

**REQUEST FOR PROPOSALS**

**CONSTRUCTION MONITORING SERVICES**

**FOR CONTRACT NO. 12-J PATCO**

**FRANKLIN SQUARE STATION RE-OPENING PROJECT**

**SEPTEMBER 9, 2021**

**Pre-Proposal Meeting**

Thursday, September 23 at 2:30 pm EST

**Questions Due**

Wednesday, September 29 at 5:00 pm EST

**Proposals Due**

Monday, October 18, 2021 at 2:00 pm EST

Delaware River Port Authority

One Port Center

2 Riverside Drive

Camden, NJ 08103

Attention: Karen L. Cyphers

Phone: 856-968-2087klcyphers@drpa.org



**REQUEST FOR PROPOSALS**

**CONSTRUCTION MONITORING SERVICES FOR CONTRACT NO. 12-J PATCO**

**FRANKLIN SQUARE STATION RE-OPENING**

# DISCLAIMER

**The contents and information provided in this Request for Proposals (“RFP”) are meant to provide general information to interested parties. The successful Proposer(s) chosen individually by the Delaware River Port Authority (“DRPA” ), on behalf of the DRPA or its wholly owned subsidiary, Port Authority Transit Corporation (“PATCO”), or collectively as the Authority (“Authority”) will be required to execute a Contract (“the Agreement”) with the Authority that will govern the rights, duties and obligations between the Authority and the Consultant(s). Where applicable, reference to “DRPA” “Authority” or “PATCO” shall include both entities.**

**ACCORDINGLY, THE TERMS SET FORTH WITHIN THIS RFP DO NOT CONSTITUTE ANY CONTRACT BETWEEN THE DRPA AND THE SUCCESSFUL PROPOSER(S). MOREOVER, THE DRPA ACCEPTS NO RESPONSIBILITY FOR ANY OMISSIONS OR DELETIONS RELATING TO THIS RFP.**

**THE AUTHORITY WILL NOT HONOR ANY ATTEMPT BY A PROPOSER TO DESIGNATE ITS ENTIRE RESPONSE AS PROPRIETARY AND/OR TO CLAIM COPYRIGHT PROTECTION FOR ITS ENTIRE RESPONSE. SEE SECTION IV, PARAGRAPH A(2) REGARDING RESTRICTIONS ON USE OF DATA.**

# QUESTIONS

Any questions regarding this RFP must be sent electronically (via e-mail) to Karen Cyphers, Acting Manager, Contract Administration, at klcyphers@drpa.org. All questions are to be submitted via e-mail. Do **NOT** send questions **via Ariba** as this will violate our Single Point of Contact Policy. Please put **“FRANKLIN SQUARE”** in the subject line of your email. The deadline for submission of questions is **5:00 pm EST, Wednesday, September 29, 2021**. Questions submitted after this date will not be answered. Questions presented by any Consultant, and the DRPA’s answers to such questions, will be shared with all Consultants who are being considered.

The DRPA will not be bound by any formal explanation, clarification, or interpretation, oral or written, by whomever made, that is not incorporated into the Addenda duly issued by the DRPA.

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| --- |
| **SINGLE POINT OF CONTACT**    The DRPA has established a single point of contact for this procurement. From the issue date of this RFP and until full execution of the Contract Agreement, the Sole Point of Contact shall be the Contract Administrator whose name and contact information appear below. Please refer all inquiries to this Contracting Officer.    Any violation of this condition may be cause for the DRPA to reject the offending Proposal or rescind the contract award. Proposers agree not to distribute any part of their Proposals beyond the Contracts Department. A Proposer that shares information contained in its Proposal with other DRPA personnel and/or with a competing Proposer may be disqualified and its Proposal may be rejected.    **The single point of contact for this Project is**:    Karen L. Cyphers, Acting Manager, Contract Administration klcyphers@drpa.org  856-968-2087 |

# NON-DISCRIMINATION

Proposers are to be aware that the Authority has in place programs for Affirmative Action and Equal Employment Opportunity. It is the policy of the Authority that it wishes to provide equal opportunity for employment to individuals, consultants, contractors, and subconsultants, and subcontractors without regard to race, color, creed, sex, age physical impairment, or national origin. The Authority seeks to provide a full, fair and equal opportunity to minority group individuals and minority owned or operated businesses who seek to supply goods and services for the use of the Authority without respect to any of the above named factors.

The Authority advises each Proposer that a more detailed statement relating to Non-Discrimination is contained in Section VI of this RFP.

**The proposed use of DBE/SBE services will be a consideration in evaluating the proposals received. The Authority’s goal for this project is: 10% DBE.**

**For additional information about the Authority’s DBE/SBE Program for this project, see Section VI., Paragraph F.**

**THE AUTHORITY WILL NOT HONOR ANY ATTEMPT BY A PROPOSER TO DESIGNATE ITS ENTIRE RESPONSE AS PROPRIETARY AND/OR TO CLAIM COPYRIGHT PROTECTION FOR ITS ENTIRE RESPONSE. SEE SECTION IV, PARAGRAPH A (2) REGARDING RESTRICTIONS ON USE OF DATA.**

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**SECTION I**

# INTRODUCTION

## A. GENERAL OVERVIEW

The DRPA is a bi-state corporate instrumentality of the State of New Jersey and the Commonwealth of Pennsylvania. The DRPA owns and operates four major toll bridge crossings of the Delaware River; the Benjamin Franklin Bridge, the Walt Whitman Bridge, the Commodore Barry Bridge, and the Betsy Ross Bridge. Each bridge facility includes office buildings, maintenance shops, garages, and other buildings and structures. In addition, the DRPA owns real property in the vicinity of the bridges.

