight Program (CHFP), as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

The Authority does 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.

2. This Agreement shall be signed by you and the Director of the Procurement Department. As used herein and hereafter, the "Chief Engineer" shall mean the Chief Engineer of the Authority, acting either personally or through his 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, the Chief Engineer has designated <NAME>, <TITLE>, or other such individual as hereinafter designated, to act as his duly authorized representative. The Project Manager for this project is <NAME>, at tel. (***) ***-****, or email address: *****@panynj.gov.

3. Your services shall be performed as expeditiously as possible and at the time or times required by the Chief Engineer and shall, in any case, be completed in accordance with the schedule specified in Attachment A. 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 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.

This Agreement is to be funded in whole or in part by the Federal Highway Administration (FHWA). As a result, the Consultant (and its subconsultant(s)) agrees to comply with the applicable FHWA Requirements set forth in Exhibit A of this Agreement, as well as FHWA Form-1273, attached hereto and made a part hereof.

5. The Consultant shall meet and consult with Authority 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 said items are not in accordance with the requirements of this Agreement and 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, disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its 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, done in accordance with sound engineering principles and signed and sealed by a licensed Professional Engineer.

6. 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 as directed by the Chief Engineer prior to the performance of specific services. All drawings shall be prepared in strict conformance to the Port Authority CADD Standards. All submissions of CADD drawings shall be submitted to the Authority on compact discs.

7. 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 the attached Pricing Sheet and paragraph 8 below, including reimbursable expenses, reaches the Not to Exceed Amount of \$_____ 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. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

8. 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 7 above. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

A. Consultant's Fixed Fee. For Consultant's satisfactory performance of its services and all of its obligations in connection with this Agreement, the Authority shall pay the Consultant, subject to pro-rata portion thereof due to any suspension or termination of this Agreement as permitted herein, a fixed fee in the amount of \$_____ ("Consultant's Fixed Fee" or "Fee") representing Consultant's profit on the base Agreement. In no event shall a change order for additional services that are within the general scope of this Agreement, result in an increase in the Consultant's Fixed Fee.

B. Direct Personnel Costs. Consultant shall be reimbursed for the actual hourly rates of Consultant's full-time employees ("Personnel") for services on the project. The Pricing and Compensation Proposal, attached Pricing Sheet, includes a schedule of the actual hourly labor rates and titles of all Consultant's personnel assigned to the project that have been approved by the Authority, including an organizational chart showing the names and titles of all staff working on the project.

1) The Authority reserves the right to audit and verify the 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 the Overhead Rate, as set forth below.

2) The Authority reserves the right of approval of all personnel, hours, billing rates and salaries of said personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or 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 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 and cost of living increases normally administered by the Authority; (b) are warranted by increased costs of providing services under this Agreement; (c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients; and (d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If, during any calendar year, the 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 Chief Engineer or his designee, in his sole and absolute discretion.

C. Overhead Rate. The overhead rate of _____% ("Overhead Rate") shall be applied to the Direct Personnel Costs as permitted above. Computation of the Overhead Rate shall comply with 48 CFR Part 31, "*CONTRACT COST PRINCIPALS AND PROCEDURES*". A Certified Audited Overhead Statement prepared by a government approved Certified Public Accountant (CPA) and/or approval/acceptance of the Consultant's proposed overhead rate by a Cognizant Agency

(i.e. Defense Contract Audit Agency ((DCAA)) shall be required as part of the “Pricing and Compensation Proposal” (Pricing Sheet).

1) An Overhead Rate is applicable for a one-year accounting period (“Provisional Overhead Rate”). Ninety (90) days prior to the expiration of the applicable accounting period, the Consultant shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a new calculation by the Consultant of the Overhead Rate in accordance with this paragraph 8.C; or iii) the Consultant shall submit to an audit of the Overhead Rate by the Authority. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by an agreement modification.

2) The Overhead Rate shall represent reimbursement to Consultant for all other costs incurred by Consultant for such personnel provided; however, for purposes of this paragraph 8.C only, the term “Personnel” shall exclude any non exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the project under the terms of a collective bargaining agreement and in accordance with the agreement documents, and are paid wages for such work. For the avoidance of doubt, the term “Personnel” for purposes of this paragraph 8.C, shall include members of a labor union who are exempt from receiving overtime pay and who render superintendents services on the project.

3) The Overhead Rate shall not apply to partners, principals or temporary employees of Consultant.

4) The Consultant’s actual Overhead Rate(s) during the term of this Agreement shall be subject to an audit by the Authority. The Authority reserves the right to retroactively adjust the Consultant’s compensation in the event that a final audit of Overhead indicates that the actual rate applicable during the Agreement is less than the rate(s) used during the Agreement. The Consultant is responsible for monitoring its actual rates to ensure compliance with the Provisional Overhead Rate applicable at the time.

5) The Overhead Rate shall not include any element that is attributable to the Consultant’s Fixed Fee or addressed as a reimbursable expense or cost under this Agreement.

D. All subconsultants performing services hereunder are subject to the advance written approval of the Authority. The Consultant shall be reimbursed for the costs of subconsultants in accordance with provisions A, B, and C above, which shall only include an amount equivalent to the aggregate amount actually paid to subconsultants by Consultant. Under no circumstances shall any subconsultant agreement, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

In the event that subconsultants are engaged for services to be performed, subcontracts must contain Exhibit A, FHWA Requirements as well as FHWA Form-1273, and the subconsultants must complete and submit the certifications contained therein.

E. Reimbursable Expenses. The Consultant shall also be compensated at an amount equal to the out-of-pocket expense, approved in writing and 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 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 Chief Engineer 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) system, cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, 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 shall be reimbursed upon prior approval for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration - <http://www.gsa.gov/portal/content/100715>) 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 advanced in writing by the Chief Engineer. 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.

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

5) 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.

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.

"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 Overhead Rate referred to in paragraph 8.C above.

F. All costs under this Agreement will be allowed to the extent permitted under 48 CFR Part 31. "*CONTRACT COST PRINCIPALS AND PROCEDURES*" and subject to audit.

See: www.acquisition.gov/far/97-03/html/31.html

9. The Authority reserves the right to make changes to any portion of the Work.

A. The Consultant shall immediately notify the Authority, in writing, of any change in the work scope either requested by the Authority or desired by the Consultant. Such notice shall be in the form of an "Initial Notice of Change" and shall include a detailed Statement of Work describing the change and the reasons for it. Upon the Authority's acknowledgment of the proposed change order, the Consultant will be requested to submit a Cost Proposal that must include the estimated hours by element of work and the applicable fully loaded hourly rate(s), other direct charges, if any, and subconsultant charges, if any, in the same detail as cost elements for the Consultant, in accordance with the provisions of this Agreement related to compensation, as well as any schedule adjustment arising from the change. The amounts to which both parties agree with the proposed change will be incorporated into the Agreement by issuance of a Change Order.

B. If the Consultant does not agree with any schedule or cost decision of the Authority related to said change, the Consultant shall diligently perform all such work as directed by the Authority. The Consultant must issue any related claim to the Authority within five (5) work-days of the Authority's request to perform said change. Upon receipt, the Authority may consider the claim. If accepted, in whole or part, Authority will issue a Change Order. The performance of all such services shall comply with the requirements of this Agreement except as otherwise mutually agreed upon by the parties, in writing.

The Authority reserves the right to delete any item of the work in whole or in part. The Chief Engineer must authorize such deletions in writing.

10. 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 one year after completion of services to be performed under this Agreement.

11. On or about the fifteenth day of each month, you shall render an invoices 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 purchase order number provided by the Chief Engineer. Upon receipt of the foregoing, the Chief Engineer 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 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.

12. A. The United States Government shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Agreement, and you shall hold the United States Government harmless from all claims arising from, or related to, completion of the Project or your continuing compliance with the terms, conditions, and assurances in this Agreement.

B. Exhibit A and Form-1273 form a part of this Agreement.

C. The Authority and the FHWA shall have reasonable access during normal business hours to all of your records and documents relating to any amounts for which you have been compensated, under or in connection with this Agreement. You shall obtain for the Authority and the FHWA similar access to similar records and documents of your consultant, your contractor, and their subconsultants and subcontractors and materialmen, if any. Such access shall be given or obtained and such records shall be maintained, both before and within a period of three years after final completion of the project.

D. You agree that you shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner upon which Federal funds have been expended. For the purposes of this Agreement, the term "Federal funds" means funds however used or disbursed to you that were originally paid pursuant to this Agreement.

13. TERMINATION

A. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered. 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.

B. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon three (3) 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 Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.

14. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority 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.

15. 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.

16. 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.

17. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Chief Engineer 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.

18. Mylars of the contract drawings, originals of technical specifications, schedules, budgets, 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 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 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 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, or subconsultant, or 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 of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, whether 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.

19. 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 shall have, without cost or expense to it, 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. 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.

20. You shall promptly and fully inform the Chief Engineer in writing of any patents or patent disputes, as well as any intellectual property rights or 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 is based upon your special qualifications for the services herein contemplated, and 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 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 to such subconsultant or give the subconsultant any rights against the Authority.

22. Disadvantaged Business Enterprise (DBE) Program

A. The requirements for the Disadvantaged Business Enterprise (DBE) program are set forth in U.S. Department of Transportation (DOT) Title 49 Code of Federal Regulations Part 26 (49 CFR Part 26) and is incorporated into this Agreement by reference.

B. The DBE participation goal for this Agreement is 17.3%.

C. This regulation applies to all agreements that include any federal funds; therefore the Consultant agrees to include the clauses cited below in all agreements for this project and to enforce such clauses. With regards to paragraph 2) below, the Consultant agrees to pay each subcontractor within 7 days of receipt of payment from the Authority.

D. The Consultant agrees to include the following clauses (printed in *Italics*) in all agreements and subcontracts:

1) The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract and shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted agreements. This regulation is incorporated into this agreement by reference. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Authority deems appropriate. This provision shall likewise apply to each subconsultant at each tier.

2) The Consultant agrees to pay each subconsultant on this project for satisfactory performance of its subcontract no later than seven (7) days from the receipt of each payment received from the Authority or within such later period as is provided in the subcontract.

3) 49 CFR Part 26 is incorporated into this Agreement by reference.

4) The DBE participation goal for this agreement is 17.3%.

5) The obligation of the Consultant is to make good faith efforts to meet the Agreement DBE participation goal of 17.3%. The Consultant can demonstrate that it has done so by meeting the Agreement goal or documenting good faith efforts. See Section 26.53 and Appendix

A of 49CFR Part 26 for descriptions and discussions of good faith efforts. The Authority is responsible for determining whether a Consultant that has not met the Agreement goal has documented sufficient good faith efforts to be regarded as responsible.

E. Assistance is available from the Authority's Office of Business and Job Opportunity to identify DBE firms and to answer any questions related to the preparation and submission of the DBE Participation Plan (Exhibit B). Questions can be addressed to Robert Foreman at (212) 435-7818 or email at rforeman@panynj.gov. The Authority through the New York State and New Jersey Uniform Certification Programs (UCP) maintains Directories identifying all DBE firms. The Directories list the DBE firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Each state UCP revises the Directory periodically. The Authority makes the Directories available as follows:

- 1) *New York State UCP Directory:* www.nysucp.net
- 2) *New Jersey UCP Directory:* www.njucp.net

23. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. 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, as determined by the Authority. These security requirements may include but are not limited to the following:

- Consultant/subconsultant identity checks and background screening, including but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
- Requiring the Consultant and subcontractors, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2009, corrected as of February 9, 2009)*.
- Issuance of Photo Identification cards;
- Access control, inspection, and monitoring by security guards.

The Consultant may be required to have its staff, and any subconsultant's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Consultant may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks shall be reimbursable to the Consultant as a Reimbursable Expense as provided herein.

The Authority may impose, increase, and/or upgrade security requirements for the Consultant and its staff and subconsultants during the term of this Agreement to address changing security conditions and/or new governmental regulations.

24. The Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants 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 or loss or damage to any property of the Consultant or its subconsultants 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 or 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 or 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 or the Authority 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 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 it 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 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 it 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 it 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 it would assume or the claims for which it 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.

25. 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 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.

26. 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 current version of the Code of Ethics in effect on the commencement date of this Agreement (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 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. With respect to the foregoing certification in paragraph "26G.", 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 Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. 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-responsibility.

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 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 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 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, 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 will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances the Consultant may be required as a condition of this Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall 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.

27. 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 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 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.

28. 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 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 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 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 version of the Code of Ethics and Financial Disclosure effective on the commencement date of this Agreement (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Chief Engineer, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant's employees to keep confidential a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

29. 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 agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in the Consultant or potential Consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said Consultant or potential Consultant, 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, 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 Chief Engineer in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Chief Engineer, 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 Chief Engineer 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 Engineer to be no longer appropriate because of such preclusion, then the Chief Engineer 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 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.

30. DEFINITIONS

As used in sections 25 to 29 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.

31. The entire agreement between the parties is contained herein, together with all attachments and any Task Orders that are hereby made a part of this Agreement, 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.

32. 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.

33. 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

Lillian D. Valenti
Director
Procurement Department

Date _____

ACCEPTED:

FIRM NAME

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 "33" to "34" and insert a new Paragraph "33": as follows:

33. 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.

