CONDITIONS AND INSTRUCTIONS TO BIDDERS
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CONDITIONS AND INSTRUCTIONS TO BIDDERS

1. INTRODUCTION

1.1 The foregoing proposal is subject to the following conditions and instructions, all interpretations of which shall be at the sole discretion of Port Authority of Allegheny County (hereinafter called "Port Authority").

1.2 The enumeration in these conditions and instructions of certain rights and remedies of Port Authority shall not be construed to preclude the exercise by Port Authority of other and additional rights and remedies which are available generally at law or which may be implied from the foregoing.

1.3 This invitation to bid may be subject to a financial assistance contract between Port Authority, the Commonwealth of Pennsylvania, Allegheny County and/or the United States Department of Transportation (DOT). Bids will be received and reviewed, but an award will not be made until all required approvals are obtained from these funding agencies.

2. BIDDER'S RESPONSIBILITY

2.1 Each bidder shall become familiar with the certifications and Form of Bid in the Bid Factors page located on the ebusiness system, the attached advertisement, instructions, specification, drawings, bond and agreement, hereinafter referred to as "bid documents," as each bidder will be held responsible to fully comply therewith. By electronically submitting a bid, the bidder acknowledges that it has carefully examined the bid documents and the worksite and satisfied itself as to the conditions affecting the work.

2.2 Bids shall be submitted electronically via the Sourcing Module of the ebusiness system located at the following web address: http://ebusiness.portauthority.org. Each bidder shall be solely responsible to ascertain that the bid was successfully transmitted to the Port Authority at or before the advertised time for submission of bids. Confirmation of successful bid transmission will be in the form of electronic mail sent automatically to the contractor upon successful completion of the bid on the Port Authority's ebusiness website.

2.3 Port Authority is exempt from Federal Excise Tax and Pennsylvania Sales Tax. Exemption certificates will be submitted upon request to the successful bidder.

2.4 Proposals shall be completed electronically.

2.5 Execution of bid:

1) In lieu of a traditional hand written signature for execution of the Form of Bid and the required certifications, each Bidder shall electronically indicate a response and corresponding acknowledgment to the Bid Factors which can be found in the Sourcing Module of the ebusiness system located at the following web address: http://ebusiness.portauthority.org. These questions shall be found in the "Event Questions" section which is under "Step One" of the Events Details screen. By completing the required fields and corresponding acknowledgments and certifications, each Bidder shall be deemed to have electronically signed the bid documents in accordance with the applicable provisions of the Electronic Signatures in Global Commerce and National Commerce Act (E-SIGN Act), 15 U.S.C. §§ 7001-7006.

2) Responses to the "Bid Factor" questions and electronic submission of the bid shall be performed by an individual authorized to submit bids on behalf of the bidder and otherwise with the authority to fully bind Bidder to the terms and conditions of the bid;

2.6 The Bidder shall provide indication of acceptance or non acceptance of the following certifications by indicating responses to Bid Factor questions located at the following web address: http://ebusiness.portauthority.org. These questions shall be found in the "Event Questions" section which is under "Step One" of the Events Details screen.

- Certification of Bidder Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion (for proposals totaling $25,000 or less only), OR Certification of Bidder Regarding Debarment, Suspension and Other Responsibility Matters (for proposals totaling over $25,000 only). Indication of acceptance of the terms of this certification is required prior to the awarding of a contract and certification of this shall be electronically submitted with the bid. Failure to electronically indicate acceptance of the terms of this certification will render the bid ineligible for award of a contract

- Buy America Certificate (for proposals totaling over $100,000 only). Indication of acceptance or non-acceptance of this certification with the bid is required for proposals totaling over $100,000. Failure to electronically indicate acceptance or non-acceptance of the terms of this certification will render the bid non-responsive and ineligible for award of a contract in excess of $100,000.

- Certification Regarding Lobbying (for Proposals totaling over $100,000), including the Disclosure of Lobbying Activities form, when appropriate. Indication of acceptance of this form (or these forms) is required if the proposal totals over $100,000. Failure to electronically indicate acceptance of the terms of this certification will render the bid ineligible for award of a contract in excess of $100,000.

2.7 Proposals shall not include any of the following: alterations of form; additions not called for; a conditional bid; an incomplete bid; irregularities which make the bid incomplete, indefinite or ambiguous; or improper markings or identifications.

3. DEBARMENT AND SUSPENSION

3.1 The Contractor agrees to refrain from awarding any third party subcontract of any amount to, or entering into any agreement of any amount with, a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs," implementing Executive Orders Nos. 12549 and 12689, "Debarment and Suspension" and 49 C.F.R. Part 29, or currently suspended or debarred by the Commonwealth of Pennsylvania or any other State. The U.S. GSA list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Orders Nos. 12549 and 12689.

3.2 The successful bidder agrees to obtain the appropriate certification from any third party subcontractor (at any tier) seeking a contract and submit it electronically. An example of the appropriate certification is the Certification of Bidder Regarding Debarment, Suspension and Other Responsibility Matters (for proposals totaling $25,000 or less only, or over $25,000 only) contained in these bid documents.

3.3 The successful bidder agrees to provide Port Authority a copy of each conditioned debarment or suspension certification provided by a prospective third party subcontractor. Until Port Authority approval is obtained, the successful bidder agrees to refrain from awarding a third party subcontract or entering into a subagreement with any party that has submitted a conditioned debarment or suspension certification.

3.4 If the Contractor awards any third party subcontract of any amount to a party that later becomes suspended or debarred by the Federal Government, the Commonwealth of Pennsylvania or any other State, Port Authority shall have the right to require that the Contractor terminate said subcontract.

3.5 Instructions for Certification

1) By electronically submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

2) The certification in this clause 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, Port Authority may pursue available remedies, including suspension and/or debarment.