The DRPA’s wholly-owned transit subsidiary, Port Authority Transit Corporation (“PATCO”), operates a rapid transit line providing public transport service between Philadelphia and Southern New Jersey. PATCO’s transit system includes an administrative and maintenance facility at Lindenwold, New Jersey and thirteen (13) stations along its approximately 14.2 mile route. The DRPA owns the nine (9) stations in New Jersey and leases the four (4) Philadelphia stations from the City of Philadelphia.

Additional information about the DRPA and its operations may be obtained by reviewing annual reports available on the DRPA’s website at www.drpa.org, “About DRPA, Annual Reports.”

The Work under this Contract will be subject to a financial assistance Contract between the Delaware River Port Authority (“DRPA” or “Authority”) and the Federal Transit Administration (“FTA”) of the United States Department of Transportation (“USDOT”). As a result, such work will be performed pursuant to all applicable Federal laws, regulations, policies and administrative practices which are currently in effect and which may be established during the performance of the Work under this Contract. By submitting a bid, the Consultant certifies that they have read, understood and agrees to comply with the Federal requirements which follow.

## B. PURPOSE AND INTENT

The Authority seeks to engage a professional firm with the necessary experience, expertise, and qualified personnel to provide Construction Monitoring Services (“Services” or “Work”) as mentioned in the Scope of Services section below.

This RFP is intended to outline the Authority’s expectations for Services to be provided. However, this RFP does not purport to define all Services that may be needed in connection with the Project**.**

## C. TERM OF ENGAGEMENT

The Consultant shall base its Proposal on providing Services for a one (1) month preparation period, a twenty-four (24) month Construction Contract duration, with a two

(2) month Project wrap-up period. Project staffing throughout the duration of the Project should be commensurate with the Services to be performed. The Consultant shall review all documentation relevant to this Project in order to become familiar with existing conditions. The Consultant shall submit, all final deliverables, as outlined in Section III within zero (0) months from Notice to Proceed.

It is anticipated that a Notice to Proceed will be issued to the Consultant in January, 2022. The Notice to Proceed for the Construction Contract is expected in February, 2022.

## D. NON-MANDATORY PRE-PROPOSAL CONFERENCE

A **non-mandatory** **Pre-Proposal Conference** will be held on **Thursday, September 23, 2021 at 2:30 pm via Teleconference**. The call-in number for this meeting is:

Conference Line: 1800-220-9875

Participant: 21 03 31 39

Proposals will be accepted only from Consultants who received project access via the SAP Ariba System.

**SECTION II**

# TIME REQUIREMENTS

|  |  |
| --- | --- |
| **ANTICIPATED SCHEDULE** | |
| ***Activity*** | ***Completion Date*** |
| RFP Issued | September 9, 2021 |
| Non-mandatory Pre-Proposal  Conference | September 23, 2021 |
| Questions due | September 29, 2021 |
| Answers provided | October 6, 2021 |
| Proposals Due**\*** | October 18, 2021 |
| Anticipated Board Approval | January 2021 |
| Estimated Expiration of PA and NJ  Governor’s Veto Period | February 2021 |
| Anticipated Commencement Date  of Services\*\* | March 2022 |

**\* Responses to this RFP must be submitted electronically via the Ariba Network. Faxed, e-mailed, and/or hardcopies will not be accepted. The Ariba submission requirement is mandatory and non-waivable.**

**\*\* Following DRPA’s Issuance of Notice to Proceed**

**SECTION III**

# SCOPE OF SERVICES

Proposers must understand that the Consultant to be engaged after responding to this RFP shall be expected to perform all the work necessary to provide for the proper Construction Monitoring and Inspection Services for Contract No. 12-J, PATCO Franklin Square Station Re-Opening. The Scope of Services the Authority requires shall include all Construction Monitor Services including but not limited to, inspection of all work to ensure that it is done in compliance with the Contract Plans and Specifications, inspecting all construction materials to be used at the site to ensure compliance with the contract Plans and Specifications, obtaining certifications of all manufactured materials, review and approve all shop/working drawings and the review the preparation of “asbuilts” by the contractor and all such other services as may be required to furnish a complete engineering service of high quality. The scope includes the review of project schedules, payments, staging and recommend alternates solutions whenever conflicts appear. The firm shall exhibit professional staff knowledgeable with transit system operations, station construction, structural improvements and repairs, utility coordination, and experience with maintenance and protection of traffic plus experience working around densely populated urban areas, transit and commuter traffic, OSHA safety requirements, plus other applicable federal, state, and local requirements. The consulting engineering firm will be expected to provide fully developed methodologies for accomplishing all the above mentioned work.

The Consultant will provide all on-site and off-site Project inspection and observation required to certify that all materials and workmanship for this Project are completed in conformance with the Construction Contract’s requirements and industry standards. The Consultant must be capable of responding to the needs of the DRPA with personnel possessing expertise in the Work specified. This expertise must exist within the firm or within the proposed Project team and must be readily available to the DRPA as needed.