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ENGINEERING DESIGN SERVICES FOR PORT JERSEY – CROSS HARBOR FREIGHT PROGRAM

I. BACKGROUND

The Port Authority of New York and New Jersey (the “Port Authority” or “Authority”) is an agency of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1500 square miles in both States, 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. The Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.” Authority’s facilities also include its wholly owned subsidiaries, such as The Port Authority Trans-Hudson Corporation a heavy-rail rapid-transit system, operating 24 hours a day, seven days a week, serving as a critical link in the New York-New Jersey transportation network.

Greenville Yard is the western terminus of the current railcar float (barge) system, which operates between Jersey City and Bush Terminal on the Brooklyn waterfront. The barge system that moves goods across the New York Harbor has been in existence since before the growth of the national highway system and before the construction of vehicular bridges spanning the Hudson River. The Cross Harbor rail freight operation at Greenville Yard once encompassed six rail transfer bridges, many rail barges, and very large upland rail support facilities. In the past few decades, however, the operation and various facilities have succumbed to competing private sector funding priorities, an inability to effectively compete with trucking, land development pressures, poor facility management, poorly coordinated transportation public policy, and a severe lack of infrastructure investment. As a result, today only one remaining transfer bridge structure (Bridge #11) is operational in Greenville Yard. Transfer Bridges #9, #10 and half of #12 are still standing but are unusable and are in an advanced state of disrepair. Transfer Bridge #11 is in need of immediate repairs to the structural, mechanical, electrical, and fender systems in order to ensure its continuing operational reliability. Furthermore, existing Barge #29, which is currently docked at Greenville Yard, is in need of repairs before it can be placed back into service.

The operator of the railcar float system is New York New Jersey Rail (NYNJ Rail), a switching and terminal railroad owned by the Authority since November 2008. It operates the only car float operation across New York Harbor. Since freight trains are not allowed in Amtrak’s North River Tunnels, and the Poughkeepsie Bridge was closed in 1974, the ferry is the only freight crossing of the Hudson River south of the Alfred H. Smith Memorial Bridge,

140 miles to the north of New York City. The Cross Harbor rail freight operation is the last remaining car float operation in the Port of New York and New Jersey.

Ultimately, the Greenville Yard will contain three distinct rail transfer sections: an Intermodal Container Transfer Facility to support the GlobalTerminal operations at the Port Jersey – Port Authority Marine Terminal, a barge-to-rail container transfer facility, and an expanded Cross Harbor Rail Freight Program (CHFP).

Under its CHFP, the Authority, with funding from the Federal Highway Administration (FHWA), is redeveloping the Greenville Yard in Jersey City (see Exhibit IV) as required to increase the amount of freight moved by rail, thereby reducing the region's dependence on trucks. The goal of the CHFP is to improve goods movement by rail across New York Harbor.

II. SCOPE OF WORK

The services of the Consultant shall generally consist of performing professional architectural and engineering design services as required to implement the CHFP. These services shall include, but not be limited to: preparing a Design Development Package, Final Design and Contract Documents, and performing Post-Award Services for modifications to the Port Jersey - Greenville Yard as follows:

- A. repair or replace, as appropriate, structural and mechanical components of Transfer Bridge #11, to extend its useful life to seven years;
- B. repair and rehabilitate the fender system for Transfer Bridge #11;
- C. repair and paint Barge #29;
- D. phase demolition of Transfer Bridges #9, #10 and #12;
- E. new transfer bridges #9 and #10 (to the extent defined herein);
- F. provide a new barge;
- G. new on-site/off-site Support Tracks and Special track work including associated site work, lighting, fire protection, and compressed air system;
- H. design two new Prefabricated Trailers.
- I. Upon completion of construction and commissioning of new Transfer Bridges #9 and #10 and support tracks, demolish and remove existing Transfer Bridge #11 (including the fender system), to the extent defined herein.

Each work item, above, shall be addressed under separate project contracts prepared by the Consultant as outlined in Exhibit III.

The Consultant shall be responsible for all involved disciplines, except as noted otherwise.

The Consultant's services hereunder shall comply with all requirements of the FHWA.

All documents referenced herein are included herewith and made a part hereof, except as otherwise noted. See Section VI for a list of available documents.

III. DESCRIPTION OF CONSULTANT'S TASKS

The Consultant's services shall include, but are not limited to performance of the following tasks:

TASK A. PROJECT SCHEDULE

Submit a schedule for performance of the following tasks, consistent with the milestones contained in Section IV below. Said schedule shall identify all required meetings and submissions and shall allow for incorporation of Authority comments as required. Prepare the schedule using Critical Path Method (CPM) and include all task milestones and interdependencies.

TASK B: MEETINGS

Attend meetings, design progress reviews, discussions, conferences, or presentations with Authority staff. Attendants may include Authority tenants, railroad representative(s), utility company representative(s), or others, as approved by the Authority. The Consultant shall arrange for subconsultant participation, as required.

Meetings shall typically take place at Authority offices at Two Gateway Center, Newark, NJ, at the Authority's Port Commerce Department Offices at 1210 Corbin Street, Elizabeth, NJ, or other Authority facilities as required. Meetings shall occur as noted herein, or as otherwise directed by the Authority. As part of this task, the Consultant shall provide the following services:

1. Prepare agenda for all meetings and submit to the Authority at least two working days in advance of the meeting, incorporate Authority comments, and submit as final.
2. Prepare, and submit draft minutes to the Authority for all meetings within 3 business days of the meeting. Incorporate Authority comments and resubmit revised minutes 2 days after receipt of comments and prior to the subsequent meeting, as required.
3. Schedule and attend monthly status meetings with the Authority, and others as required and approved by the Authority, to review progress, discuss project staffing, and plans for the upcoming month.
4. It is anticipated that the Consultant shall conduct a Railroad Operations Interview with NYNJ Rail staff, as required for the Consultant to have a clear understanding of the system.
5. Participate in orientation meetings at the start of the Design Development, and the Final Design stages with Authority staff and all key personnel of the Consultant, as appropriate.
6. Conduct design progress presentations to the Authority and others as determined by the Authority. Presentations shall be conducted at both 75% and 100% completion for both the Design Development and Final Design work.

As part of the presentations, prepare all required presentation material including, but not limited to, drawings, computations, and backup information for tasks performed. The presentation shall include a detailed and comprehensive Power Point presentation.

7. Attend construction coordination meetings as identified in Task J below.

For purposes of this task, the Consultant shall estimate 1,500 staff hours total for the project contracts outlined on Exhibit III. Such amount is not guaranteed, or intended to represent a minimum or maximum; Consultant's actual hours necessary to fulfill the requirements of this task may be more or less.

TASK C: REVIEW AVAILABLE DOCUMENTS

The Consultant shall review reports, drawings, and other available documents as required, prior to performance of the following tasks. See Section VI below.

TASK D. FIELD INSPECTION AND VERIFICATION

Prior to performing any field inspection/verification services, submit a Safety Plan to the Engineer for review and approval. Information in the Safety Plan shall include, but not be limited to: a description of the inspection/verification services to be performed, the types of vehicles and equipment to be used, names of personnel to be present, the name and qualifications and experience of Consultant staff in charge at the site of the verification work, a rail safety plan and an emergency response plan that lists the telephone numbers for both the NYNJ Rail operator's office and the Port Authority Police and includes directions to the nearest hospital and the means of conveying the emergency response plan to the Consultants field personnel. Upon approval of the Safety Plan by the Authority:

1. Prior to inspection, meet with Authority staff to review Authority data relevant to the inspection.
2. Provide all equipment including rigging, scaffolds, and ladders as required to inspect the structure and to maintain rail traffic under and over the structure. Staging of inspection work may be required.
3. Conduct a field inspection of Greenville Yard, as appropriate, and as required, verifying exiting field conditions including taking all appropriate field measurements.
4. Submit electronic copies of completed field findings on inspection reporting forms (which shall be provided by the Consultant and approved by the Authority) and meet with Authority staff to discuss those findings. Electronic files shall be provided in pdf format (jpg format for photographs).

TASK E: BASIS OF DESIGN REPORT

Prepare a Basis of Design Report (BDR) for each of the project elements as defined in Section II above, outlined on Exhibit III. Reports shall be produced on 11" x 17" bounded format with color printing, as appropriate to include but not be limited to:

1. Design Criteria Summary: A summary of all criteria to be used in the design including loads (dead, live, wind, snow, vehicular, wheel, impact, rail car, or other loads as appropriate), material grades, codes and assumptions, and shall be in accordance with, but not limited to:
 - a) Codes and Standards (See Exhibit I, included herewith and made a part hereof)
 - b) Railroad (RR) Track Geometry Criteria and RR Track Clearance Criteria
 - c) Drainage Criteria
 - d) Loading Criteria
 - e) Material Criteria
 - f) Serviceability Criteria
 - g) Corrosion Protection Criteria

- h) Criteria for Structural Components to accommodate future modification, rehabilitation, and replacement
 - i) Criteria to accommodate loading, deflection, and stress induced during construction
 - j) Minimum design life assumed for each bridge and barge element
 - k) Other design and construction requirements/assumptions
 - l) Electrical load calculation
 - m) Lighting criteria
 - n) Design and construction assumptions
 - o) The Design Criteria Summary shall also include:
 - 1) Design Methods and Procedures
 - 2) Repair Methods and Procedures
2. Perform an analysis of the various size barges shown in Exhibit II, Barge Tonnage Capacity Alternatives. Include cost and schedule estimates and operating impacts for each of the various size barges.

This analysis shall include identification of alterations required to the existing transfer bridge structures/fendering in Greenville Yard and at the 65th Street Terminal in Brooklyn and an assessment of the impacts of the various size barges on the development of the new transfer bridges at Greenville and on the tugboat operating requirements.

The new barge shall be designed to have a four (4) rail track system on deck for the placement of between 20 to 28 - 60' railcars and have a bow configuration enabling docking to meet the existing transfer bridge alignments for the movement of rail cars to and from the barge. Specifically, the car-float must be designed to connect to existing transfer bridges at the Greenville Yard located at Jersey City, NJ; and 65th Street Transfer Bridge at Brooklyn, NY; and new transfer bridges #9 and #10.

The analysis shall also consider use of the barge at various tide heights, and the impact of the various tide heights and other weather and operating conditions on the various rail car lengths, and required clearances. Clearances to be proposed by the Consultant in consultation with the Authority and Naval Architect.

Provide design criteria for the new barge as per item 1 above.

- 3. In the Greenville Yard Master Plan, the design alternatives considered for the new Transfer Bridge in the study were 1) Bridge Gantry, 2) Hydraulic Lift, and 3) Pontoon. The Consultant shall verify the alternatives considered, as well as other options not considered in the Master Plan, and present the advantages and disadvantages for each alternative in terms of operations, maintainability, constructability, and cost. The Consultant shall provide a presentation and report for this evaluation and the recommended design to the Authority for review. After review, the Authority will direct the Consultant on the design option to proceed for the Transfer Bridges.
- 4. The design of the new barge and Transfer Bridge shall accommodate any future increases or changes in loading and clearances anticipated in the long term by the industry and NYNJ Rail. Provide criteria for any future loading and clearance increases or changes.

5. Demolition of existing Transfer Bridges: In accordance with the National Environmental Policy Act, and pursuant to a Memorandum of Understanding (MOU) with the New Jersey State Historic Preservation Officer (NJ SHPO), the Authority will be undertaking a study, under a separate consulting contract, to determine the feasibility of demolishing the existing transfer bridges at Greenville Yard and reconstructing and preserving all or portions of the transfer bridges, to another location. The demolition plans for the existing transfer bridges will require coordination with this consultant. Impact to the demolition plans may include, but not limited to, the order and manner in which portions of the existing transfer bridges are demolished and removed or preserved.

The Consultant shall assume 25% of the transfer bridge structure or components are to be preserved and estimate staff time according.

6. Sustainable design criteria utilizing Sustainable Infrastructure Guidelines (dated August 2010). This includes but is not limited to project achievement summary and identified alternates for analysis.
7. A detailed draft Code Analysis Report for the codes and standards listed in Exhibit I.

Submit the BDR to the Authority. Incorporate Authority comments, as required, and re-submit the BDR as Final. See Section IV for submission requirements.

Update the Final BDR as required during the design duration to reflect any changes. All changes shall be subject to the review and approval of the Authority.

TASK F: DESIGN DEVELOPMENT PACKAGE

Upon approval of the BDR, and written authorization from the Authority to proceed, prepare a Design Development Package (DDP). The DDP shall include design development of all involved engineering discipline components, as appropriate, equivalent to a 50% level of completion of the total final design as defined in Task G and shall include but not be limited to: drawings, technical evaluations, calculations, construction cost estimates, construction schedules and staging plans, and presentation materials. Coordinate the work of all involved disciplines and resolve any discrepancies for final approval by the Authority.

In developing the design, the Consultant shall consider availability of materials, equipment and labor, construction sequencing and scheduling and cost as it relates to the construction, operations, maintenance requirements and energy conservation aspects of the project.