3) The prospective lower tier participant shall provide immediate written notice to Port Authority if at any time the Prospective lower tier participant learns that its certification was erroneous when electronically 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]. You may contact Port Authority for assistance in both 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 Port Authority.

6) The prospective lower tier participant further agrees by submitting this proposal electronically that it will indicate acceptance of the clause titled "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 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, Port Authority may pursue available remedies including suspension and/or debarment.

4. BUY AMERICA PROVISION

4.1 This procurement is subject to the Federal Transit Administration Buy America Requirements in 49 CFR 661.

4.2 Indication of acceptance or non-acceptance of the Buy America Certificate, as contained in the bid factors must be electronically submitted with the bid if the total amount of the item(s) bid is greater than $100,000. A bid totaling over $100,000 which does not include electronic indication of acceptance of or non-acceptance of this certificate will be considered non-responsive and ineligible for award of a contract.

5. DISCLOSURE OF LOBBYING ACTIVITIES

5.1 This procurement is subject to the Federal Transit Administration Lobbying Disclosure Requirements in Title 31 U.S.C. Section 1352.

5.2 For proposals totaling over $100,000, indication of acceptance of the terms of a Certification Regarding Lobbying form shall be electronically submitted by the bidder with the proposal. A bid totaling over $100,000 which does not include electronic indication of acceptance of the terms of the certificate will be considered ineligible for award of a contract.

6. CERTIFICATIONS

6.1 In electronically submitting the foregoing proposal, the bidder agrees and/or certifies that:

1) The bidder shall save harmless and fully indemnify Port Authority and all its officers, agents and employees from all damage, costs or expense that may at any time be imposed or claimed for infringement of any patent right of any person, association or corporation as a result of the use by Port Authority or any of its officers, agents or employees, of articles supplied under this contract and of which the Contractor is not the patentee, assignee or licensee.

2) The bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract.

3) No Board member, officer or employee of Port Authority engaged in or responsible for the development of the specification or the award or administration of the contract for which this bid/proposal is made, nor any member of the immediate family of any such Port Authority Board member, officer or employee has any interest, direct or indirect, in any contract or the proceeds thereof which may be awarded by Port Authority pursuant to this procurement.

4) No Board member, officer, or employee of Port Authority or of a local public body, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in the contract or the proceeds thereof.

5) Board members, officers, employees and agents of Port Authority have neither solicited nor accepted gratuities, favors or anything of monetary value from the bidder, potential bidders or parties to subagreements.

6) The bidder/contractor shall comply with all applicable Federal, State and Local laws, regulations, policies and related administrative practices presently in effect, as well as any changes to these Federal requirements, which may become effective during the period of the contract.

7) The successful electronic bidder agrees that, absent the Federal Government's, Commonwealth of Pennsylvania's and/or the County of Allegheny's express written consent, the Federal Government, the Commonwealth of Pennsylvania, and the County of Allegheny respectively, shall not be subject to any obligations or liabilities to any third party subcontractor, or any other person not a party to this proposal or Agreement, in connection with the performance of the contract work. Notwithstanding any concurrence provided by the Federal Government or the Commonwealth of Pennsylvania in or approval of any solicitation, subagreement or third party subcontract, the Federal Government and the Commonwealth of Pennsylvania continue to have no obligations or liabilities to any party, including the third party subcontractor.

8) The electronic bidder recognizes that the requirements 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 C.F.R. Part 31, apply to its actions pertaining to the contract work. Accordingly, by electronically signing the Agreement, the electronic bidder 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 work covered by the proposal or Agreement. In addition to other penalties that may be applicable, the bidder also 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, as amended, on the bidder to the extent the Federal Government deems appropriate.

9) The electronic bidder 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 a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the 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.

7. APPROVED EQUAL DEFINITION

Invitations for bids or requests for proposals are based upon a clear and accurate description of the technical requirements for the material, product or service required. Wherever an Original Equipment Manufacturer's (OEM) product of trade or brand name and catalog number of a manufacturer or vendor's product may be identified as the approved product for the purposes of this proposal, it shall be understood that the term "Approved Equal" if not inserted therewith shall be implied. Where the term "product" is used, it shall also mean a material or service. Nothing herein is intended to preclude bidders from submitting proposals for products from other manufacturers. The aforementioned manufacturer's product is intended to offer a benchmark against which the bidder may evaluate its particular product for the purposes of "Approved Equal". It shall be the Bidder's obligation to conclusively and convincingly prove to Port Authority that its proposed product meets or exceeds the specifications of the benchmark product. For the purposes of this specification, "meets or exceeds" shall mean any other manufacturer's product which is equivalent in material, workmanship and service and is as efficient and economical in operation as the specified product. It also shall mean the proposed product shall possess a standard of performance, quality, composition, construction, durability, design, and suitability equal to or greater than the specified product.

The bidder, when electronically submitting a product for "Approved Equal" consideration, may be requested by Port Authority to submit the extent and complexity as well as cost of
all changes or modifications necessary to integrate the proposed "Approved Equal" product with existing or related equipment.

When quoting a proposed "Approved Equal" product, the bidder if requested, should submit under separate cover a sample, full descriptive and technical data and other supporting information and documentation if available for each item proposed as an "Approved Equal."

Port Authority may also require that the proposed product be tested by an independent laboratory which shall certify that the product meets or exceeds the specifications of the

specified item. The cost of this testing and certification shall be borne by the bidder. Depending on the item bid, the Authority at its sole option may: 1) Accept testing data/results from the independent testing laboratories; and/or 2) accept full descriptive and technical data and supporting information as well as references from other entities and/or transit authorities that have had experience with the proposed product and/or 3) elect to field test a proposed product that, in the opinion of Port Authority, is the only reliable way to evaluate the proposed "Approved Equal" product. These test results, if testing is required, shall apply, time permitting, to the current bid, or because of the length and complexity of testing certain products, be deferred to a future bid thereby making the product ineligible for award on the present bid. However, through this process the proposed product may be identified and an "Approved Equal" for future bidding purposes.