## A. PRECONSTRUCTION PHASE

1. Review of Project Documents and Existing Conditions

The Construction Monitor shall review and become totally familiar with the project plans and specifications, including project phasing requirements and maintenance and protection of transit and traffic plans. The Consultant shall review and develop an understanding of existing PATCO operations, street, and pedestrian traffic. The Construction Monitor shall become thoroughly familiar with the facilities, including their operational characteristics, existing transit operations and maintenance patterns, Franklin Square events, and all features of the facilities that will be affected by work under this Project. The Construction Monitor shall become generally familiar with on-going projects along the PATCO right-of-way.

1. Project Control Methods

The Construction Monitor shall develop project control methods, including safety assurance, safety certification process and quality control, field modifications and change orders, project cost accounting and control, schedule review, submission and shop drawing procedures, project record keeping procedures, monitoring contractor’s compliance with DBE program goals, and public communication procedures. All project control methods and procedures will be submitted for review and approval by the Authority.

1. Community, Government, and Business Coordination

Work to be accomplished under this Contract will have an impact on the local community, local and regional businesses, commuters, and other entities responsible for the regional transportation network. The Construction Monitor will need to develop an understanding and sensitivity for the potential impacts of this project and for those who will be affected by it. The Construction Monitor will need to anticipate how various activities and restrictions will affect these parties and be prepared to assist the DRPA with the coordination required to mitigate any potential adverse impacts. The Construction Monitor shall work with key stakeholders to identify individuals who will receive project information and attend project progress meetings.

The Construction Monitor shall set up and maintain a web based “community billboard”. The Construction Monitor will coordinate with the Contractor, community, DRPA/PATCO, and update the web site, weekly or as needed. In addition, the Construction Monitor shall develop and distribute a monthly construction update to be delivered to local residents and businesses. The Consultant should utilize the services of an experienced public relations firm for the purpose of facilitating interaction with the public, businesses, organizations, and government agencies. The public relation firm shall establish a toll-free number that will be answered 24 hours a day, 7 days a week through-out the duration of the Contract. The answering service will respond to inquiries raised by residents of Philadelphia concerning the project activities.

1. Drug testing and background testing

Drug testing and background testing are required and will be performed by the Proposer and the results of which will be shared with the DRPA. The background check shall include, as minimum personnel information including driver license and social security number. The DRPA will only allow personnel who pass the background check and drug testing to participate in the project.

## B. CONSTRUCTION PHASE

1. Project Control

The Construction Monitor shall monitor the work of the Contractor and subcontractors, and coordinate the Work with the activities and responsibilities of the DRPA to complete the Project in accordance with the project plans, specifications, budget, and schedule. The Construction Monitor shall establish a professional on-site organization and home office support staff, as required, to coordinate and monitor the Project, which shall be responsible to the DRPA for the ongoing performance of the Project.

The Construction Monitor shall schedule and conduct bi-weekly progress and go/no-go meetings with the Contractor and DRPA personnel to discuss procedures, progress, problems, and scheduling. The Construction Monitor will be responsible for recording and distributing minutes of all meetings. The Construction Monitor shall work with stakeholders to ensure work proceeds with minimal disruption to PATCO operations and above-ground activities.

**The Construction Monitor shall serve as liaison between the Contractor and the DRPA; this includes daily coordination with PATCO staff regarding scheduled closures, staging operations, material deliveries, track outages/restrictions, etc.**

The Construction Monitor will provide coordination between the Franklin Square re-opening project, other contracts, as well as PATCO operations and maintenance work.

The Contractor will be required to prepare and maintain a schedule to control progress of the work. The Construction Monitor will participate with the Contractor in developing and maintaining the project schedule. The Construction Monitor is to assure that the Contractor is updating the project schedule on a biweekly basis, as stated in the construction documents. The Construction Monitor shall prepare a formal, written monthly report to the DRPA regarding changes to the contractor’s schedule, variances between actual work and progress schedule, and critical milestones to be accomplished during the month. The Construction Monitor shall determine the adequacy of the Contractor’s personnel and equipment, the availability of materials and supplies to meet the plans, specifications, and schedule. The Construction Monitor shall continually review the Contractor’s staging plan and safety program, and make recommendations as necessary.

1. Cost Control

The Construction Monitor shall develop and implement a project cost control system by which the Contractor’s bid quantities can be monitored and updated. The cost control system will identify by pay item, the original quantity, unit cost, and total item cost; quantities completed to date; quantities remaining to be completed to finish the work; change orders (approved and pending); and shall generate an updated monthly project cost report in conjunction with the processing of the Contractor’s approved application for payment.

In addition to the monthly project cost report, the Construction Monitor shall provide a projection of cash flows for the duration of the Project, and a supplemental written report to the DRPA, describing project cost performance and identify any potential problems or variances from earlier projections. The Construction Monitor shall also maintain certified payrolls from the Contractor and subcontractors, and perform spot monitoring of the work force to assure that correct prevailing wages are being paid by the Contractor and subcontractors. The Construction Monitor will review and analyze any construction claims arising out of the Work and will make recommendation for settlement.

1. Construction Staging and Phasing

The Contractor is responsible for phasing of construction in a manner that will minimize impacts to street traffic, pedestrian movements, and PATCO service. Although most Work is expected to be performed during the day, any work requiring restrictions to PATCO train operation will be performed during weeknights and weekends. The Consultant shall work with the Contractor to identify work items which will require track outages/restrictions. The Consultant shall work with the Contractor to coordinate work activities and track outages/restrictions with PATCO as well as other contractors requiring track outages and restrictions.