1. The DDP shall include but not be limited to the following components/items:
 - a. Repair or replace, as appropriate, structural and mechanical components of Transfer Bridge #11:
 - 1) Stabilize the screw jacks of the lift mechanism
 - 2) Replace wire ropes, sheaves, and bearings for the bridge and apron spans
 - 3) Repair, realign, or replace the counterweights and associated supports
 - 4) Repair cross braces as required to decrease leaning of apron tower
 - 5) Encase timber substructure in concrete for additional support
 - 6) Repair landings and stairways between towers
 - 7) Repair barge mooring connections

- 8) Repair deteriorated steel floor beams and girders
 - 9) Replace roofing system
 - 10) Repair and/or replace, as appropriate, existing fender system
 - 11) Modify or repair all associated appurtenances (not noted above) as required to maintain them in a state of good repair
- b. Repair and paint existing Barge #29:
 - 1) Dry dock the barge
 - 2) Scrape marine growth and accumulated materials
 - 3) Clean and paint
 - 4) Install galvanic anodes
 - 5) Replace manhole covers and access ladders
 - 6) Install bottom doublers
 - 7) Provide for welding and steel work as required
 - 8) Air test, gauge hull bottom
 - c. Phased demolition of existing Transfer Bridges #9, #10 and #12.
 - d. Construction of new support tracks and special trackwork for new Transfer Bridge #9, including a temporary track to existing Transfer Bridge #11, as depicted in Exhibit IV, and removal of existing tracks and special trackwork as required.
 - e. Modify "A" Yard tracks as depicted in Exhibit IV.
 - f. Construct new exchange tracks/tail tracks for the Tropicana Juice Distribution Facility and relocate a portion of Tropicana's adjacent truck trailer storage area as depicted in Exhibit IV.
 - g. Construct a new Transfer Bridge #9, which shall include dredging and related docking/tie-up system.
 - h. Design new barge.
 - i. After constructing and commissioning new Transfer Bridges #9 and #10 and support tracks, demolish existing Transfer Bridge #11, including the fendering system. Task J, Post-Award Services, is not required for this item.
 - j. Design two prefabricated trailers as follows:
 - 1) One 24 foot x 60 foot prefabricated trailer similar to the existing office trailer on-site.
 - 2) One 12 foot x 20 foot prefabricated trailer having a shower and locker room.
 - k. Design of new Transfer Bridge #10, similar to the new Transfer Bridge #9, support tracks and special track work, and limited to DDP design.

2. General Requirements

a. The drawings for all disciplines shall include:

- 1) Major demolition and removals
- 2) Hazardous material removals
- 3) Major construction partitioning or protection
- 4) General phasing and sequencing of installations
- 5) Construction Plans
- 6) Details
- 7) Sections

b. Construction Cost Estimates and Schedule

- 1) Unit prices for the Construction Cost Estimate (item “2.” below) shall be developed from similar projects designed, constructed, or under construction by the Consultant or other organizations. Unit prices to be used shall be submitted to and approved by the Authority.
- 2) Prepare a construction cost estimate based upon the DDP documents and in accordance with the Authority's "General Estimating Guidelines". The construction cost estimate shall include a contingency of up to 15%. Estimates shall be prepared at 50%, 75%, and 100% level of the completion of the DDP documents. The construction cost estimate shall include itemized costs and payment descriptions of all “Unit Cost” items. The cost estimate shall reflect the latest cost figures for the New York – New Jersey Metropolitan area. The Consultant shall use the Authority’s standard cost estimating form. The form will be provided to the Consultant.
- 3) Do not include cost of work and materials associated with the utility lines relocation to be performed by others.
- 4) Long Lead Time, Mock-Up Testing
Provide a listing of all specification sections intended for the project, items requiring long lead-time, mock-up testing, and materials (including those that may be sole sourced), giving your reasons therefor. Include a description of these items along with a recommendation on how to pursue such testing and/or purchases.
- 5) As part of the DDP, prepare Outline Technical Specifications.

c. Construction Staging and Duration Schedules

Provide detailed construction phasing and staging plans for all work to be performed. In the development of the construction staging, closure, outages or disruptions to rail operations should be minimized. Coordinate the staging plans with regard to NYNJ Rail operations. The construction staging and sequences shall not impact on the operations of the terminal facilities. Develop construction staging plan for uninterrupted rail service to the Tropicana Distribution facility.

Describe in detail the method and sequence of construction, including the use of line diagrams and drawings. Show construction sequence, procedure, and method, including special equipment that may be required. Show temporary structures (such

as temporary shoring and underpinning) that may be required to accomplish the work, including protection of existing roadway and tracks. Indicate how major structural components can be delivered to or removed from the site, and include special equipment or procedures needed.

Address stages of construction over the active railroad tracks, and operator areas. Methods of construction and selection of temporary structures shall minimize environmental impacts. Meet with Authority staff, terminal operators, railroad, and utility companies to address their concerns, including periods of track outages allowed, during the development of the construction sequence, procedure and method. Meetings will be arranged and organized by the Authority.

Provide estimates of time and schedules required to complete construction, as well as estimates of delivery times for all long lead-time items. Present the Construction Phased Program Schedule in bar chart form using days, weeks or months as appropriate for the unit of time. Schedules shall be provided at 50%, 75%, and 100% level of completion of the DDP documents.

d. Public Utilities

The Authority will contact appropriate public utilities during design and construction stages for coordination purposes. The Consultant shall participate, as required, and provide input as necessary for the Authority to coordinate the design and construction with all public utilities that may have their services affected by this project.

e. Construction Access Structure Design:

Design of all structures required allowing access for construction of the project. Such structures include temporary trestles and platforms to provide access for construction.

f. Engineering Design Drawings:

For all design items, prepare engineering design drawings in sufficient detail and appropriate scale such that all structural member layout, material, size, location, geometry, notes and details are established and shown.

g. Design Computation:

Design Computation and computer printouts shall be organized, legible, bear the initials of the designers and checkers, and show clarifying diagrams. (User manuals shall be provided as necessary to assist in review/audit of computer analysis).

3. Architectural

- a. Prepare program documents for modular facilities that shall include but may not be limited to requirements for employee lockers, offices, restrooms.
- b. Prepare preliminary drawings and specifications including plans, sections, elevations for modular buildings
- c. Prepare code analysis and ADA compliance requirements for modular facilities
- d. Prepare sustainable design analysis to determine conformance with Port Authority Sustainable Guidelines.

4. Civil Engineering

- a. Develop track alignment, including special trackwork, and plans.
- b. Develop cross sections at an interval no greater than 100 feet. Cross sections shall depict track centers, existing and preliminary finished grades and any other pertinent information and dimensions.
- c. Develop track profiles.
- d. Develop grading and drainage, including storm water management devices or concepts and plans.
- e. Prepare preliminary concept for a compressed air system to be used for the purpose of charging the rail cars brake system. At a minimum, the compressed air system shall include piping, enclosed shed for the compressor and miscellaneous equipment, and air outlets at the tracks.

5. Electrical Engineering

- a. Develop Project Implementation staging.
- b. Provide for all areas of the Site Wide:
 - 1) Power
 - 2) Lighting (normal and emergency)
 - 3) Corrosion Protection
- c. Design shall be based upon code requirements and actual load requirements with provisions for 25% future load growth included in the feeders, switchgear/switchboards, distribution panels, electrical rooms, and closets as spares and spaces.
- d. Electrical Design shall include:
 - 1) Electrical load calculations (connected load and demand load)
 - 2) Electrical one-line diagrams
 - 3) Riser diagrams
 - 4) Block diagrams
 - 5) Control diagrams
 - 6) Design and layout of Electrical Equipment rooms/closets
 - 7) Layout of major equipment, such as electrical vaults, switchgear, distribution panels, lighting panels
 - 8) Control equipment, including sizes, types and locations
 - 9) Equipment location, elevations and details as necessary
 - 10) Utility location plans and routings for all power and communications infrastructure required to support all systems, including the utility and infrastructure connections
 - 11) Grounding

- 12) Power, control, and communication cables management plans, schedules and routes
 - 13) Equipment schedule
 - 14) Specifications for all electrical equipment, including creation of custom specifications where applicable
 - 15) Catalog Cuts of critical equipment
- e. Power:
- 1) Design a complete electrical installation including all conduits, wires auxiliary material and equipment.
 - 2) Both normal and emergency power for all devices and equipment requiring electrical power.
 - 3) All transformer, switchgear, switchboards and panel boards as required to distribute power.
 - 4) Each panel board shall incorporate a minimum of 25% spare circuit breakers.
 - 5) Series rated panel boards are not acceptable. All panel board breakers shall be bolt-on type.
- f. Lighting:
- 1) Provide lighting systems with lighting levels and uniformity in accordance with the requirements of applicable codes and standards.
 - 2) All lighting circuits shall be controlled by means of lighting control cabinets including all switching hardware and logic controls.
 - 3) All lighting fixtures shall be alternately circuited so that the failure of a circuit shall not leave an area in darkness.
 - 4) Lighting design shall include emergency battery power pack.
 - 5) Design shall include development of lighting level criteria, selection of lighting fixtures and fixture layouts, lighting control routines and determination of the quantities and locations of fixtures to be provided with emergency battery power pack.
- g. Corrosion Protection:
- 1) Design of the corrosion protection system for existing Barge #29 and new barge shall be by a NACE International certified Corrosion or Cathodic Protection Specialist.
 - 2) Provide a cathodic protection system for all submerged surfaces of existing Barge 29 and new barge. A design evaluation shall be completed including coordination of the cathodic protection system with the coating system to be applied to the barges, and selection of the appropriate galvanic anodes.
 - 3) Provide calculations of bare surface area based on assumed coating system effectiveness, and cathodic protection current density to yield the anticipated current required to achieve cathodic protection.

- 4) Evaluate the available galvanic anode types and sizes, and select the type best suited to the calculated current requirements and life requirements for the barges.
 - 5) Provide preliminary layout drawings showing anode placement, mounting details and other construction requirements to provide an effective and durable cathodic protection system.
 - 6) Provide materials and installation specifications for the cathodic protection system. Include system testing requirements to insure that the system meets industry criteria for cathodic protection.
- h) Electronics:
- 1) Prepare block diagram for each system.
 - 2) Provide preliminary layout drawings showing telecommunication system for the new prefabricated trailers and Transfer Bridges.
 - 3) Provide all necessary calculations for each system.
 - 4) Coordinate with other disciplines for design options and recommendations.
 - 5) Prepare Final Design criteria that shall include, but not be limited to assumptions, interdependencies, and impact to existing operation.
 - 6) Provide Equipment Schedule and Catalog cuts for all equipment.
 - 7) Identify local utility pole for Telecom service drops if necessary.
 - 8) Perform utility pole survey and provide report in Verizon approved format (such as N888 forms) for application purposes.
 - 9) Identify any items that may require the Authority to obtain a FCC license and provide documentation needed for FCC Filing.
 - 10) Provide demarcation point for Telecom Company to drop service.
 - 11) Provide equipment location, elevations and details.
6. Environmental Engineering:
- a) Determine and prepare all necessary permit applications for all of the tasks for the project as one package. Potential permits include, but are not limited to the following:
 - 1) U. S. Army Corps of Engineers Nationwide Permit
 - 2) U.S. Army Corps of Engineers Individual Permit
 - 3) New Jersey Department of Environmental Protection Waterfront Development/Coastal Wetland Permit and Dredging Application
 - 4) New Jersey Department of Environmental Protection Water Quality Certification/Coastal Zone Management Plan Certification
 - 5) Hudson-Essex-Passaic Soil Conservation District Soil Erosion and Sediment Control Permit
 - b) Prepare Stormwater Management Plan

- c) Determine if asbestos, lead paint or other hazardous materials need to be abated prior to demolition of Transfer Bridges 9, 10, 11 or 12.
 - d) Evaluate the need for dewatering and provide necessary management/treatment if required.
7. Geotechnical Engineering:
- a) Foundation design:
 - 1) The location and type of piles and their compression, lateral and uplift capacity.
 - 2) Recommendations for the most cost effective foundation systems for the transfer bridge and for the preferred foundations.
 - 3) Drawings showing the number and spacing of foundation elements used for the transfer bridges.
 - b) New Support Tracks and Special Trackwork:

Evaluate site settlement within the area, if any, of the new tracks and special trackwork.
 - c) Repairs to Existing Transfer Bridge #11:
 - 1) Perform literature survey to gather subsurface information, sounding data, and available technical papers regarding the construction of the transfer bridge.
 - 2) Specify any subsurface investigation recommendations upon review of existing data, which shall be incorporated in 'Geotechnical Tasks to be performed by Authority staff' (see below). The field data from on-going subsurface investigations will be made available to you in a timely manner.
 - 3) Review results of subsurface investigations including laboratory test data.
 - 4) Evaluate condition of timber piles, cap beam, etc. for damage caused by marine borers. Perform underwater inspection and analysis to determine creosote retention level of treated timber piles and cap beams. Results shall include life cycle analysis for timber piles and cap beam.
 - 5) Evaluate load carrying capacity of timber piles based on items b, c, and d above.
 - 6) Evaluate existing condition of shallow foundations regarding load carrying capacity.
 - 7) Evaluate existing condition of transfer bridge abutments.
 - 8) Recommend rehabilitation of structures supported on shallow and deep foundations, and of transfer bridge abutments if required.
 - 9) Provide recommendations for the repair and rehabilitation of existing fender system.