The warranty requirements outlined in the specification, shall apply to any sample product supplied for field testing. Any sample product supplied for field testing and/or evaluation shall be supplied at no cost to Port Authority unless other arrangements have been made with Port Authority prior to product delivery.

Products that fail to conform to the specification and/or fail testing and/or fail to conform to the definition of "Approved Equal" as described herein shall be cause for Port Authority to reject the bid on that item.

Port Authority will be the sole judge as to whether the bidder's proposed product is an "Approved Equal" to the specified product, and as such, this decision shall be final.

8. CHANGES WHILE BIDDING

8.1 During the bidding period, bidders may be furnished addenda for additions to or alterations of bid documents, which shall be included in the work, covered by the proposal and become a part of the contract documents. Only the Director of Purchasing and Materials Management Department shall issue the aforementioned addenda. Bidders will receive electronic notifications indicating any alterations to any of the bid documents. Bidders are responsible for re-submitting bids based on these alterations.

9. INTERPRETATIONS

9.1 If any prospective electronic bidder on the proposed contract is in doubt as to the true meaning of any part of the plans, specification or other proposed contract documents, said bidder may submit to the Director of Purchasing and Materials Management Department a written request for an interpretation thereof. The bidder submitting the request will be responsible for its prompt delivery. Additionally the bidder may pose questions electronically on the event forum associated with bid events at the following address: http://ebusiness.portauthority.org. Any change to bid documents resulting from such

a request will be made only by an addendum. Bidders will receive electronic notifications indicating any alterations to any of the bid documents. Bidders are responsible for re-submitting bids based on these alterations.

10. WITHDRAWAL OF BID PRIOR TO OPENING

10.1 Bids may be withdrawn at any time prior to the time specified for the receipt of bids by filing a written request for withdrawal with the Director of Purchasing and Materials Management Department, Port Authority, duly executed by the bidder or its authorized representative. The withdrawal of a bid, prior to the time specified for the receipt of bids, does not prejudice the right of the bidder to file a new bid.

10.2 A request for withdrawal received after the time specified for the receipt of bids shall not be considered, nor may any bid be withdrawn after that time except as provided under the Pennsylvania Legislature Session of 1974, Act No. 4, entitled "Public Contracts - Bid - Withdrawal."

11. PORT AUTHORITY BID PROTEST PROCEDURES

11.1 Purpose: Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest with Port Authority of Allegheny County. The procedures for submitting such protests may be found on the Authority's web site www.portauthority.org.

12. METHOD OF AWARD

12.1 Bids will be publicly opened at the advertised time and place set for such bid opening. The prices proposed in the bids will be made public for the information of the bidders and other interested parties.

12.2 Award will be made on separate unit price, total lump sum bid for all items in each group, or total lump sum bid for all items in all groups (total bid), to the lowest responsive bid from a responsible bidder, as detailed in the bid documents.

12.3 In case of discrepancy, the unit price will be considered as the price bid. The extension figures are only for the information of Port Authority and will not be considered as part of the bid.

12.4 The staff of Port Authority is not authorized to accept or reject bids. Only the Board of Port Authority has that power. Accordingly, acceptance or rejection of bids will be publicly announced at a subsequent meeting of the Board of Port Authority at an advertised time and place.

12.5 When a bid has been determined by Port Authority to be the lowest responsive bid by a responsible bidder, a contract will be awarded within 75 days from the date of the opening of the proposals. This time may be extended with the consent of the bidder.

12.6 Award may not be made to any bidder who, in the opinion of Port Authority, is in default on any bid, purchase order or contract with Port Authority prior to the date of the proposal under consideration.

13. SINGLE BID/TOO FEW BIDS - RESPONSE

13.1 In order to ensure that reasonable prices are received, bidders may be required to submit a cost/price analysis of their bid when too few or a single bid response is received on a proposed contract.

14. COMPETENCY OF BIDDERS

14.1 Bidders may be required to submit duplicate sworn statements of their financial responsibility, technical qualifications and performance record before contract is awarded to them.

15. SAMPLES

15.1 Samples, if required, must be furnished at the expense of the bidder unless otherwise specified.

16. EXECUTION OF CONTRACT

16.1 Within 20 days after the contract has been awarded, the successful bidder shall deliver to Port Authority a properly executed contract, in duplicate.

17. PERFORMANCE GUARANTY

17.1 For Contracts totaling $100,000 and over unless otherwise noted on the Proposal the following shall apply; within 20 days after the contract has been awarded, the successful bidder shall deliver to Port Authority a properly executed performance bond or a cashier's check or certified check or irrevocable letter of credit in the amount of at least fifty percent (50%) of the accepted bid as security for faithful performance of the contract.

17.2 Performance bonds shall be on forms provided by Port Authority and shall be executed by such sureties licensed to transact business in the Commonwealth of Pennsylvania and named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

17.3 Provisions of the performance bond, if one is submitted, shall not limit, in any manner, any liability of the Contractor to Port Authority.

17.4 All alterations, extensions of time, extra and additional work, and other changes to the contract may be made without securing the consent of the surety on the performance bond. Such changes shall not, however, alter the surety's responsibility relating to the performance bond.

17.5 If any surety upon any bond furnished in connection with this contract becomes unacceptable to Port Authority, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of Port Authority and of persons or firms supplying labor or materials in the prosecution of the work of the contract.