The Contractor is responsible for providing, installing, and maintaining all pedestrian and traffic control devices in accordance with the specifications. The Consultant will review the Maintenance and Protection of Traffic (“MPT”) plans and will also be responsible for observing traffic and pedestrian flow through the work zone during construction; based upon these field observations, the Consultant will suggest minor changes/alterations to the Traffic Control Pattern, as necessary, in order to improve traffic flow and/or safety.

The Contractor will be performing work on and adjacent to City of Philadelphia Streets and SEPTA/New Jersey Transit Bus lines. Prior to work activities affecting local streets and existing bus stops, the Consultant will make sure that the Contractor is maintaining the required coordination and communication with the respective agencies. The Consultant shall work with the Contractor to develop an agency contact log to denote coordination activities and track communications.

1. Change Orders

The Construction Monitor shall develop and implement a system for the preparation, review, processing, and monitoring of change orders. The Construction Monitor shall recommend necessary or desirable changes to the DRPA. The Construction Monitor shall review and submit recommendations to the DRPA in connection with requests for changes, and assist in negotiating change orders. All change orders will be authorized by the DRPA before the Contractor executes the work identified in the Change Order.

1. Progress Payments

The Construction Monitor shall develop and implement a procedure for the review, processing, payment, and recording of applications by the Contractor for progress and final payments. The Construction Monitor shall assure that signed waivers of liens are executed as necessary for payment, and that Certificates of Insurance have been provided by all Contractors and subcontractors.

1. Shop Drawings and Submittals

Shop drawings and working drawings for this project will be reviewed and approved by the Construction Monitor. Transmission and tracking of shop drawings will be the responsibility of the Construction Monitor. The Construction Monitor shall, therefore, establish and implement coordination and tracking procedures for expediting the review, processing and approval of shop drawings and submittals.

1. Inspection and Progress Reports

**The Construction Monitor shall inspect and monitor all aspects of the work to be performed under Contract No. 12-J, Franklin Square Station Re-opening** to assure that all Work, material, procedures, and methods are in compliance with the project plans and specifications, contract documents, applicable standards and codes, laws and regulations, and in accordance with safety and operational requirements. As a condition of submitting a Proposal for this work, the Construction Monitor shall thoroughly review the project documents and field conditions, and, based on the stated project schedule, prepare his Proposal to provide the number and caliber of qualified personnel required to inspect and monitor all aspects of the work, materials incorporated into the work, maintenance and protection of traffic procedures, and the Contractor’s methods and procedures for compliance with the Contractor’s Safety Plan. The Construction Monitor’s staffing levels shall be commensurate with the level of ongoing construction activities.

The Construction Monitor will review the Contractor’s vertical and horizontal control for establishing construction layouts and will review the Contractor’s layout of critical items.

The primary responsibility for testing materials, has been designated in the construction documents to be the responsibility of the Contractor. The Contractor is required to retain and pay for the services of independent testing agencies for the testing of all materials. The Construction Monitor will need to observe all on-site and off-site testing of materials, and is responsible for determining the extent of this effort from the construction documents. The Construction Monitor will also be responsible for compiling and maintaining the results of all tests performed in connection with the work on this Project. All test reports will be reviewed by the

Construction Monitor for compliance with the design and specifications. The Construction Monitor will submit the reports to the DRPA with its analysis of the results.

Special inspections and testing, as listed in the 2021 International Building Code (“IBC 2021”) and on the Contract Drawings and Specifications are to be performed by the Construction Monitor. The performance of special inspections and testing shall be in compliance with the IBC 2021. The special inspectors shall be compliant with the requirements of IBC 2021 (with any local amendments).

The purpose of these periodic inspections is to observe and document the adequacy of the Contractor’s shop facilities. The frequency and duration of these periodic inspections shall be determined by the Construction Monitor.

The Construction Monitor shall prepare a monthly progress report for the Project, including information on the Contractor’s work and progress, and percentages of completion. The Construction Monitor shall keep a daily log of the activities on site and the progress of the Project, which shall be available to the DRPA upon request.

8. Project Records

The Construction Monitor shall maintain at the site, on a current basis, a record of all contracts, drawings, shop drawings, insurance documents, all applicable codes, regulations, and technical standards and specifications, and other construction related documents. The Construction Monitor shall also maintain a complete, concise set of daily project records which is a compilation of the reports of all project personnel and which describes, in detail, all work performed that day, the conditions under which it was performed, and all information relevant to the work. This daily report needs to include by reference, all tests that were conducted of the Work and the results of those tests. The daily project report needs to be tied to the project CPM schedule and needs to be in sufficient detail and of sufficient quality and accuracy to form the basis of DRPA’s defense regarding any claims.

The Construction Monitor shall ensure that the Contractor maintains a current set of records drawings and specifications. These drawings and specifications will be used to prepare a reproducible set of drawings showing all as-built conditions at the end of the work.

The Construction Monitor shall ensure that the Contractor maintains on-site copies of certified payrolls. The Construction Monitor shall also ensure that current wage determinations and the Davis-Bacon Poster (“WH-1321”) are posted at all times by the Contractor at the site of work in a prominent and accessible place where they can be easily seen by workers.