- 10) Evaluate need for any dredging to provide access to existing and new barges. Dredging recommendations shall include but are not limited to:
 - (a) Depth of dredge level.
 - (b) Dredge material disposal plan.
 - 11) Evaluate site settlement within development area, if any.
 - 12) Demolition of Existing Transfer Bridges #9, #10, #11 and #12: Design the demolition/removal of all shallow/deep foundations.
 - 13) Provide recommendations on whether to abandon existing pile foundations or leave in place and design/construct around them.
- d) New Transfer Bridges #9 and #10:
- 1) Evaluate alternate schemes for foundation support of the Transfer Bridges # 9 & 10 structures and perform a constructability/feasibility study.
 - 2) Provide the pertinent foundation and its cost for each scheme.
 - 3) Evaluate alternate methods for reconstruction of a new fender system for the New Transfer Bridge #9 & #10.
 - 4) Evaluate requirements for dredging and disposal of the riverbed sediment. Cost analysis should include dredging and dredge material disposal cost.
 - 5) Provide recommendations on whether to abandon existing pile foundations or leave in place and design/construct around them.
 - 6) Evaluate site settlement within development area, if any.
- e) Geotechnical Tasks to be performed by Authority staff:
- 1) Develop a subsurface investigation program for the new Transfer Bridges #9 and #10 and existing Transfer Bridge #11 structures, including but not limited to test borings, test pits, geophysical investigations, and laboratory testing. The Authority will meet with the Consultant to obtain input regarding specific field or laboratory geotechnical parameters the Consultant may require for the seismic analysis of the transfer bridge structures so that the subsurface investigation can be jointly developed.
 - 2) Provide oversight of the subsurface investigation program. The subsurface investigation program will be performed by the Authority. The laboratory program will be planned by the Authority's staff in coordination with the Consultant. All laboratory testing will be performed at the Authority's Testing Laboratory located at Jersey City, NJ.
 - 3) Prepare boring presentation drawings containing the results of the subsurface exploration program and summary sheets presenting the results of laboratory tests and the geophysical survey. The Consultant will be provided with the field and laboratory data so that they can develop seismic criteria for design of the New Transfer Bridge #9 & #10 structures. The Authority's staff will review the seismic criteria applicable to foundation design.

8. Mechanical Engineering:

a) Mechanical Design:

- 1) Compressed air system (CAS) and required HVAC systems for the air compressor shed. Air Compressor system to be located at the west end of the Greenville Yard and will serve the yard railroad cars. The compressed air system shall include, but not be limited to: screw compressors, dryers, air receiver, pressure reducing valves, etc.
- 2) Identifying the mechanical equipment, associated supports, and appurtenances that need to be replaced or upgraded to extend the useful life of the existing transfer bridge to seven years. Provide a report outlining the prioritized recommended series of replacements or upgrades in light of the planned useful life of existing Transfer Bridge #11.
- 3) Control diagrams and sequences.
- 4) Layout of equipment.
- 5) Control equipment, including sizes, types and locations. Ensure that the architectural elements contribute to the use and visible control of the equipment for safe and effective operation.
- 6) Equipment location, elevations and details.
- 7) Electric power requirements of equipment, HP, kilowatts, amps, voltage, etc. including designation of equipment requiring standby power.
- 8) Equipment schedule
- 9) Catalog Cuts of equipment
- 10) Staging requirements/sequences, including design for temporary equipment needed to continue operation while components are replaced or repaired.
- 11) All new equipment and associated appurtenances shall be current and of the high-efficiency type.

b) Mechanical Design shall include, but not be limited to:

- 1) Bridge Span Drive Motors
- 2) Bridge Span Drive Brakes
- 3) Bridge Span Drive Speed Reducers
- 4) Bridge Span Drive Bearings
- 5) Bridge Span Drive Couplings
- 6) Screw Jacks and appurtenances
- 7) Wire Ropes, Wire Rope Sheaves and Bearings
- 8) Electrically Operated Winches
- 9) Manually Operated Winches
- 10) Friction Cylinder
- 11) Barge Locking System

- 12) Heel Bearings
- 13) Apron Hinge Connection
- 14) Counterweights
- 15) Controls for the equipment listed and the operator workstation/panel (also known as the Control Desk)
- c) Plumbing Design:
 - 1) Domestic water system, including location and sizing for the domestic water service(s), backflow prevention devices, meters, and hot water heaters
 - 2) Sanitary and storm drainage systems, including preliminary location and sizing for the house sewer(s), oil/water/sediment separators, drainage of sump and ejector pumps
 - 3) Riser diagram and sketches
 - 4) All new equipment and associated appurtenances shall be current and of the high-efficiency type.
- d) Fire Protection Design:
 - 1) Suppression systems (dry, pre-action and foam) and fire standpipe systems sprinkler and fire standpipe riser locations, associated Fire Department (Siamese) connections, FM 200 fire suppression systems, associated fire alarm interface capable of reporting back to the fire alarm control panel central system and fire hydrant locations.
 - 2) Riser diagrams, sketches, and the location of the valve assembly controlling the fire suppression system protecting the area.
 - 3) Specifications for materials, piping / fittings, valves with accessories, details, installation, and tests, including creation of custom specifications where applicable.
 - 4) Electric power requirements of equipment, Horse Power, kilowatts, amps, voltage, etc. including designation of equipment requiring standby power.
 - 5) Coordination of the fire protection design with the fire alarm system required by code.
 - 6) Staging requirements/sequences including design for temporary equipment needed to continue operation while components are replaced or repaired.
 - 7) All new equipment and associated appurtenances shall be current and of the high-efficiency type.
- 9. Structural Engineering:
 - a) Provide detailed inspections, including underwater inspections, evaluations, and reports for the priority repairs as recommended in the condition survey reports listed. The Consultant shall perform supplemental field inspections to verify the current condition of the existing structural systems and develop a prioritized list of necessary and recommended repairs to extend the useful life of the existing transfer bridge to

seven years. The additional inspection services shall be sufficient to complete the design work to maintain the existing Transfer Bridge #11 in a state of good repair.

- b) Provide a report outlining the prioritized recommended series of repairs in light of the planned useful life of existing Transfer Bridge # 11.
- c) Provide design and contract drawings for the repairs to existing Transfer Bridge #11.
- d) Provide design and contract drawings for the demolition of existing Transfer Bridges #9, #10, and #12. Coordinate with the separate Authority Consultant tasked with the study of the NJ SHPO requirements.
- e) Include design of all pertinent structural components for the Transfer Bridges included in the superstructure, substructure, connections, bearings, and foundations. The structural engineering effort consists of, but is not limited to, the design of the following items:
 - 1) Transfer bridge superstructure, including towers and gantry structures
 - 2) Transfer bridge substructure, including abutment, pier, and ramp structures and pile/drilled shaft foundations
 - 3) Control room structure
 - 4) Structural support for electrical and mechanical equipment and housing
 - 5) Miscellaneous structures
 - 6) Sign structures
 - 7) Structural design of temporary foundation related elements utilizing Authority geotechnical criteria
 - 8) Construction methodology, sequence and staging
- f) Provide design and contract drawings for the demolition of existing Transfer Bridges #11, including the fendering system, after the construction and commissioning of new Transfer Bridges #9 and #10 and support tracks. Coordinate with the separate Authority Consultant tasked with the study of the NJ SHPO requirements.

10. Naval Architecture:

- a) Perform a thorough inspection of existing Barge #29, and develop a prioritized list of necessary and recommended repairs required to restore the barge into service. Design shall be of sufficient scope and detail to provide shipyards the ability to bid the repair work.
- b) Provide design and contract drawings for the repairs to existing Barge #29.
- c) Provide design and contract drawings for the new barge. Barge design shall be in accordance with American Bureau of Shipping (ABS) standards and include all loading developed in conjunction with the Authority and operator (NYNJ Rail). Barge design shall also include all loads incurred during shipping and delivery. Submit design calculations and drawings to ABS for review and comments. Incorporate comments from ABS to the design.

11. Sustainable Design:

Include an executive summary, project credit checklist showing achievement level, list of issues requiring resolution to advance design progress and description of strategies and/or identified alternates used for credit achievement.

12. Traffic Engineering:

Identify the access points for construction vehicles and prepare any necessary conceptual maintenance of traffic plans during construction.

13. The DDP documents shall be submitted for Authority review at 50%, 75% and 100% levels of development, unless otherwise noted. See Section IV for submission requirements. Prepare a detailed and comprehensive Power Point presentation and conduct a formal design presentation at approximately 75% completion of the DDP.

Upon completion of the DDP, present and submit the final DDP to the Authority. Conduct formal design presentations to the Authority of the 100% complete DDP. Prepare a detailed and comprehensive Power Point presentation. Upon approval of the DDP and written authorization from the Authority, the Consultant may proceed with the performance of Task G, Final Design and Contract Documents.

14. Construction Cost Estimates

- a) Prepare draft and final construction cost estimates as required for the DDP (Stage II) and Final Design (Stage III).
- b) Reconcile cost estimates with other cost estimates developed by the Authority's Engineering disciplines.
- c) The construction cost estimate shall also include, but not be limited to, itemized costs and payment descriptions of all "Unit Cost" items.

TASK G: FINAL DESIGN AND CONTRACT DOCUMENTS

Upon approval of the DDP and direction from the Authority to proceed, prepare the contract drawings and specifications for work to be performed by a Contractor, which shall include, but not be limited to, the appropriate work items contained in the foregoing tasks. Final Design and Contract Documents for each discipline shall include but are not limited to:

1. General Requirements:

- a. Prior to the performance of this task, submit a specific Quality Control/Quality Assurance Program for the professional services to be performed in connection with the Final Design and the preparation of contract drawings, construction estimates, and specifications specified herein.
- b. Upon completion of the Contract Documents required hereunder, submit a letter to the Chief Engineer signed by the Consultant's principal certifying that the Consultant has performed the Quality Control/Quality Assurance Program as defined by the Consultant at the start of this Task.
- c. Contract Drawings: The engineering drawings shall be prepared in conformance with the Authority CAD Standards and by using the "AutoCAD" computer program. The engineering drawings shall be prepared in both AutoCAD DWG and Design Web Format (DWF).

For contract drawings, observe the following signature procedures:

- 1) All Consultant contracts shall have a cover sheet containing the facility name, contract title and contract number. The cover sheet shall have the appropriate places for signature by Authority staff. No other information shall appear on the cover sheet. This will be the only Contract Drawing prepared by the Consultant that will be signed by the Authority.
- 2) Sign and seal all drawings prepared by you.
- 3) Sub-consultants shall sign and seal their own drawings. The Consultant's logo shall appear on each drawing prepared by a sub-consultant.
- 4) All drawings, except for barge drawings, prepared by the Consultant, shall be signed and sealed by the Principal(s) of the firm who is a Professional Engineer licensed in the State of New Jersey. All barge drawings, prepared by the Consultant, shall be signed and sealed by the Principal(s) of the firm who is a Naval Architect licensed in the States of New York and New Jersey. The barge drawings shall bear both the States of New York and New Jersey seals and signatures.

For all drawings, the New Jersey seal shall have the following beneath the seal:

ORIGINAL SEALED AND SIGNED BY:

New Jersey Professional Engineer #
& Certificate of Authorization #

- d. Design Calculations and Diagrams: Submit complete design computations and design drawings covering all structural framing and supports, such as primary framing members, bracing, and foundations.

All engineering calculation sheets, including computer generated input and output sheets, shall be numbered (sheets shall also include total number of sheets in package), dated, indexed and bound. All calculation sheets shall have the Consultant's logo and shall be initialed by the designer and the checker. The index sheets shall define the total number of sheets submitted and shall bear the seal and signature of the lead engineer or an experienced engineer holding a Professional Engineer's license in the State of New Jersey or Naval Architect licensed in the States of New York and New Jersey and who is familiar with and responsible for the design.

- 1) Calculations shall clearly distinguish between new and existing construction. Documents from which existing dimensions and existing member properties were obtained shall be referenced in the calculations.
- 2) Design calculations for design review/audit shall be submitted at the 50%, 75% and 100% levels of drawing development.
- 3) Furnish the description and proof of adequacy of the computer program, if the computations are submitted in computer print out form. The description of each program shall include:
 - the type of problems solved by the program.
 - the nature and extent of the analysis.

- the assumptions made in the program.
 - instructions for interpreting the computer output format
- 4) Submit complete input/output file of all computer analyses for the final design of all members in compact disc (CD) format.
 - 5) Indicate the design criteria used and the diagrams showing the loading conditions and loading combinations.
 - 6) Indicate the design constants and equations used, including all references.
 - 7) Submit with calculations, indexed and clearly identified input and output sheets, for the entire structure or for those portions of the structure, which will be sufficient to enable the Authority to evaluate the structure.
 - 8) Submit a clear diagram of all member forces (axial, shear, bending or other forces, as appropriate) for each loading condition controlling the design.
 - 9) At the conclusion of this task, a complete set of the final design calculations for all structural components, including sketches and computer printouts and all item described above shall be submitted to the Authority for its records. Engineering design calculations shall be signed and sealed by a professional engineer licensed in the State of New Jersey or naval architect, licensed in the States of New York and New Jersey.
- e. Construction Document Deliverables:
- 1) Technical bid documents for all disciplines, including drawings, and specifications. Documents are to be complete, clear, accurate and fully coordinated between disciplines. Documents shall describe in detail all of the work, include all schedules, details, plans, dimensions, and diagrams necessary to provide full understanding for accurate bidding and construction and shall meet Federal procurement requirements.
 - 2) Provide complete construction documents corresponding to individual construction bid packages, as directed by the Authority. Provide the Authority with a complete set of reproducible drawings and documents as well as electronic files conforming to the project standards (e.g. Authority CAD Standards).
 - 3) Major equipment not in scope (for clearances, space requirements, power requirements, etc.) shall be depicted for coordination purposes.
 - 4) All demolition and removals shall be indicated as part of the contract documents.
 - 5) Provide the final construction schedule, phasing and staging plans for all the project components.
- f. Specifications
- 1) Provide the following information for the Authority Standard Division 1 Specifications. Authority staff will prepare Division 1:
 - a) Information specifically related to Conditions and Precautions, Staging, Available Property, Temporary Structures, and other General Provision Requirements of the subject contract.
 - b) A list of the contract drawings.