18. NO SUBLETTING OR ASSIGNMENT

18.1 No contract may be assigned, sublet or transferred without the written consent of Port Authority.

18.2 In instances where written consent is provided, The Contractor shall pay each Subcontractor and Supplier for satisfactory performance of the portion of the Work completed by the Subcontractor or Supplier by no later than fourteen (14) days from the receipt of each payment which the Contractor receives from Port Authority for any pay estimate that includes work performed by the Subcontractor or Supplier. The Contractor shall also pay each Subcontractor and Supplier all retainage, if retainage has been withheld from the Subcontractor or Supplier by the Contractor, within twenty (20) days after the Subcontractor's or Supplier's work is satisfactorily completed in its entirety, regardless of whether retainage is still being held by Port Authority from the Contractor. Payment shall be made by the Contractor under this Article except for the value of deficiency items as set forth below in subsection18.3.

18.3 Notwithstanding the provisions of subsection 18.2, the Contractor may withhold payment from a Subcontractor or Supplier for any deficient work performed by the Subcontractor or Supplier. If the Contractor withholds payment from a Subcontractor or Supplier for a deficiency item, it shall notify the Subcontractor or Supplier, and Port Authority, of the reason for such withholding of payment within 15 days after receipt of the notice of a deficiency item from the Engineer or Authority.

18.4 Contractor's failure to comply with the requirements of this Section18 shall constitute a default under the Contract.

19. QUANTITIES

19.1 The estimated quantities given in this proposal are for the purpose of bidding only. Port Authority may purchase more or less than the estimated quantities and the bidder shall not assume that such estimated quantities are part of the contract.

20. STANDARD WARRANTY

20.1 Unless otherwise specified herein, the warranty on the item(s) covered by this bid shall be governed by the current and applicable provisions of the Uniform Commercial Code with respect to warranty of merchantability or fitness for particular purpose (which warranties may not be abrogated), or the manufacturer's warranty, at the discretion of Port Authority.

21. DELIVERY OF MATERIALS, INSPECTION, AND REMEDIES OF PORT AUTHORITY FOR NON-CONFORMITY TO SPECIFICATION

21.1 Delivery must be made strictly in accordance with the contract documents. The material listed in the proposal must be FOB delivered to point or points in Allegheny County as shown on the proposal or specification. Delivery must be made on, or before, the date specified.

21.2 If, upon inspection of the material, any article is defective or fails in any way to meet the terms of the contract, it will be rejected. The decision of Port Authority shall be final and the rejected material shall be replaced by, and at the expense of, the Contractor.

21.3 In the event any material shipped by the Contractor is not received by an agent of Port Authority, it shall be the responsibility of the Contractor to immediately replace this material in like quantity. It is expressly understood and agreed that not withstanding any provision of the Uniform Commercial Code or other law applicable, title to the material covered by this contract shall not vest in Port Authority until said material is received, inspected and accepted by Port Authority.

21.4 If the Contractor furnishes articles not meeting the specification, and does not replace such articles, or if there is a failure to deliver any purchase within the specified time, Port Authority reserves the right to purchase the same in the open market and deduct the expense, including any excess in price over that called for in the contract, from the amount due the Contractor from Port Authority. If the amount due the Contractor is not sufficient to meet such expenses in excess price paid for, Port Authority may proceed against the Contractor and/or the Contractor's sureties when applicable.

22. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

22.1 No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

23. CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

23.1 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, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, 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 FTA may issue.

23.2 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) relations, "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 FTA 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 and Federal transit law at 49 U.S.C. § 5332, 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 FTA 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 FTA may issue.

23.3 The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

23.4 In connection with the performance under this agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin and shall comply with the Commonwealth of Pennsylvania Nondiscrimination Clause below.

23.5 Nondiscrimination Clause

1) The Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age or sex. The Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the Port Authority setting forth the provisions of this nondiscrimination clause.

2) The Contractor shall in advertisement or requests for employment placed by it or on its behalf; state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

3) The Contractor shall send each labor union or worker's representative with whom it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Contractor.

4) It shall be no defense to a finding of noncompliance with this nondiscrimination clause that the Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third party discrimination or made a good faith effort to correct it; such factor shall be considered in mitigation in determining appropriate sanctions.

5) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that the Contractor will be unable to meet its obligations under this nondiscrimination clause, the Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6) The Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the

Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and the Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

7) The Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the Port Authority of Allegheny County and the Commonwealth Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If the Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Port Authority.

8) The Contractor shall actively recruit minority contractors or contractors with substantial minority representation among their employees.

9) The Contractor shall include the provisions of this nondiscrimination clause in every contract, so that such provisions will be binding upon each contractor.

24. AMERICANS WITH DISABILITIES ACT

24.1 The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA); 42 U.S.C. § 12101 et seq. and 49 U.S.C. §322, Section 504 of the Rehabilitation Act of 1973, as amended: 29 U.S.C. §794, Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. §1612.

25. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

25.1 The Contractor shall carry out the applicable requirements of 49 C.F.R., Part 26, or at another Part if re-issued, or any requirements or guidance FTA may issue, in the performance of this Contract.

25.2 The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the

[Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

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25.3 In connection with the performance of this contract, the Contractor will cooperate with Port Authority in meeting its commitments and goals with regard to the maximum utilization of DBEs and will use its best effort to insure that DBEs shall have the maximum practicable opportunity to compete for subcontract work under this contract.

26. LABOR PROVISIONS - NONCONSTRUCTION CONTRACTS

26.1 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 for all hours worked in excess of forty hours in such workweek.

26.2 Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore 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 (1) 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 (1) of this section.

26.3 Withholding for Unpaid Wages and Liquidated Damages

The Port Authority of Allegheny County 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 (2) of this section.

26.4 Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

26.5 Payrolls and Basic Records

(I) 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)(l)(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.

26.6 Independent Contractor

The Contractor certifies that it has performed or will perform its Project acquisition, construction or reconstruction under this Agreement as an independent contractor and that, in performing all of its services under the terms of this Agreement, it has made or will make provisions for Workmen's Compensation where the same is required and has carried out or will carry out full responsibility for the payment of Social Security taxes as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who have performed or will perform services under this Agreement.