The Construction Monitor is responsible for preparing all correspondence and project coordination necessary in order to successfully complete the work, including records of telephone conversations, meeting minutes, field notes, project submissions, coordination with outside agencies, owner and utilities, etc.

1. Document Interpretation

The Construction Monitor shall expedite and assist in the clarification of contract documents and shall advise the DRPA concerning resolution of issues.

The Construction Monitor shall provide responses to equipment type related questions relative to construction activities.

The Construction Monitor shall attend meetings as is required to provide technical input relative to the Final Design Plans.

1. Safety Certification

PATCO is subject to safety oversight. The safety certification process involves the production of a certification manual which must be customized for the Franklin Square Station Project. The manual will include procedures for ensuring that each safety related element of work is tracked and recorded on a daily basis. Upon completion of work for the Station, a formal inspection and sign-off procedure which must be performed prior to opening the station to the public. Monthly certification meetings are held to review progress and ensure compliance with the certification procedures. The Consultant will be required to monitor work items and obtain required documentation of safety certifiable elements of the project. The Consultant will also be involved with the formal inspection and sign-off on the safety certification.

1. Station Construction

The Franklin Square Station Re-Opening Project involves the partial demolition of existing station components, installation of new station headhouse, installation of electrical and communication systems, elevator, escalators, fire/life safety systems, lighting, closed-circuit television cameras, signage, emergency exits, streetscape, and landscaping improvements. The Contractor is responsible for the means and methods for the Work; the Construction Monitor shall review the contractors’ means and methods to ensure compliance with the Contract Plans and Specifications and with PATCO’s Standard Operating Procedures and Operating Rules.

During construction activities, the Construction Monitor shall inspect and measure interim and completed work to ensure compliance with the Contract and industry requirements. Although the Contractor is required to perform work in accordance with the Contract, the Construction Monitor shall have the knowledge and equipment necessary to confirm that the work meets Contract and industry requirements. If the interim or completed work does not meet the Contract requirements, the Construction Monitor shall stop the activity, notify the Contractor about the issue, and work with the Contractor to immediately address and resolve non-compliant issues.

1. Waterline Relocation

Work on the Franklin Square Station Re-Opening Project involves the relocation of an existing water line within the footprint of the new station headhouse. Although the Contractor is required to coordinate the relocation of the waterline from the Station to Seventh Street, the Construction Monitor needs to ensure that coordination is done with both the Philadelphia Water and Streets Department

ahead of relocation and that all necessary documents to support the Work have been collected and disseminated to proper entities.

1. Elevator and Escalator Installation

The station re-opening includes the installation of one new heavy-duty elevator and escalator in Franklin Square Station. The Construction Monitor shall document all testing and miscellaneous construction supporting this element of Work. Work supporting the elevator installation includes installation of equipment rooms, construction of elevator shafts, and associated mechanical, electrical, and fire protection systems. The Construction Monitor shall work with the Contractor to ensure that elevator inspections and acceptance testing is performed in accordance with the contract specifications which requires to inspection of the escalator and elevator systems by an inspector from the Commonwealth of Pennsylvania. The Construction Monitor will ensure that all supporting documents are submitted as required for obtaining a Certificate of Occupancy. The work associated with this installation also includes connection to PATCO’s Vertical Transportation Remote Monitoring System (“VTRMS”). The Construction Monitor shall work with the Contractor to ensure seamless connection and testing of the elevator and escalator systems.

1. ADA Requirements

Work performed on the Franklin Square Station will create a station which is fully accessible and meets the American with Disabilities Act (“ADA”) requirements. The Construction Monitor shall work with the Contractor to ensure that work performed with fare collection, elevator, station entrance, and platforms conform with ADA requirements. The Construction Monitor shall take the necessary measurements to ensure that work performed on the platform meets PATCO’s tolerances for level boarding. The Construction Monitor shall identify platform locations which fall out of tolerance and address non-compliant conditions with the Contractor.

1. Human Remains Monitoring

Due to the location of the Work, the Construction Monitor shall have an archeologist on site during Contractor’s excavation activities. If human remains are encountered during excavation, the Construction Monitor shall shut down work to allow the archeologist access to perform their work as required by the project’s human remains monitoring document.

1. Station Information Signage

The Consultant shall work with the Contractor to ensure that any station information signage or elements installed in 1936 and/or 1976 is protected from damage during removal and secured safely. Station information signage shall be turned over to DRPA after removal.

1. Fare Gate Control and Ticket Vending Machines

PATCO will be responsible for providing fare gates and the Ticket Vending machines for Franklin Square station. The Contractor will be responsible for the installation of fare equipment. The Consultant shall work with the Contractor and PATCO to ensure that delivery, installation, and testing of fare collection systems is performed without delay to the project schedule.

1. Substantial Completion

The Construction Monitor shall determine Substantial Completion of the work, or designated portions of the work, and prepare for the DRPA a list of incomplete items and a schedule for their completion.

1. Final Completion and Certification

The Construction Monitor shall determine Final Completion and provide written notice to the DRPA that all punch list items have been completed and the work is ready for final acceptance. The Construction Monitor shall certify to the DRPA that all work has been completed in accordance with the contract documents.

## C. POST-CONSTRUCTION PHASE

1. Final Project Records

At the end of the Work, the Construction Monitor shall neatly package all project records and deliver them to the DRPA. The records will be indexed for ease of retrieval. These records shall be in electronic and hard copy format.