- c) A list of unit price items, where appropriate, with payment description and estimated quantities for each item.

2) Technical Specifications:

The Authority has prepared certain standard technical specifications that will be made available in hard copy and/or on CD as requested by the Consultant. These standard technical specifications must be used by the Consultant and may not be altered. Since these standard Technical Specifications may contain materials and related procedures, which are not appropriate to the specific Contract being proposed, the contract drawings must clearly define the materials and scope of work. Division 1 of the Authority's specifications dealing with general provisions, includes the following language: "In case of a conflict between a requirement of the Contract Drawings and a requirement in Division 1 of the Specifications, the requirement of Division 1 shall control. In case of a conflict between a requirement contained in other Divisions of the Specifications and a requirement of the Contract Drawings, the requirement of the Contract Drawings shall control."

- a) Prepare all technical specifications, which are not available from the Authority. Any technical specifications prepared by the Consultant shall be in the same format as the Authority standard technical specifications, and make any changes therein requested by the Authority throughout its various reviews.
 - b) Comply with the "Instructions to Consultants for Preparation of Port Authority Construction Contract Documents" which will be made available upon commencement of work by the Consultant.
- 3) Other than hard copies of specifications prepared by the Consultant that are to be submitted to the Authority as noted herein, the Consultant shall submit CD copies of said specifications. One (1) disc copy shall contain the specifications in Microsoft Word format, and shall be labeled to clearly indicate the contract title, the name of the word processing program used and the revision number of said program.

2. Architectural:

- a. Prepare final contract drawings and specifications including but may not be limited to, floor and roof plans, reflected ceiling plans, typical building sections, detail sections, specifications, and schedules to fully construct modular buildings for facilities.
- b. Prepare fixture and furniture layout for modular facility buildings.
- c. Prepare final documentation for Sustainable Design compliance.

3. Civil Engineering:

- a. Finalize: track alignment, including turnouts and plans; cross sections; track profiles, grading and drainage, including storm water management devices or concepts and plans; and the compressed air system.
- b. Prepare and finalize horizontal geometry data plans.

- c. Prepare utility plans depicting such things as water mains, sanitary sewers, etc.
- 4. Electrical Engineering:
 - a. Electrical:

Finalize power, lighting, and corrosion protection design as listed in Task F.
 - b. Electronics:
 - 1) Prepare block diagram for each system.
 - 2) Provide Equipment location, elevations and details as necessary
 - 3) Provide Equipment Schedule.
 - 4) Provide Final layout drawings showing Telecommunication (Telecom) System for the new prefabricated trailers and Transfer Bridges.
 - 5) Coordinate with other disciplines for design
 - 6) Identify local utility pole for Telecom service drops if necessary.
 - 7) Assist Authority with any Utility Pole licensing agreements and/or application with local utility company for Telecom Service such as (N888 forms).
 - 8) For items that require the Authority to obtain a FCC license, provide necessary information for FCC licensing.
 - 9) Provide Demarcation point for Telecom Company to drop service.
- 5. Environmental Engineering:
 - a. Prepare all necessary permit applications for all tasks associated with this project as one permit package for Authority review and submittal.
 - b. Determine if asbestos, lead paint, or other hazardous materials need to be abated prior to demolition of existing Transfer Bridges #9, #10, #11 or #12.
 - c. Prepare a stormwater management plan.
 - d. Prepare soil erosion and sediment control permit application drawings (notes and details) and contract set drawings.
 - e. Evaluate the need for dewatering and provide necessary management/treatment if required.
- 6. Geotechnical Engineering:

Finalize Geotechnical Engineering design as listed in Task F. Provide final design and contract drawings.
- 7. Mechanical Engineering:
 - a. Mechanical Design:
 - 1) Finalize design of the bridge and apron vertical movement systems including the counterweights as listed in the Task F description.
 - 2) Finalize design of the winches (powered and manual) for tying on and pulling the barge tight against the apron.

- 3) Finalize design of the barge locks for ensuring the bridge apron and barge are on the same level for the train car to travel to and from the bridge and the barge.
- 4) Finalize all details.
- 5) Finalize design of the control panel and workstation for safe and effective operation.
- 6) Ensure all equipment, wires, ropes, etc. is protected from the weather and has sufficient space for maintenance and operation.
- 7) Finalize the staging and temporary equipment.
- b. Plumbing and Fire Protection Design:
 - 1) Finalize design of the bridge plumbing piping system as listed in Task F description. Provide final design and contract drawings.
 - 2) Finalize design of the bridge Fire Protection system as listed in Task F description. Provide final design and contract drawings.
8. Structural Engineering:

Details and information shown on the structural drawings shall be accurately established and be readily utilized to develop shop and fabrication drawings for construction, and the ordering of catalog items. The drawings shall also include the recommended phasing, staging and sequences of construction.
9. Naval Architecture:

Details and information shown on the naval architecture drawings shall be accurately established and be readily utilized to develop shop and fabrication drawings for construction, and the ordering of catalog items. The drawings shall also include the recommended phasing, staging and sequences of construction.
10. Sustainable Design:

Provide final sustainable design achievement based on Sustainable Infrastructure Guidelines (dated August 2010) to include an executive summary showing achievement level, final project credit checklist, and final credit documentation. Contract drawings shall reflect any sustainable design strategies to be executed by contractor.
11. Traffic Engineering:

Identify the access points for construction vehicles and prepare any necessary maintenance of traffic drawings and specifications during construction. Include any necessary traffic control devices in accordance with the National Committee on Uniform Traffic Control Devices, *Manual on Uniform Traffic Control Devices (2009 Edition)*.
12. Trailers:

Develop final specifications for the trailers, including electrical, telecommunication, HVAC, and plumbing requirements.
13. Deliverables:

The Final Design documents shall be submitted for Authority review at 50%, 75% and 100% levels of development. See Section IV for submission requirements. The

Consultant shall incorporate all comments and provide a written response to all comments.

At the completion of Final Design, submit to the Authority all requested documents, reports, and related materials forming the Final Design Package.

TASK H. COST ESTIMATE

1. Prepare a Construction Cost Estimate based on the Final Design documents and in accordance with the Authority's "General Estimating Guidelines" listed in Section VI and included herewith.
2. The Construction Cost Estimate shall not include a design contingency. (Contingency is not to be confused with design accuracy noted in 4. below.)
3. Estimates shall be prepared at 50%, 75% and 100% level of the completion of the Final Design documents. See Section IV for submission requirements.
4. The Final construction cost estimate shall be completed to reflect the actual construction cost of the project.
5. The Construction Cost Estimate shall include itemized costs of all "Unit Cost" items.
6. After review by the Authority, incorporate comments and/or changes and resubmit as final.

TASK I: CONSTRUCTION SCHEDULE

1. Prepare a Construction Schedule that shall include all the phasing requirements of the various elements of the CHFP as described in Section II Scope of Work. The CHFP as well as the rail service for the Tropicana Distribution Facility referenced in this Attachment A shall remain operational during all phases of the construction elements. The day-to-day functions of these operations will not permit any disruptions.
2. Provide estimates of construction duration and schedules required to complete construction of each individual element as well as a Master Plan Schedule, which shall include all the project elements.
3. During the preparation of the construction schedule, the Consultant shall be required to coordinate the schedule with adjacent projects the Authority is engaged in.
4. A schedule shall be included for delivery times for all long lead-time items.
5. Present the Construction Schedule in bar chart form using days, weeks, or months as appropriate for the unit of time. Schedules shall be provided at 50%, 75% and 100% level of completion of the Final Design documents. See Section IV for submission requirements. Submit schedule in Primavera P6 and PDF format.
6. MISCELLANEOUS

Constructability Review:

- a. Perform constructability analyses of construction within this operating traffic environment and make recommendations pertaining to construction feasibility on integrating operational requirements, availability of specialized equipment, and available areas for staging. Prepare construction phased program schedules that

- identify critical paths of the entire program, sequence construction contracts (if applicable) and staging, and consider long lead materials and equipment.
- b. Assist Authority staff as required to develop a Request for Proposals/Qualifications for the purpose of identifying qualified contractors for the performance of construction.

TASK J: POST-AWARD SERVICES

The Consultant shall not proceed with any work on this Task without express written consent of the Authority's Project Manager.

1. Submit your specific Quality Control/Quality Assurance Program for the professional services to be performed in connection with the performance of your Post Award Duties specified hereunder.
2. Review, and approve or disapprove, all shop drawings, catalog cuts and samples for conformance with the Specifications and Contract Drawings as per Division 1 of the specifications after receipt of said materials from the Contractor, for those materials for which the Consultant is the Engineer-of-Record. Indicate any corrections and additions as required. Advise the Authority thereof giving the reasons for your decisions. Make all required distributions through final approval. Six (6) copies of each working drawing shall be required.
3. Review and respond to Request for Information (RFI) and other pertinent technical inquiries from the Contractor, the Authority, and project related parties.
4. In addition to any on-site observations, the Consultant may be required as the Engineer-of-Record, to attend, at the request of the Authority, up to ten (10) pre-construction meetings for various phases of construction. In addition, the Consultant may be required to attend up to two (2) field progress meetings per month for each construction phase during the construction period.
5. Audit alternative construction details and materials proposed by the Contractor, as requested by the Authority.
6. Make post-award contract changes with detailed drawings, which may include revised Contract Drawings, estimates, and make site inspections as required for the changes.
7. Compensation for the evaluations and changes referred to in items 5 and 6 above shall be computed in accordance with the paragraphs of the Agreement relating to compensation and shall not be charged against the estimated cost, provided that none of these items result from non-compensated work.
8. The approximate construction durations for each project contracts, shown on Exhibit III, are for the sole purpose of estimating staff time.

IV. SCHEDULE AND SUBMISSIONS

Submit the work identified above for review by the Chief Engineer within the number of calendar days stipulated below and as per the schedule shown on Exhibit III, included herewith and made a part hereof, for each project contract of the Program after receipt by you of one copy of the Agreement executed by the Authority.

- A. Submit the 100% complete Project Schedule required under Section III, Task A above, and your specific Quality Control/Quality Assurance Program for the professional services to be performed within **15** calendar days, for each project contract. Include in the Project Schedule your estimated schedule for submissions at 50% and 75% levels of development or completions for Tasks F, G, H, and I. Authority comments on the Project Schedule will be forwarded within **7** calendar days thereafter. Resubmit the schedule as final after incorporating Authority's comments (as required) within **3** calendar days after receipt of the Authority's comments.
- B. Submit 10 sets of the 100% BDR, required under Section III, Task E, within **"A"** calendar days after authorization to proceed by the Authority. **"A"** calendar days are shown on Exhibit III for each project contract. Authority comments will be forwarded to you within **10** calendar days after receipt of said submission. Incorporate comments and provide a written response.
- C. Submit the 100% DDP, required under Section III, Task F, within **"B"** calendar days after authorization to proceed to Stage II by the Authority (may be concurrent with the BDR). **"B"** calendar days are shown on Exhibit III for each project contract. The 50% and 75% submissions shall be in accordance with the approved project schedule. Authority comments will be forwarded to you within **15** calendar days after receipt of each submission. For all submissions (50%, 75% and 100%) incorporate all comments and provide a written response. Said submissions shall include, but not be limited to the following:
1. One (1) reproducible master set and 3 copies of standard size (22" x 34") engineering drawings showing all information and details.
 2. One (1) reproducible master set and 20 copies of half size (11" x 17") drawings of those indicated in Item 1 above.
 3. Three (3) compact discs (CD) of those drawings indicated in Item 1 above in both CAD and pdf format.
 4. Ten (10) copies of the report outlining the prioritized recommended series of repairs to Transfer Bridge No. 11 and Barge No. 29.
 5. Three (3) copies of the design computations, including computer printouts and sketches in bounded form.
 6. Three (3) copies of the BDR and three (3) copies in electronic format (i.e., CD). The BDR, including text (in Microsoft Word file), graphics and drawings for typical applications, with each design standard and specification explained and summarized.
 7. Five (5) copies of the Construction Cost Estimate and five (5) copies in electronic format.
 8. Five (5) copies of the Construction Staging and Schedule and five (5) copies in electronic format.
 9. Three (3) copies of the Outline Technical Specifications and three (3) copies in electronic format.