26.7 Davis-Bacon Act and Copeland Act

In contracts to which they apply, contractors must comply with all requirements of the Davis-Bacon Act, 40 U.S.C. 276a et seq., the Copeland Act, 18 U.S.C. 874 and 40 U.S.C. 276c.

27. CHANGES

27.1 Port Authority may, at any time, without invalidating the contract and without notice to the sureties, by written order designated or indicated to be a Contract Modification, make any change in the work within the general scope of the contract, including but not limited to, changes:

1) In the specification and contract drawings;

2) In the method or manner of performance of the work;

3) In the Port Authority-furnished equipment, materials, or services; or,

4) Directing acceleration in the performance;

5) Eliminating any portion of the work no longer required for its proper completion;

6) Increasing or decreasing the estimated quantities; or

7) Eliminating a portion of the work, even though required for proper completion, if due to unforeseen causes the Contractor would be unduly delayed in performing that portion of the work or its performance thereof would otherwise be adverse to Port Authority's interests, and if its elimination will not materially change the nature and extent of the work.

27.2 Except as herein provided, no order, statement, or conduct of Port Authority shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

27.3 If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, an equitable adjustment will be made and the contract modified in writing accordingly. However, no allowance will be made for loss of anticipated profit on any portion of the work not performed by reason of a change in the work.

28. SUSPENSION OF WORK

28.1 Port Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of Port Authority.

28.2 If the performance of all or any part of the work is for an unreasonable period of time suspended, delayed, or interrupted by an act of Port Authority in the administration of this contract, or by Port Authority's failure to act within the time specified in the contract (or if no time is specified, within a reasonable time), an adjustment will be made for any necessary increases in the cost or time of performance of the contract (excluding profit) and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent:

1) That performance would have been so suspended, delayed or interrupted by another cause, including the fault or negligence of the Contractor; or

2) For which an equitable adjustment is provided for or excluded under any other provision of the contract.

28.3 No claim under this clause shall be allowed:

1) For any cost incurred more than 20 days before the Contractor's notification to Port Authority, in writing, of the particular act or failure to act upon which the claim is based (but this requirement shall not apply to a claim resulting from a suspension order); and,

2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

29. DISPUTES

29.1 Disputes - Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Port Authority's Contracting Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

29.2 Performance during Dispute - Unless otherwise directed by Port Authority, Contractor shall continue performance under this contract while matters in dispute are being resolved.

29.3 Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within thirty (30) days of the first observance of such injury or damage.

29.4 Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. This agreement shall be governed by the laws of the Commonwealth of Pennsylvania as they may from time to time be in effect, without giving effect to its conflicts of law provisions. Any suit or proceeding arising out of, relating to or mentioning this agreement shall be commenced only in a state or Federal court located in Pittsburgh, Allegheny County, Pennsylvania, and each party to this agreement hereby consents to the jurisdiction and venue of such court.

30. TERMINATION FOR DELAY, NEGLECT OR DEFAULT

30.1 Wherever in this Section the word "Contractor" appears, it shall also be construed to mean the surety in case of default and completion of the contract by the surety.

30.2 If the Contractor fails to begin work within the time specified in the Notice To Proceed; fails solely in the opinion of Port Authority, to perform the work with sufficient workers, equipment or materials to ensure the completion of said work in accordance with the contract documents; performs the work unsatisfactorily in the opinion of Port Authority; neglects or refuses to remove materials or perform anew any work rejected as defective or unsatisfactory; discontinues the prosecution of the work without approval of Port Authority; fails to resume work which has been discontinued or suspended within ten (10) days after notice to do so; becomes insolvent, is declared bankrupt or commits any act of bankruptcy or insolvency; allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours; makes an assignment for the benefit of creditors;

fails or refuses, within ten (10) days after written notice by Port Authority, to make payment or show cause why payment should not be made of any amounts due for materials furnished, labor supplied or performed, equipment rentals, and utility services rendered; fails to protect, repair or make good any damage or injury to property; for any cause whatsoever, does not solely in the opinion of Port Authority, carry on the work in an acceptable manner; or fails to perform any provisions of the Contract Documents, Port Authority, after having given seven (7) days written notice to the Contractor and its Surety of any of the above identified delays, neglects, or defaults on the part of the Contractor, shall be entitled, without invalidating the contract, to declare the Contractor in default, take the prosecution of the work out of the hands of the Contractor, appropriate or use materials and equipment and enter into a contract or contracts for the completion of the work; or may use such other methods as in its opinion will be expedient for the completion of the work.

30.3 If Port Authority, pursuant to 30.2, elects to take the prosecution of the work out of the hands of the Contractor, Port Authority may, at its option, notify and require the Surety to complete the work in accordance with the contract documents.

30.4 If Port Authority elects to take the prosecution of the work out of the hands of the Contractor and complete the work, Port Authority may, at its option, take all right, title and interest in and to the equipment and materials owned by the Contractor and assembled for use in the execution of the work, and may use them for completion of the work.

30.5 If the completion of the work by any of the methods specified above results in financial loss to Port Authority, it may:

1) Dispose of, in the manner it determines to be in its best interest, any of the equipment or materials it acquired under this provision, without further legal process. Equipment or materials not required for completion of the work or for the recoupment of loss or legal charges or any balance remaining from the disposition of any materials or equipment after the deduction of losses, costs and any legal charges by Port Authority shall be turned over to the party legally or equitably entitled thereto.

2) Deduct from moneys due or to become due to the Contractor under the contract or any other contract with Port Authority all costs and legal charges incurred by Port Authority, and Port Authority will credit the Contractor with the balance remaining from any disposal of the equipment or materials; or

3) In the event the costs or legal charges incurred by Port Authority, less the credits provided for, exceeds the sum which would have been payable under the contract for the completed work, hold the Contractor or its Surety liable to Port Authority for the amount of said excess.