1. As-Built Drawing

Upon completion of all work, the Construction Monitor shall ensure that the Contractor maintains and delivers a set of reproducible, as-built drawings and in electronic format (AutoCAD 2019 or latest version) from the working documents that were maintained throughout the project.

Proposers must understand that the Consultant to be engaged after responding to this RFP shall be expected to perform all the work necessary to provide for the proper Construction Monitoring and Inspection Services for Contract No. 12-J PATCOFranklin Square Station Re-Opening Project.

The Consultant will provide all on-site and off-site Project inspection and observation required to certify that all materials and workmanship for this Project are completed in conformance with the Construction Contract’s requirements and industry standards. The Consultant must be capable of responding to the needs of the DRPA with personnel possessing expertise in the Work specified. This expertise must exist within the firm or within the proposed Project team and must be readily available to the DRPA as needed.

**SECTION IV**

# PROPOSAL REQUIREMENTS

**A. GENERAL INFORMATION**

## 1. Examination by Proposers

Proposers must examine all documents provided by the Authority in connection with this RFP, as referenced in the Scope of Services, and make their own estimates in connection with provision of the Services. Failure by the Proposer to get acquainted with the available information will not relieve the Proposer from responsibility for estimating properly the difficulty or cost of successfully performing the Services. The DRPA assumes no responsibility for any conclusions or interpretations made by the Proposer on the basis of the information made available by the DRPA.

## 2. Proprietary Information

All Proposals, plus supporting and/or subsequent materials, will become the property of the DRPA and will not be returned.

All portions of a Proposal, and the RFP, may be considered as a part of any awarded Contract and will be incorporated therein by reference.

All restrictions on the use of data contained within a Proposal and all confidential information must be clearly designated as such within the Proposal. Proprietary information submitted in a Proposal or response to the RFP, will be handled in accordance with the DRPA’s Right-to-Know/Open Records Policy available for review at http://www.drpa.org/about/records.html.

To the extent permitted by law, the DRPA intends to withhold the contents of the Proposals from public view until such time as the DRPA determines, in its sole discretion, that competitive, bargaining or other applicable reasons no longer require non-disclosure. At that time, all Proposals will be available for review in accordance with the DRPA’s Right-to-Know/Open Records Policy.

## 3. Withdrawal of Proposals

A Proposal, after having been submitted, may be withdrawn by the Proposer prior to the deadline set for Proposal submission upon the presentation of a written request for such withdrawal to Karen Cyphers, Acting Manager of Contract Administration, to the Delaware River Port Authority, One Port Center, 2 Riverside Drive, Camden, NJ, 08101-1949. No withdrawal of Proposals will be allowed after the submission deadline even though Proposals may not have yet been opened.

## 4. Right of the DRPA to Amend the RFP

An amendment to the RFP may become necessary in order to make changes to requirements, delivery schedules, opening dates, and the like, or to correct defective or ambiguous information. When such a change becomes necessary, it will be accomplished by issuance of an Addendum to the RFP. Such an Addendum will be sent to each Proposer to whom the RFP has been furnished. The Addendum will be issued within a reasonable time before the scheduled receipt of Proposals in order to allow Proposers sufficient time to consider the Addendum in their Proposals. The Addendum will clearly state the changes made and whether or not the Proposal Due Date is changed. The Addendum will include instructions to the Proposers for acknowledging receipt of the Addendum and information concerning the effect of failure to acknowledge or return the Addendum.

## 5. Right of the DRPA to Reject Proposals

The DRPA reserves the right to reject any or all Proposals in its sole discretion, consistent with DRPA Procurement Policies and Procedures. The DRPA also reserves the right to waive any informality or error in a Proposal, to award the Contract only to a Proposer experienced in this class of work whose proposal is deemed by the DRPA to be most advantageous to the public’s interest and to negotiate with any or all Proposers who submit Proposals in response to this RFP. In addition, the DRPA may, at any time, revoke this RFP in its sole discretion and without assuming any liability in connection with its issuance and/or revocation.

The provisions of the RFP are made for the benefit of the DRPA and no right shall be deemed to accrue to any person making a Proposal by reason of the submission of any Proposal, or by the waiver or non-enforcement of any provisions or requirements of the RFP or by reason of any term or terms hereof.

Proposals which are incomplete, conditional, or wherein Proposal prices for the several items of the Work are unbalanced may cause the DRPA to reject the Proposal. This provision is not, however, in any way to limit or detract from the generality of the above reservation of rights.

## 6. Protest Procedures

1. Who May File the Protest

A Proposer or prospective Proposer who has a grievance in connection with the solicitation or award of a contract may file a protest. Protests relating to cancellation of all bids or Proposals are not permitted.

1. Time for Filing

* 1. A protest by a prospective Proposer must be filed before the time set for Proposal Opening and/or the Proposal Due Date.

* 1. If a protest is filed by a Proposer, the protest must be filed within **SEVEN (7) CALENDAR DAYS** after the protesting Proposer

knew or should have known of the facts giving rise to the protest.

## IN NO EVENT, HOWEVER, MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE

**CONTRACT IS AWARDED.** The contract award date is defined as the expiration of the New Jersey’s and Pennsylvania’s

Governors’ veto period after award of the contract by the DRPA’s Board of Commissioners.

3.) Untimely protests shall not be accepted and shall be disregarded.