- D. Submit the 100% Final Design and Contract Documents, Cost Estimate and Construction Schedule, required under section III, Tasks G, H and I, within “C” calendar days after authorization to proceed to Stage III by the Authority. “C” calendar days are shown on Exhibit III for each project contract. The 50% and 75% submissions shall be in accordance with the approved project schedule. Authority comments will be forwarded to you within **15** calendar days after receipt of 50% and 75% submissions. Authority comments will be forwarded to you within **30** calendar days after receipt of 100% submission. For all submissions (50%, 75% and 100%) incorporate all comments and provide a written response. Said submissions shall include, but not be limited to the following:
1. One (1) reproducible master set and 5 copies of standard size (22” x 34”) engineering drawings showing all information and details.
 2. One (1) reproducible master set and 20 copies of half size (11” x 17”) drawings of those indicated in Item 1 above.
 3. Five (5) compact discs (CD) of those drawings indicated in Item 1 above in both CAD and pdf format.
 4. Five (5) copies of the design computations, including computer printouts and sketches in bounded form.
 5. Five (5) copies of the BDR and five (5) copies in electronic format (i.e., CD). The BDR, including text (in Microsoft Word file), graphics and drawings for typical applications, with each design standard and specification explained and summarized.
 6. Five (5) copies of the Construction Cost Estimate and five (5) copies in electronic format.
 7. Five (5) copies of the Construction Staging and Schedule and five (5) copies in electronic format.
 8. Five (5) copies of the Outline Technical Specifications, including Custom Specifications, and five (5) copies in electronic format.
- E. The 100% completed Contract Drawings and Technical Specifications submitted above will be reviewed by the Authority's Law Department. The Consultant shall make any changes to the Contract Drawings and Technical Specifications resulting from this legal review and submit the revised Contract Drawings and Technical Specifications, which will be used for bidding purposes.
- F. At the completion of Final Design, submit to the Authority all requested documents, reports, and related materials forming the Final Design Package. The Final Design package shall include but not be limited to the following:
1. The original signed mylars and one (1) copy of a reproducible set of standard size (22” x 34”) engineering drawings showing all information and details, along with 10 full size (22” X 34”) copies.
 2. One (1) reproducible set of half size (11” x 17”) drawings of those indicated in Item 1 above, along with an additional 20 half-size copies.
 3. Ten electronic files on CD of those drawings indicated in Item 1 above in both CAD and pdf format.

4. Five (5) copies of the Construction Cost Estimate and five (5) copies in electronic format.
5. Five (5) copies of the Outline Technical Specifications, including Custom Specifications, and five (5) copies in electronic format.
4. Five (5) copies of each of the design discipline's Final Design computations, including computer printouts and sketches in bounded form.
5. Ten (10) copies of the final BDR and ten (10) copies in electronic format (i.e., CD).
6. Long Lead Time, Mock-Up Testing, Sole Source Items.

Provide a final listing of all items requiring long lead-time, mock-up testing, and materials that may be sole sourced. Include a description of these items along with a recommendation on how to pursue such testing and/or purchases.

G. These durations are meant as general timeframes, and may be impacted by progress of other Cross Harbor Freight Program work.

V. ADDITIONAL INFORMATION FOR PREPARATION OF DESIGN DOCUMENTS AND CONSTRUCTION COST ESTIMATES

Except as otherwise noted herein, the Preparation of Preliminary Engineering and Final Design (Contract Documents) shall conform to Authority standards, and codes which would be applicable if the Authority were a private corporation. In case of a conflict, the more stringent requirement shall apply.

A. General Requirements:

1. Prepare all Contract Drawings on standard size Authority mylar tracings. Contract Drawings may be reduced to one-half size prints before distribution to potential contractors for bidding. Tracings shall be prepared in such a manner as to produce clearly legible drawings after reduction. Scales shall be graphical rather than numerical.
2. Engineering drawings shall be prepared in conformance with the latest Authority CAD Standards and by using the "AutoCAD" computer program. Drawings shall be prepared in both Auto CAD DWG and Design Web Format (DWF).
3. Meet with the Authority and incorporate Authority comments after all submittals.
4. The following additional services shall be provided as part of the Consultant's task:
 - a. Answer questions asked of the Authority staff by bidders during the bid period.
 - b. Prepare Contract Addenda including Contract Drawing revisions and engineering calculations, as necessary or as requested by the Chief Engineer, for Authority approval and issuance by the Authority. Furnish originals for final printing.
 - c. Conform Technical Specifications and Contract Drawings to Addenda when directed by the Chief Engineer after award of the Contract.
 - d. Upon request, assist Authority staff in performance of tasks below:
 - 1) Prepare Information for Bidders, Form of Contract, Division 1 of the Specifications and the Analysis of Bid and Contract Progress Schedule.

- 2) Meet with Authority staff from time to time to review all Specifications, Contract Drawings, construction cost estimates, and schedules prepared.
- 3) Review with, and transmit comments from, various Authority Departments for incorporation into the Contract Documents.
- 4) Review Addenda with and obtain approval of various Authority Departments.

B. Document Management Standards:

1. Maintain clear, dated records of all pertinent documents including but not limited to transmittals, submittals and responses (email or letter correspondence), Consultant or Authority requests and responses, meeting journals and minutes, drawings, original marked shop drawings; engineering design, calculation and drawings prepared during each project stage. These documents shall be made readily available for review by the Authority upon request. Upon the completion of each project stage, or at the request of the Authority, all these documents shall be listed, filed and submitted to the Authority.
2. Submit proposed paper and electronic formats of all deliverables for Authority approval prior to first or draft submittal; include this process on the appropriate schedule. In every instance when information can be communicated in several ways, propose the clearest and least complex method: outlines are preferred over text, matrices are preferred over narrative, complete diagrams are preferred over incomplete detailed drawings, and sketches and photographic images are preferred over complex rendered images.
3. Develop an internal document control and version control system for documents.
4. Develop and implement an electronic document management strategy, so that all deliverables are accessible, and the drawings, specifications, schedules, and estimates become the basis for computer aided facilities management as each construction phase is completed. Review anticipated Authority electronic strategy, and utilize approved hardware and software, and compatibility with Authority systems. The systems presently anticipated are:
 - a. AutoCAD latest version
 - b. Microsoft Excel: budgeting, cost monitoring, tables, and charts
 - c. Microsoft Word: word processing
 - d. Microsoft PowerPoint: graphics and presentations
 - e. Primavera P6: design schedules
 - f. Adobe Acrobat
 - g. Authority CAD Standards:
5. Submit all documents to the Authority in both hard copy and electronic version simultaneously
6. All Reports will be submitted in 8 ½" by 11" and 11" by 17" for sketches and drawings, black and white format unless otherwise noted.
7. All Graphics will be submitted in 8 ½" by 11" color format unless otherwise noted.

8. All Drawings will be submitted in 22" x 34". Half-size sets will also be used.
9. Follow Approved Quality Control Plan requirements for minutes, schedules, transmittals, correspondence and all other documents
10. Update software as required, in consultation with the Authority.

VI. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY

The Authority will make available for the Consultant's information certain documents specified below. The documents specified in Section A, below were not prepared for the subject work. The Authority makes no representation or guarantee as to, and shall not be responsible for, the accuracy, completeness or pertinence of these documents and, in addition, shall not be responsible for conclusions drawn there from. The documents are made available to the Consultant merely for the purpose of providing the Consultant with such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent, or of any value to the Consultant. The documents specified under Section B, below were prepared for the subject work, or for other purposes, and form a part of this Agreement.

A. Available Documents

1. Greenville Yard Master Plan (December 2010)
2. Transfer Bridges Drawings, Greenville, NJ, Pennsylvania Railroad
3. Transfer Bridges Repairs Drawings, Greenville, NJ, Conrail
4. Investigation of Transfer Bridge No. 11 Greenville Yard Transfer Bridge System, Jersey City, NJ, (December 2006)
5. Port Authority Facility Condition Survey Program - New Jersey Marine Terminal Greenville Yards Facility, (April 2009)
6. Evaluation of the Towers Supporting Transfer Bridge No. 11 at the Greenville Yards Facility in Jersey City, NJ, (May 2009)
7. Interim Condition Survey of Greenville Yard Float Bridge at the Greenville Yards Facility in Jersey City, NJ, (July 2010)
8. Prioritization of Bridge No. 11 Priority Repair Recommendations (April 2009)
9. Bridge No. 11 Priority Repair Recommendations - Estimated Construction Cost (April 2009)
10. Greenville Yard Master Plan Proposal – Design of Electrical and Mechanical Repairs, (June 2009)
11. Survey of NYCH Carfloat Barge No. 29 (July 2003)
12. Survey Report: NYNJ Rail LLC Barge No. 29 (August 2008)
13. Condition and Evaluation for Service Inspection Survey Vessel "Railroad Carfloat #29" (November 2008)
14. Estimate for 360' x 41' x 12' car float "No. 29" (September 2008)
15. Rehabilitation Project - "Railroad Carfloat #29" Shipyard Quotations and Analysis (December 2008)

B. Documents

1. Authority Design Guidelines (Civil) - Cross Harbor Freight Program
2. Authority Sustainable Infrastructure Guidelines, 100% Draft (August 2010)
3. Authority CAD Standards (www.panynj-cadstandards.com)
4. Authority General Estimating Guidelines

VII.CONDITIONS AND PRECAUTIONS

A. GENERAL

Immediately inform the Authority of any unsafe condition discovered at any time during the course of this work. Vehicular and rail traffic at the site shall always have priority over any of the Consultant's and Contractor's operations.

B. WORK AREAS

Limit inspection work to the areas necessary for the performance of such inspection and shall not interfere with the operation of the Facility without first obtaining specific approval from the Facility General Manager.

During all periods of time when the Consultant is not performing operations at the work site, Consultant shall store all equipment being used for the inspection in areas designated by the Facility General Manager and provide all security required for such equipment. The Consultant shall not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways, rail tracks, or structures at any time.

C. WORK HOURS

Perform work at the site between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday, unless otherwise directed by the Facility General Manager. In any case, no work shall be performed at the site on a legal holiday of either the State of New York or the State of New Jersey, unless otherwise directed by the Chief Engineer.

IX.LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial 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 in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this contract, then the Consultant 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. In addition, the liability policies (other than Professional Liability) shall include the Port Authority of NY & NJ and its wholly owned entities as an additional insureds and shall contain an endorsement that the policy may not be canceled,, terminated or modified without thirty (30) 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 most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy (ies) and certificate of insurance shall contain separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured.

Further, the certificate of insurance and the liability Policy (ies) shall be specifically endorsed that *“The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority”*.

2. The Consultant shall have the policy endorsed as follows:
 - a. Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
 - b. Coverage for work within 50 feet of railroad.

B. Workers' Compensation Insurance:

1. The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident.
2. The Consultant shall have the policy endorsed as follows:
 - a. United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
 - b. Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

C. Professional Liability Insurance:

Not less than \$2 million each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. 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.

D. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its 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, via e-mail, to the Project Manager.

1. Upon request of the Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
2. The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this contract. The insurance requirements are not a

representation by the Authority and/or PATH 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 Contract.

The General Manager, Risk Management must approve the certificate(s) of insurance before work. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Contractor shall promptly obtain a new and satisfactory certificate and/or policy.

* * *

ATTACHMENT B

REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL ENGINEERING DESIGN SERVICES FOR PORT JERSEY – CROSS HARBOR FREIGHT PROGRAM (RFP #24554)

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification, 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. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Authority's Freedom of Information Policy and Procedure adopted by the Port Authority's Board of Commissioners on November 20, 2008, which may be found on the Authority website at <http://www.panynj.gov/corporate-information/freedom-of-information.cfm>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

ATTACHMENT C

COMPANY PROFILE

**REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT
PROFESSIONAL ENGINEERING DESIGN SERVICES FOR
PORT JERSEY – CROSS HARBOR FREIGHT PROGRAM (RFP #24554)**

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 a DBE not currently certified by the Authority, see the Authority's web site – <http://www.panynj.gov/business-opportunities/sd-become-certified.html> to receive information and apply for certification.

EXHIBIT I

APPLICABLE CODES AND STANDARDS

The following is a summary of criteria to be used in the design. Criteria shall include the latest edition of all applicable codes and requirements and shall include but not be limited to those indicated below. Within the Greenville Yard site, all work shall be designed in accordance with latest standards and requirements of the Authority. Other applicable design criteria and guidelines will be provided or developed by the Authority in conjunction with the Consultant's work. Perform a search through the Authority's Engineering Files to gather all available existing information necessary to perform the design.