30.6 If, after the Contractor is terminated under this provision, a determination is made that the Contractor was not in default, the rights and obligations of the parties shall be the same as

if the termination had been issued pursuant to Section 31. (TERMINATION FOR CONVENIENCE OF PORT AUTHORITY)

30.7 Port Authority, in addition to any other rights provided in Section 30, may require the Contractor to transfer title and deliver to Port Authority, in the manner and to the extent directed by Port Authority:

1) any completed supplies, and

2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of Port Authority, protect and preserve property in the possession of the Contractor in which Port Authority has an interest.

30.8 The Contractor's right to proceed will not be terminated nor the Contractor charged with resulting damage if the delay in the completion of the work arises from causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of Port Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers at any time arising from causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and, the Contractor, within 10 days from the beginning of any such delay (unless Port Authority grants a further period of time before the date of the final payment under the contract), notifies Port Authority in writing of the causes of delay.

31. TERMINATION FOR CONVENIENCE OF PORT AUTHORITY

31.1 This contract may be terminated by Port Authority in accordance with this provision in whole, or in part, whenever Port Authority determines that such termination is in its best interests. Any such determination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the contract is terminated and the date upon which such termination becomes effective.

31.2 After receipt of a Notice of Termination and except as otherwise directed by Port Authority, the Contractor shall:

1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

2) Place no further orders or subcontracts for materials, service, or equipment, except as may be necessary for completion of such portion of the work not terminated;

3) Terminate all orders and subcontracts to the extent that they relate to the terminated portion of the work;

4) Assign to Port Authority, in the manner at the time, and to the extent directed by Port Authority, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case Port Authority shall have the right, in its sole discretion, to settle or pay any claims arising out of the termination of such orders and subcontracts;

5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval of Port Authority, which approval shall be final for all the purposes of this provision;

6) Transfer title and deliver to Port Authority in the manner, at the times, and to the extent directed by Port Authority:

   a) The fabricated or unfabricated parts, work in process, completed work, supplies and other material or equipment procured as a part of, or acquired in connection with the performance of, the portion of the work terminated; and

   b) The completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to Port Authority.

7) Use its best efforts to sell, in the manner, at the time, to the extent, and at the price or prices directed or authorized by Port Authority, any property of the types referred to in Section 31.2 (6); provided, however, that:

   a) The Contractor will not be required to extend credit to any purchasers;

   b) The Contractor may acquire any such property under the conditions prescribed by and at a price or prices approved by Port Authority; and

   c) The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Port Authority to the Contractor under the contract or shall otherwise be credited to the price or cost of the work or paid in such manner as Port Authority may direct.

8) Complete performance of such portion of the work as was not terminated by the Notice of Termination; and

9) Take such action as may be necessary, or as Port Authority may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which Port Authority has or may acquire an interest, until the effective date of termination.

31.3 At any time after expiration of a plant clearance period the Contractor may submit to Port Authority a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of the items the disposition of which has

been directed or authorized by Port Authority, and may request Port Authority to remove such items or enter into a storage agreement covering them.

31.4 Not later than 15 days thereafter, Port Authority will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

31.5 After receipt of a Notice of Termination, the Contractor shall submit to Port Authority its termination claim, if any, in the form and with the certification prescribed by Port Authority. Such claim shall be submitted promptly but in no event later than one year from the date of termination. Upon failure of the Contractor to submit its termination claim within the time allowed, Port Authority shall determine, based on the information available, the amount, if any, due to the Contractor by reason of the termination, which decision shall be final and binding upon the Contractor, and shall thereupon pay the Contractor the amount so determined.

31.6 Subject to the provisions of Section 31.5, the Contractor and Port Authority may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. No claims for loss of anticipated profits will be allowed for the termination.

31.7 The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in the following Section 31.8 or in this Section, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and Port Authority to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Section.

31.8 In the event of the failure of the Contractor and Port Authority to agree upon the amount to be paid to the Contractor by reason of a termination pursuant to this provision, Port Authority shall determine, based on the information available to Port Authority, the amount, if any due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

1) For completed supplies accepted by Port Authority (or sold or acquired as provided in Section 31.2 (7) and not therefore paid for) a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

2) The total of:

a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under Section 31.8 (1) hereof;

b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in preceding Section 31.2 (5) exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the contract, which amount shall be included in the cost payable under Section 31.8 (2) (a); and

c) A sum as profit on Section 31.8 (2) (a) above, determined by Port Authority to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under the subdivision and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and,

3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontract thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

31.9 The total sum to be paid to the Contractor under Section 31.8 shall not exceed the contract sum as reduced by the amount of payments otherwise made and as further reduced by the value of that portion of the work not terminated. Except for normal spoilage, and except to the extent that Port Authority shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under Section 31.8 the fair value, as determined by Port Authority, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Port Authority, or to a buyer.

31.10 In arriving at the amount due the Contractor under this section, there shall be deducted:

a) Any claim which Port Authority may have against the Contractor in connection with the contract; and

b) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to this section and not otherwise recovered by or credited to Port Authority.

32. RECORD RETENTION AND ACCESS

32.1 The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, 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 Port Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

32.2 Upon request and in accordance with 49 CFR 18.36(i), the Contractor agrees to permit the FTA Administrator, the Comptroller General of the United States, the Commonwealth of Pennsylvania, County of Allegheny, and Port Authority, or their authorized representatives, to inspect and copy all contract work, materials, payrolls, and other documents, and to audit the books, records and accounts of the Contractor and its subcontractors pertaining to the contract. The Contractor agrees to require each subcontractor and supplier to permit the FTA Administrator, the Comptroller General of the United States, the Commonwealth of Pennsylvania, and Port Authority, or their duly authorized representatives, to inspect and copy all work, materials, payrolls, and other documents and records involving that third party subcontract and to audit the books, records, and accounts involving that third party subcontract as it affects the contract work.