1. Form of Protest

* 1. A protest must be in writing and filed with the DRPA’s Director of Procurement.

* 1. A protest must state all grounds upon which the protesting party asserts that the solicitation or award is improper, as well as the remedy sought by the protesting party. Issues not raised by the protesting party within the deadline for filing are deemed waived by the protesting party.

* 1. The protesting party shall submit with the protest any documents or information deemed relevant by the protesting party, as well as any requests for DRPA documents the protesting party deems relevant to the protest.

1. Investigation

Upon receipt of the protest, the DRPA’s Director of Procurement will appoint a Protest Officer who will be a Manager or other employee in the Procurement Department with the requisite procurement knowledge, as designated by the Director of Procurement.

The Protest Officer shall review the protest and supporting documents and issue a written report and decision to the Director of Procurement within five (5) business days of the appointment, where feasible. The Protest Officer may take any action or make any requests he or she deems necessary in order to investigate the protest, including extending the time to issue a decision in order to obtain all evidence and other pertinent information.

DRPA may in its sole discretion, conduct a hearing in person or by telephone where it concludes that the protest cannot be resolved on the basis of the written record alone. The hearing shall be conducted by the Director of Procurement or his/her designee, the Chief Engineer or his/her designee, and/or the Deputy-CEO or his/her designee.

In cases where DRPA decides to hold a hearing, it will generally conduct a pre-hearing conference in order to review the scope of the hearing, identify the appropriate witnesses and their availability, if allowed, establish the date and location of the hearing, and discuss other logistical and procedural matters. In cases where DRPA determines that only some of the protest issues require a hearing, it will generally limit the hearing to those issues.

1. Response

Following a review of the Protest Officer’s report, the results of a hearing, if conducted, and any other pertinent information, the Director of Procurement or his/her designee shall advise the protesting party of the DRPA’s decision. The response shall be in writing and state the reasons for the decision.

1. Appeal

* 1. The DRPA’s decision will be final unless, within three (3) business days of receipt of the written decision, the protesting party files with the General Counsel a written appeal, setting forth the reasons for disagreement with the Authority’s response and, if desired, requesting a personal appearance before the appropriate Committee. The General Counsel or his/her designee may take any action or make any requests he or she deems necessary in order to review the appeal, including extending the time to issue a decision on the appeal.

* 1. If a personal appearance is requested, the protesting party shall appear at the next advertised, appropriate public Committee meeting, unless otherwise directed by the Authority. These meetings are open to the public and provide for public comment.

1. Review and Decision

* + 1. Within sixty (60) days after receipt of the appeal, the appropriate Committee, after consideration of the allegations, facts, any materials provided by the protesting party and Authority staff at prior stages of the protest shall make a determination to rebid the Contract or take such other action as may, in the opinion of the Committee, be appropriate, including recommending to the Board the award of the Contract.

* + 1. The General Counsel shall advise the protesting party in writing of the Committee’s recommendation and the date on which the Contract award will be considered by the Board of Commissioners.

* + 1. The non-vetoed determination regarding the Contract by the Board of Commissioners, shall constitute an exhaustion of the remedies available to a Proposer at the Authority level.

## B. TECHNICAL PROPOSAL REQUIREMENTS

To achieve a uniform review process and obtain the maximum degree of comparability, the DRPA requires that all Proposals follow a basic format. The Proposer is expected to provide Services as outlined in this RFP and prepare its response to fully address its ability to satisfy these components. Clarity and conciseness are essential and will be considered in assessing the Proposer’s capability.

Proposals will be limited to no more than **ten (10) pages**, ***excluding*** personnel resumes/experience profiles, SF 330 forms, OSHA 300 and 300A and Experience Modification Factors, current work capacity, solicitation and commitment forms, Political Contribution Disclosure Form/Certification, a Table of Contents, and a copy of this RFP. All sheets in the Proposal must be 8 ½ x 11 with a size 12 font. No fold-outs will be permitted.

The Technical Proposals are required to follow the format set forth below:

## 1. General Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the Proposers seeking to perform Services for the DRPA in conformity with the requirements of this RFP. The Technical Proposal should demonstrate the qualifications of the Proposer and of its particular staff to be assigned to this engagement.

**There should be no dollar units or total costs included in the Technical Proposal**.

## 2. Cover Letter

The signed cover letter should be on company letterhead clearly stating the name of the Proposer, business address, telephone numbers, **and e-mail address**. The following information should also be provided:

1. Introduction of the proposing firm and a summary of its qualifications.

1. Name(s) of authorized principals with authority to negotiate and contractually bind the proposing firm.

1. A statement that binds the proposing firm to the proposed Scope of Services and Cost Proposal for the term of the Agreement.

1. Confirmed acceptance of the Standard Contract Clauses, including the Insurance Requirements. These clauses are non-negotiable.

1. Indication as to whether there are any conflicts of interest that would limit the proposing firm’s ability to provide the requested Services.

## 3. Scope of Services

A demonstration of the Proposer’s understanding of the requested Scope of Services is required as part of the Proposal. The response should outline how the Proposer plans to accomplish the required Services, any information or assistance that it expects from the DRPA to complete the requested Services, and other services or specialties that may distinguish the abilities of the Proposer.