The services of the Consultant shall comply with all applicable Federal and State codes and requirements including but not limited to the following:

1. American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering
2. American Bureau of Shipping Rules, Guides and Regulations
3. International Building Code (IBC), New Jersey Edition
4. American Society for Testing and Materials (ASTM International) Standards
5. American Welding Society (AWS) Codes and Guidelines
6. The Society for Protective Coatings (SSPC) Standards
7. Port Authority Tenant Construction Review Manual
8. Engineers ventilation and energy performance standards
9. New Jersey Department of Environmental Protection (NJDEP)
10. National Institute for Occupational Safety & Health (NIOSH) Guidelines
11. Latest edition of the following Federal Regulations:
 - a. Americans with Disabilities Act
 - b. Clean Water & Clean Air Act
 - c. US energy, water conservation and Green Building regulations
 - d. US Occupational Safety & Health Administration regulations
 - e. US Environmental Protection Agency (EPA) regulations
12. In addition to those indicated above, the Consultant's design should also conform to the following criteria and the latest versions of the codes and standards identified (but not limited to) those below, listed by discipline.
 - a. Structural, Civil & Geotechnical Engineering
 - 1) AWS D1.5M/D1.5 Bridge Welding Code
 - 2) AWS D1.1/D1.1M Structural Welding Code
 - 3) ANSI/ASCE 7, Minimum Design Loads for Building and Other Structures

- 4) Analysis and Design of Reinforced and Prestressed Concrete Guideway Structures, ACI 358.1R
 - 5) CEB/FIP Model Code for Concrete Structures
 - 6) International Building Code (IBC)
 - 7) American Institute of Steel Construction (AISC) Steel Construction Manual
 - 8) American Concrete Institute (ACI) Building Code Requirements for Reinforced Concrete
 - 9) Consolidated Rail Corporation (Conrail), Standard Maintenance of Way Plans
 - 10) Consolidated Rail Corporation (Conrail) CE-6, Specific Requirements Of Consolidated Rail Corporation For Work On Its Right Of Way
- b. Electrical Engineering:
- 1) National Electrical Code
 - 2) Illuminating Engineering Society (IES) and the New York State Energy Code
- c. Sustainable Design:
- 1) Port Authority Sustainable Infrastructure Guidelines (100% Draft, 8/2010)
 - 2) New York State Executive Order 111
 - 3) US DOE/EPA Energy Star Program
- d. Corrosion Protection:
- NACE International (NACE) Standard Practice- SP0176-2007- Corrosion Control of Submerged Areas of Permanently Installed Steel Offshore Structures Associated With Petroleum Production

EXHIBIT II
BARGE TONNAGE (T) CAPACITY ALTERNATIVES

NUMBER OF FREIGHT CARS

	20 CAR	24 CAR	28 CAR
Full Load at 262,000 lbs per car	2,620 T	3,144 T	3,668 T
3/4 Load – 1/4 Empty	2,115 T	2,538 T	2,961 T
2/3 Load – 1/3 Empty	2,014 T	2,336 T	2,759 T
Full Load at 286,000 lbs per car	2,860 T	3,432 T	4,004 T
3/4 Load – 1/4 Empty	2,295 T	2,754 T	3,213 T
2/3 Load – 1/3 Empty	2,182 T	2,528 T	2,987 T

Footnotes:

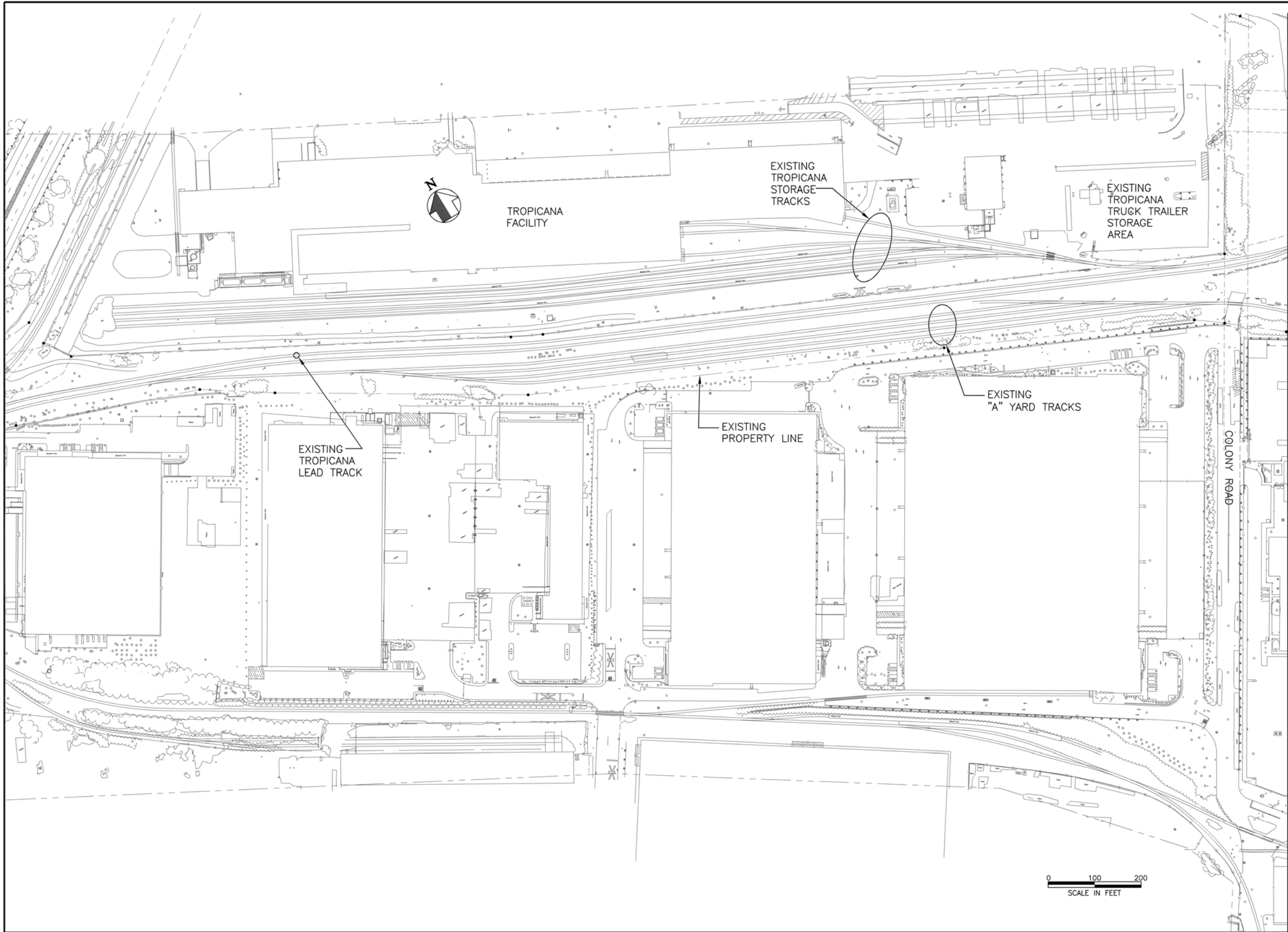
- 1) Empty car = 30 Tons
- 2) 1 Ton = 2,000 Pounds
- 3) T = TONS
- 4) CAR = FREIGHT CAR

EXHIBIT III
SCHEDULE AND SUBMISSIONS

Project Contract	Approx. Start Date	“A” Calendar Days (1)	“B” Calendar Days (2)	“C” Calendar Days (3)	“D” Approx. Constr. Durations (4)
1) Repair of existing Transfer Bridge No. 11 and existing fender system for Slip No. 11	July 2011	20	60	90	16 months
2) Rehabilitation of existing Barge No. 29	July 2011	20	60	90	12 months
3) Support Tracks for Transfer Bridge No. 9 and Trailers	July 2011	20	90	150	24 months
4) Off-Site Tracks (Tropicana), Tracks and Reconfigure “A” Yard Tracks	July 2011	30	90	150	21 months
5) Phased demolition of existing Transfer Bridges No. 9, 10 and 12	Sept. 2011	20	60	90	18 months
6) Transfer Bridge No. 9, dredging and related docking/tie-up systems work	July 2011	60	120	240	24 months
7) New Barge	Sept. 2011	60	90	120	14 months
8) Support Tracks for Transfer Bridge No. 10	January 2012	20	90	NA (5)	NA (5)
9) Transfer Bridge No. 10	January 2012	30	120	NA (5)	NA (5)
10) Demolition of existing Transfer Bridge No. 11	Sept. 2012 (To Be Confirmed)	20	60	90	NA (5)

Footnotes:

- 1) Submit 100% Basis of Design Report (BDR) within “A” Calendar Days
- 2) Submit 100% Design Development Package (DDP) within “B” Calendar Days
- 3) Submit 100% completed Contract Documents within “C” Calendar Days
- 4) Approximate construction duration in months for estimating staff time only.
- 5) NA – Not Applicable



CHIEF

No.	Date	Revision	Approved
-----	------	----------	----------

ENGINEERING DEPARTMENT

NEW YORK AND
NEW JERSEY
RAILROAD, LLC

CIVIL

Title
PORT JERSEY CROSS HARBOR
FREIGHT PROGRAM

EXHIBIT IV
EXISTING CONDITIONS
SITE PLAN-1-

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 3rd Floor, 3 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010. It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

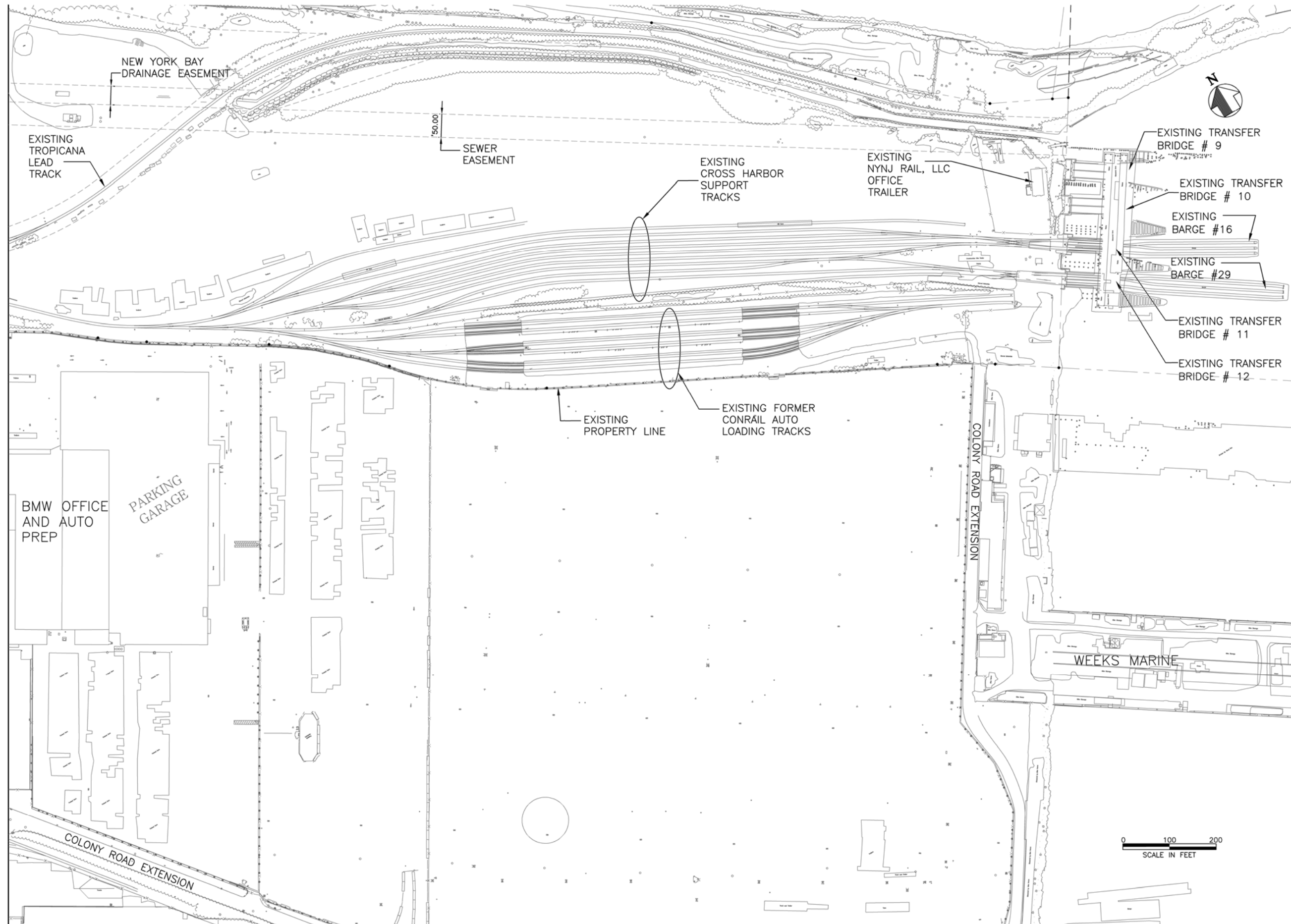
DES DRN CHK
Designed by Drawn by Checked by

Date 02/02/2011

Contract
Number

Drawing
Number SK01
PID# 11176000

MATCH LINE, SEE DRAWING NO. SK01



CHIEF

No.	Date	Revision	Approved

ENGINEERING DEPARTMENT

NEW YORK AND
NEW JERSEY
RAILROAD, LLC

CIVIL

Title
PORT JERSEY CROSS HARBOR
FREIGHT PROGRAM

EXHIBIT IV
EXISTING CONDITIONS
SITE PLAN -2-

This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent.
All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with release vendors that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 3rd Floor, 3 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010.
It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.