33. STEEL PRODUCTS PROCUREMENT ACT

33.1 This contract is subject to the provisions of the Pennsylvania "Steel Products Procurement Act," Act No. 3 of 1978, March 3, P.L. 6 (73 P.S. §§1881 et seq.) and any amendments thereto.

34. MOTOR VEHICLE PROCUREMENT ACT

34.1 This contract is subject to the provisions of the Pennsylvania "Motor Vehicle Procurement Act - Act No. 1984-40" and any amendments thereto. All Motor Vehicles, as defined in the Act, to be purchased, leased or rented by Port Authority in the performance of this contract shall be governed by the terms and conditions of this Act.

35. MOTOR VEHICLE SAFETY STANDARDS AND POLLUTION REQUIREMENTS

35.1 When new motor vehicles are purchased with project funds, the Contractor must provide Port Authority with a certification in writing that:

1) The horsepower of each vehicle is adequate for the speed, range and terrain in which it will be required and also to meet the demands of all auxiliary power equipment.

2) The motor vehicles comply with all motor vehicle safety standards established by the Federal Government, the Commonwealth of Pennsylvania and the County of Allegheny.

3) The motor vehicles comply with all motor vehicle exhaust emission standards established by the Federal Government, the Commonwealth of Pennsylvania and the County of Allegheny.

4) The motor vehicles comply with all noise level standards established by the Federal Government, the Commonwealth of Pennsylvania and the County of Allegheny.

36. ENVIRONMENTAL REQUIREMENTS

36.1 The Contractor recognizes that many Federal and state laws imposing environmental and resource conservation requirements may apply to the contract work. Some, but not all, of the major Federal laws that may affect the contract work include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; and the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The Contractor also recognizes that U.S. EPA, FHWA and other agencies of the Federal Government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the contract work. Thus, the Contractor agrees to adhere to, and to impose on its third party subcontractors, any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and the Contractor. The Contractor acknowledges that this list does not constitute the Contractor's entire obligation to meet all Federal environmental and resource conservation requirements.

1) Environmental Protection. The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

2) Clean Air

a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Port Authority and understands and agrees that the Port Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

3) Clean Water. The Contractor agrees as follows:

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 U.S.C. §§ 1251 et seq.

b) The Contractor agrees to report, and require each third party subcontractor at any tier to report, any violation of these requirements resulting from any contract work implementation activity of a third party subcontractor (at any tier) or itself to FTA and the appropriate U.S. EPA Regional Office.

4) Mitigation of Adverse Environmental Effects. The Contractor agrees that if the contract work should cause adverse environmental effects, the Contractor will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. § 5324(b), and all other applicable Federal laws and regulations, specifically, the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

37. PREFERENCE FOR RECYCLED PRODUCTS

37.1 The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery 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.

37.2 The Contractor shall comply with Section 1505 of the Municipal Waste Planning, Recycling & Waste Reduction Act.

38. ENERGY CONSERVATION

38.1 Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

39. CARGO PREFERENCE

39.1 Use of United States-Flag Vessels - The contractor agrees:

1) To use privately owned United States-Flag commercial vessels to ship at least 50 percent 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 the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

2) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

3) 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.

40. FLY AMERICA

40.1 The Contractor shall comply with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and all applicable guidelines.

41. TECHNICAL DATA AND COPYRIGHTED MATERIALS

41.1 The Term "Technical Data" shall mean all "Subject Data" defined in 41.2. Examples of Technical Data shall include, but not be limited to the following:

1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes related to the Contract Services;

2) Materials pertaining to end items, components, or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements;

3) Other materials which have been or are normally furnished without restriction by the Contractor, Subcontractor or Supplier; and

4) Other specifically described; materials, which the parties have agreed, will be furnished without restriction.

41.2 The term "Subject Data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered pursuant to the Agreement. The term includes graphic or pictorial delineation's in media such as drawings or photographs; test in specifications or related performance or design type documents; machine forms such as punched cards, magnetic tape or computer memory printouts; information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals technical reports, catalog item identifications and related information. The term does not include financial reports, costs analyses and similar information incidental to contract administration.

41.3 The Contractor agrees to and does hereby grant to Port Authority and any Federal and State agencies providing funds for this contract, as well as their officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Port Authority and said Federal and State agencies to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, all Technical Data, reports or material, regarding this Agreement and the work covered, now or hereafter covered by copyright.

41.4 Such copyrighted matter shall not be included in Technical Data furnished hereunder without the written permission of the copyright owner for Port Authority to use such copyrighted matter in the manner above described.

41.5 The Contractor shall notify Port Authority in writing of each notice or claim of copyright infringement or infringement of other intellectual property right received by the Contractor with respect to any Technical Data delivered hereunder.

41.6 The Contractor shall indemnify, save and hold harmless, Port Authority, FTA, the Commonwealth of Pennsylvania, and their officers, agents and employees, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under the contract.

42. PATENT RIGHTS

42.1 The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes, not furnished by Port Authority, used on or incorporated in the Project and shall indemnify and save harmless Port Authority, FTA, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of any patented materials, equipment, devices or processes.

42.2 In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor at its expense, shall:

1) Secure for Port Authority the right to continue using such materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses:

2) Replace such materials, equipment, devices or processes; or

3) Modify such materials, equipment, devices or processes so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefore without prejudice to any other rights of Port Authority.

42.3 If any invention, improvement or discovery of the Contractor, any Subcontractor or any Supplier is conceived or first actually reduced to practice during the course of the Agreement, which invention, improvement or discovery may be patentable under the laws of the United States or any foreign country, the Contractor shall immediately notify Port Authority and provide a detailed written report to Port Authority. Port Authority will advise FTA accordingly. The rights and responsibilities of the Contractor, any Subcontractor, any Supplier, Port Authority and FTA, with respect to such invention, improvement or discovery will be determined in accordance with all applicable federal laws, regulations, policies and any waiver thereof.