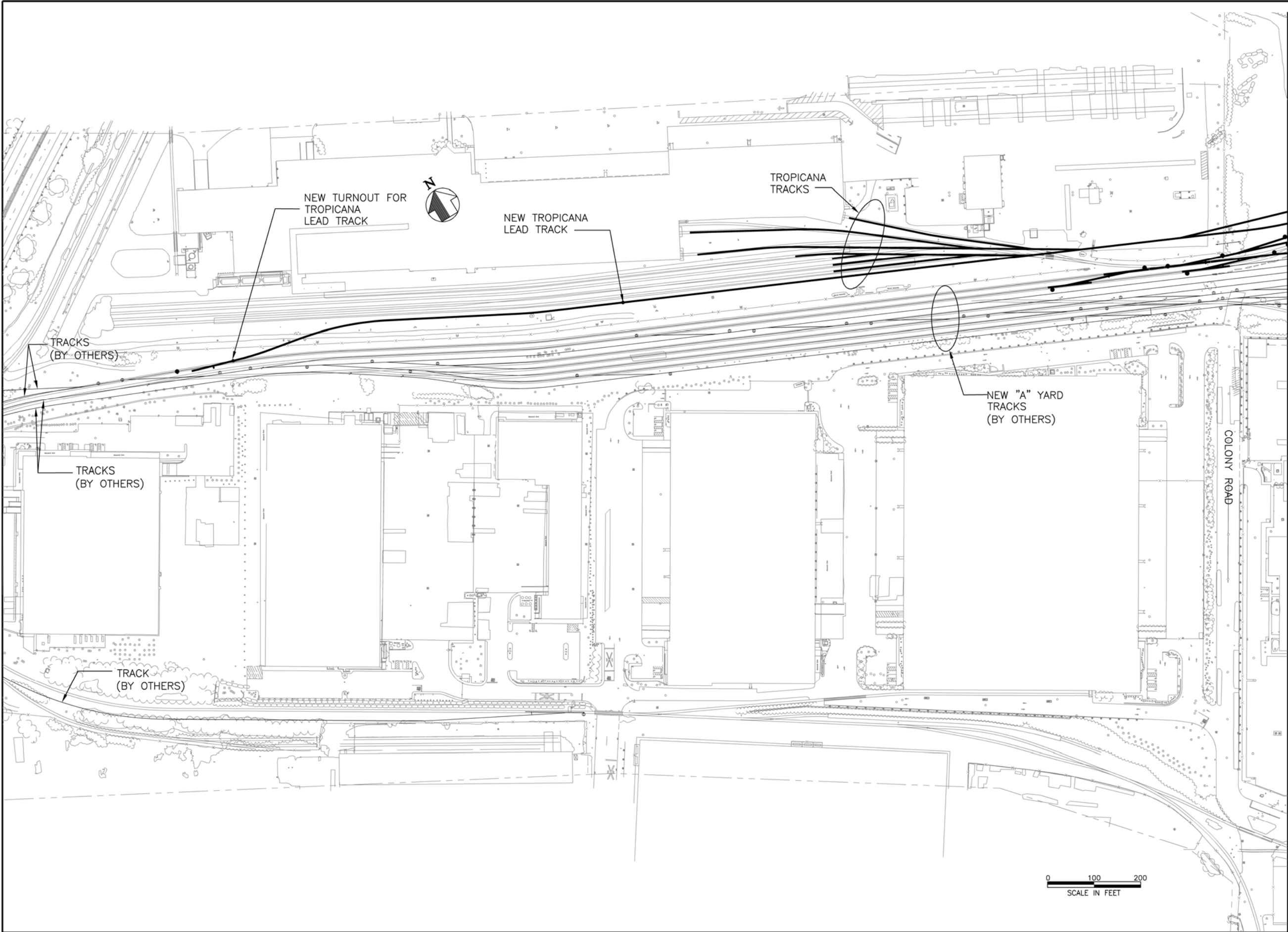
DES DRN CHK
Designed by Drawn by Checked by

Date 02/02/2011

Contract
Number

Drawing
Number

SK02
PID# 11176000



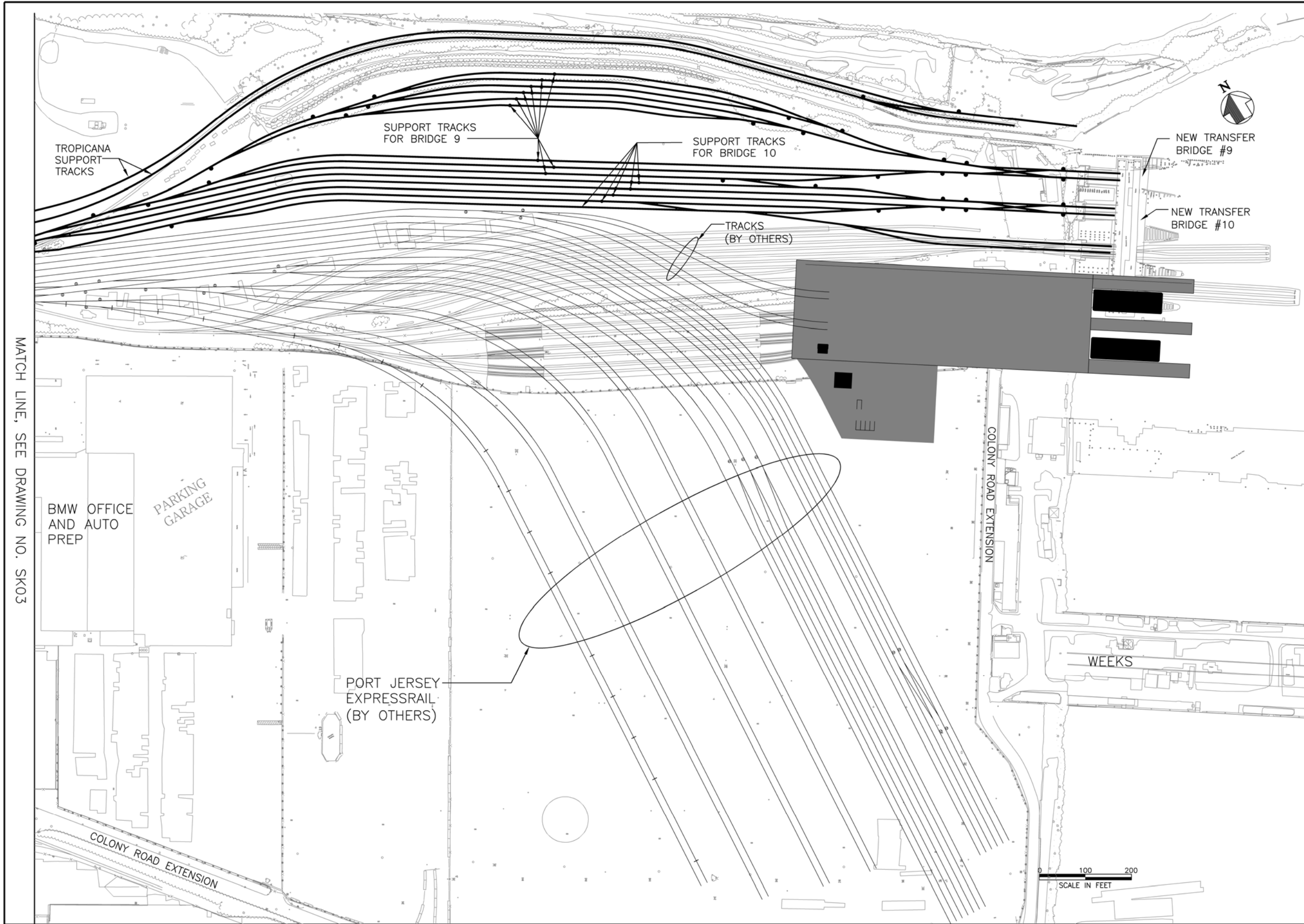
Sheet 1 of 2

**THE PORT AUTHORITY
OF NY & NJ**

CHIEF

No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			
NEW YORK AND NEW JERSEY RAILROAD, LLC			
CIVIL			
Title			
PORT JERSEY CROSS HARBOR FREIGHT PROGRAM			
EXHIBIT IV PROPOSED CONDITIONS SITE PLAN -1-			
<small>This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with release vendors that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 3rd Floor, 3 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010. It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.</small>			
DES	DRN	CHK	
Designed by	Drawn by	Checked by	
Date	02/02/2011		
Contract Number			
Drawing Number			
SK03			
PID# 11176000			

MATCH LINE, SEE DRAWING NO. SK04



Sheet 1 of 2

THE PORT AUTHORITY
OF NY & NJ

CHIEF

No.	Date	Revision	Approved
ENGINEERING DEPARTMENT			
NEW YORK AND NEW JERSEY RAILROAD, LLC			
CIVIL			
Title			
PORT JERSEY CROSS HARBOR FREIGHT PROGRAM			
EXHIBIT IV PROPOSED CONDITIONS SITE PLAN -2-			
<small>This drawing subject to conditions in contract. All inventions, ideas, designs and methods herein are reserved to Port Authority and may not be used without its written consent. All recipients of Contract documents, including bidders and those who do not bid and their prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 3rd Floor, 3 Gateway Center, Newark, NJ 07102 or the office of the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010. It is a violation of law for any person to alter a document in any way, unless acting under the direction of a licensed professional engineer or registered architect. If this document bearing the seal of an engineer/architect is altered, the altering engineer/architect shall affix to the document their seal and the notation "altered by" followed by their signature and the date of such alteration, and a specific description of the alteration.</small>			
DES	DRN	CHK	
Designed by	Drawn by	Checked by	
Date	02/02/2011		
Contract Number			
Drawing Number	SK04		
	PID# 11176000		

FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

1.	Incorporation of Federal Highway Administration Terms	1
2.	Federal Changes	1
3.	No Federal Government Obligations to Third Parties	1
4.	Organizational Conflict of Interest	1
5.	Certification – Debarment and Suspension	2
6.	Certification – Lobbying Restrictions – Contracts Exceeding \$100,000	4
7.	Access to Records and Reports	11
8.	Civil Rights	12
9.	Cargo Preference – Use of United States Flag Vessels	13
10.	Davis-Bacon and Copeland Anti-Kickback Acts – Contracts Exceeding \$100,000	13
11.	Contract Work Hours and Safety Standards Act - Contracts Exceeding \$100,000	21
12.	Seismic Safety	23
13.	Energy Conservation	23
14.	Clean Water Requirements - Contracts Exceeding \$100,000	23
15.	Clean Air Requirements - Contracts Exceeding \$100,000	23
16.	Fly America	24
17.	Contracts Involving Federal Privacy Act Requirements	24
18.	Preference for Recycled Products	24
19.	Program Fraud and False or Fraudulent Statements or Related Acts	24
20.	ADA Access Requirements	25

1. INCORPORATION OF FEDERAL HIGHWAY ADMINISTRATION TERMS

As used herein, the term “Agreement” shall also mean “Contract” and “Contractor” shall also mean “Consultant”. This Agreement is anticipated to be partially or wholly funded by the Federal Highway Administration (FHWA).

Anything to the contrary herein notwithstanding, all FHWA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FHWA terms and conditions.

Each and every provision required by the FHWA to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FHWA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

2. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FHWA issues a written determination otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by the FHWA.

3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4. ORGANIZATIONAL CONFLICT OF INTEREST

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work

to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

- 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Contractor’s actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FHWA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.
- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010.

- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
 - G. As required by FHWA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000**
- A. Definitions as used in this Clause:
 - 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor" t, it also includes any other public agency.
 - 2.) "Covered Federal action" means any of the following Federal actions:
 - a. The awarding of any Federal contract;
 - b. The making of any Federal grant;
 - c. The making of any Federal loan;
 - d. The entering into of any cooperative agreement; and
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
 - 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
 - 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
 - 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an

intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.

- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
 - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
 - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
 - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the

submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
- a. Agency and legislative liaison by own employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
- (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
- (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.

- (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.
 - (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or

proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a

Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

7. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, the FHWA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FHWA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.

- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

 - 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

 - 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to

employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FHWA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

A. Minimum Wages

- 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 2.)
 - a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry;
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
 - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has

found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

5.)

- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

B. Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

- 1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 2.)
 - a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Highway Administration. The payrolls submitted shall set

out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Highway Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon

request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 2.) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the

U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Highway Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility –

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

C. Withholding for unpaid wages and liquidated damages

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

12. SEISMIC SAFETY

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

13. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

16. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FHWA.

18. PREFERENCE FOR RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it

makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

20. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

(name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____ of _____, 2011

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

FHWA REQUIREMENTS

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: <input checked="" type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input checked="" type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post award	3. Report Type: <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

FHWA REQUIREMENTS

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

FHWA REQUIREMENTS

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 2011 _____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

EXHIBIT B

DBE PARTICIPATION PLAN

INSTRUCTIONS: Submit this completed form with your proposal. Note: If more than one (1) page is used, complete all totals on last page.

Agreement Title: _____

Consultant's Name: _____ Agreement Amt: _____

Mailing Address: _____

Telephone No: _____ DBE Goal: _____ %

Name, Address, Telephone No. of DBE Subconsultant (Including name of contact person)	DBE	Description of Work/Services to be Provided	Anticipated Date DBE Will Start Work	Approximate \$ Amount to DBE Sub	DBE % of Tot. Agreement Amount
TOTAL				\$	%

Signature of Contact Person:_____

Approved by: _____

Print Name: _____

Title: _____ Date: _____

Note:

A) All subsequent revisions to the plan must be submitted for approval to the Project Manager for acceptance by OBJO.

Office of Business and Job Opportunity (OBJO) Representative

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

	Page
I. General	1
II. Nondiscrimination	1
III. Nonsegregated Facilities	3
IV. Payment of Predetermined Minimum Wage	3
V. Statements and Payrolls	5
VI. Record of Materials, Supplies, and Labor	5
VII. Subletting or Assigning the Contract	5
VIII. Safety: Accident Prevention	6
IX. False Statements Concerning Highway Projects	6
X. Implementation of Clean Air Act and Federal Water Pollution Control Act	6
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion	6
XII. Certification Regarding Use of Contract Funds for Lobbying	8

ATTACHMENTS

- A. Employment Preference for Appalachian Contracts
(included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all

related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA

each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of

a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,

quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.