42.4 Nothing contained in this clause shall imply a license to Port Authority or FTA under any patent or be construed as affecting the scope of any license or other right otherwise granted to Port Authority or FTA under any patent.

43. NOTICE OF FINANCIAL ASSISTANCE

43.1 All reports, maps and other documents completed as part of this Agreement, other than documents prepared exclusively for internal use by Port Authority or the Contractor, and all Project signs, shall contain an appropriate notice of financial assistance by the Federal Government and the Commonwealth of Pennsylvania.

44. FEDERAL CHANGES

44.1 Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Port Authority and FTA, 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.

45. FEDERAL PRIVACY ACT

45.1 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.

45.2 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 FTA.

46 PENNSYLVANIA'S RIGHT-TO-KNOW LAW

Upon execution of the Agreement, all bids submitted in response to the Bid Documents will be considered to be public records, as defined by the "Pennsylvania Right-to-Know Law", and Authority is subject to this Law. Subject to the specific exceptions under the Law, Authority is required to, and indeed will, make available all public records in response to a properly submitted Right-to-Know request as defined by the Law. Further, if the bid or any other material provided to Authority by the Bidder pursuant to the Bid Documents contains any reference to material being CONFIDENTIAL, PROPRIETARY or RESTRICTED, in any manner, the Bidder, by the act of submitting its bid, affirmatively rescinds and makes null and void any such stated limitations on such identified material.

47. PENNSYLVANIA INSPECTION AND COPYING OF RECORDS ACT

Upon execution of the Agreement, all bids submitted in response to the Bid Documents will be considered to be public records, as defined by the "Pennsylvania Inspection and Copying of Records Act", and Authority is subject to this Act. Subject to the specific exceptions under the Act, Authority is required to, and indeed will, make available all public records as defined by the Act. Further, if the bid or any other material provided to

Authority by the Bidder pursuant to the Bid Documents contains any reference to material being CONFIDENTIAL, PROPRIETARY or RESTRICTED, in any manner, the Bidder, by the act of submitting its bid, affirmatively rescinds and makes null and void any such stated limitations on such identified material.

48. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

48.1 The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 (latest revision), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Port Authority requests which would cause Port Authority to be in violation of the FTA terms and conditions.

49. FLOW DOWN

49.1 The Contractor will include in such subcontracts the provisions or appropriate versions of sections 2.7, 6.1(7), (8) and (9), 23, 24, 26, 30, 31, 32, 33, 37.1, 38, 39, 40, 41, 42, 43, 44, 45 and 47 hereof. Where the amount of the subcontract exceeds $100,000 the contractor will also include in such subcontracts the provisions or appropriate versions of sections 3, 4, 5, 29, 36.1(2) and 36.1(3) hereof. The Contractor shall provide to Port Authority evidence of inclusion of said provisions in its subcontractor agreements.

50. INDEMNIFICATION

50.1 Contractor shall, at its sole cost and expense, defend, indemnify and hold harmless Authority, the government and any other agencies and entities as identified in this Agreement, and their respective officers, directors, agents and employees (hereinafter collectively referred to as “Indemnitees”), against all claims and proceedings based upon actual or alleged infringement or other misappropriation of any patent, copyright, or other intellectual property right or wrongful use of any trade secret or confidential information, and Contractor shall hold Indemnitees harmless from any resulting losses, liabilities, damages, costs and expenses including, without limitation, reasonable attorneys’ fees, arising from such claims. If an infringement, misappropriation, misuse or other violation of law or equity covered by the indemnity provided for herein is established by a court or administrative agency in a final decision from which no appeal is or can be taken, or if Authority is temporarily or permanently enjoined or otherwise legally estopped from using all or any portion of the Contractor’s products, equipment or services subject to this Agreement, Contractor shall be liable to Authority for any and all damages incurred by Authority resulting from the infringement, misappropriation, misuse of other violation of

law or equity or from Authority being so enjoined or estopped, including (but not necessarily limited to) Authority's increased costs to solicit and enter into a new contract with another contractor to provide the subject products, equipment or services to Authority in a legal and non-infringing manner.

51. VERIFICATION OF EMPLOYEES

51.1 Should Davis Bacon Wage Determinations be required for this contract, the determination will be attached to this solicitation by the Authority. In the event that Davis Bacon Wage Determinations are included with this solicitation, the following provisions will apply:

A. This Contract is subject to the provisions of the Pennsylvania Public Works Employment Verification Act (S.B. 637, Session 2011) (hereinafter in this Article, the "Act"), and any and all regulations promulgated in regard to the Act. Within five (5) days of the issuance of the Notice of Award for the Contract, and prior to any portion of the Work being performed, the Contractor and all then retained Subcontractors, at any tier, shall submit to Authority verification forms, approved by the Pennsylvania Department of General Services and otherwise acceptable to Authority, acknowledging responsibility for, and compliance with, the Act and that as required by the Act, they have each verified the employment eligibility of each new employee utilizing the U.S. Department of Homeland Security's E-Verify program. Furthermore, prior to any Subcontractor, at any tier, performing any portion of the Work, the Subcontractor, through the Contractor, shall submit to Authority such verification forms.

B. Upon Authority's request, the Contractor shall, and shall require each of its Subcontractors to, provide Authority with a written representation that their employees and employment practices are compliant with all applicable laws, including, but not limited to, in compliance with "I-9" requirements, 8 U.S.C. §§ 1324, et seq., and shall provide Authority with all documents and information necessary to support any such representation or information, including copies of I-9s for all employees assigned to, or performing any portion of, the Work.

52 PROMPT PAYMENT

Contractor will be paid in "lump sum" upon completion and acceptance by Authority's Project Manager; of the operating equipment (if a complete operating assembly is specified); items supplied (if strictly parts or materials are supplied); or per the completion of the project schedule milestones (for projects with stated milestones); within 30 days of acceptance of accurately stated invoices.