**4.** **Proposer’s Qualifications and Experience** - The following information should be included in the Proposal:

1. A brief description and history of the Proposer’s Firm, highlighting any relevant experience in handling a project of the scope and magnitude specified herein, including experience related specifically to the Scope of Services listed above. The proposed Consultant team **must** demonstrate extensive experience with all Work included in this Proposal.

1. A brief description of the education, training, and experience of proposed office and field personnel. Personnel assigned to the project **must** meet the following requirements:

* 1. The Resident Engineer will be a Registered Professional Engineer in the Commonwealth of Pennsylvania plus have a minimum of five (5) years of Resident Engineer experience with transit station construction projects. The Proposer **must** certify that the Resident Engineer will be assigned solely to this project and that he will be available to the project on the date of Notice to Proceed. It is the intent of the DRPA that this Resident Engineer serve in this capacity throughout the duration of the project.

The Consultant shall recognize that the Resident Engineer has the ability to dramatically affect the outcome of the construction project. Professional conduct and due respect to all parties involved will form the basis upon which the Resident Engineer will effectively and quickly build project control. Identifying and resolving conflicts before the project is actively involved in construction will avoid unnecessary conflicts, change orders, additional costs, etc. Preparing, expediting and clarifying project technical information such as problem resolutions, drawings, sketches, and contract interpretation will permit efficient execution of the work.

It is recognized that Resident Engineer is a challenging position requiring an individual with many diverse skills and an affinity for complex construction projects.

* 1. Support personnel for the Resident Engineer shall be, as a minimum, Graduate Engineers experienced in this type of work or inspectors who possess NICET Certificates demonstrating training and experience at a level commensurate with the role they will fill on this project.

* 1. Personnel performing review of any methods or procedures requiring engineering calculations or analysis shall be a Professional Engineer registered in the Commonwealth of Pennsylvania.

* 1. The Construction Monitoring firm shall have experienced professional office staff to support the field staff with their responsibilities for project control and monitoring.

* 1. It is anticipated that field staff will include personnel as listed herein. There will be work conducted by the contractor using multiple shifts and/or weekend work. Staffing during normal or **peak construction periods** shall be as follows:

One (1) Resident Engineer (PE Required)

One (1) Field office Engineer/Schedule

One (1) Lead Inspector

One (1) Inspector

The Construction Monitor shall reduce staffing levels to the minimum required to provide adequate inspection services during off-peak construction periods. The Delaware River Port Authority will not pay for personnel whose purpose is not justified.

Overall project staffing provided by the Construction Monitor shall be commensurate with the scope and schedule of work performed. The Construction Monitor’s Proposal shall clearly state how this project staffing requirement will be met. DRPA will review and approve staffing level based on the contractor’s schedule of operations.

1. State whether the proposed Project personnel are full-time employees of the Proposer’s Firm, or if they will be hired specifically for this Project, or work on a retainer or part-time basis.

1. If the Proposing Firm intends to use subconsultants for any portion of the Work, it must indicate this in its Proposal. Subconsultants must demonstrate the required experience and expertise related to the Work they intend to perform. Meaningful use of DBE services will receive strong consideration in the evaluation of all Proposals.

1. Any other information that the Proposer deems relevant and which will assist DRPA in evaluating the Proposal.

1. Current copy of Standard Form (“SF”) 330 (properly filled out) for the Proposing Firm and for any subconsultants it intends to use. Include a Profile Code Identification Sheet with the SF 330.

1. A comprehensive organizational chart, including all subconsultants, showing the Project management hierarchy for this Project and which indicates that those individuals in charge possess a valid professional engineering license based in either the State of New Jersey or in the Commonwealth of Pennsylvania, depending upon where the work will be performed.

1. Brief descriptions of education and experience of no more than ten (10) key personnel (including subconsultants) who will be assigned to work on this Project. Resumes shall provide a brief description of the projects on which the employee has gained his/her experience, but the focus should be on the specific duties of the individual.

1. List of projects on which the proposing firm and any proposed subconsultants have worked that are similar in size and character to this Project. Provide relevant information on these projects and a contact person for each project.

1. List of the major projects on which the proposing firm and proposed subconsultants are currently working and state at what percent of capacity is the firm’s current workload.

1. OSHA 300 and 300A Reports and Experience Modification Factors (State of New Jersey and Commonwealth of Pennsylvania), for the most recent three (3) years excluding current calendar year, for Proposing Firm and any subconsultants it intends to use.

1. A list of the Proposing Firm’s (and proposed subconsultants’) official key personnel who will be in charge of each phase of the Work. A Certification shall be provided by the Proposer stating that the personnel included in the aforementioned list actually are employed by the Proposer or subconsultant, and that they will be made available and assigned to the Project.

1. Subconsultants’ Proposals will be combined with the proposing consultant’s Proposal into one overall Proposal. Responsibility for various Work items must be clearly spelled out.

1. Indicate location of the Project office for work to be done by the Consultant and/or subconsultants to be utilized in performance of the Work.

1. An unmarked copy of this RFP must be included with the Proposal. Any revisions, additions, or corrections to the RFP which may result in the form of an Addendum issued by DRPA shall also be included with the submitted Proposal. Any Addenda attached thereto must be signed by the Consultant.

1. The Political Contribution Disclosure Form and Certification - Prohibition on Contracting with Vendors who Make Certain Political Contributions, shall be submitted, via SAP Ariba.

1. The Consultant must clearly identify any assumptions or qualifications it may have made in determining its Technical and Cost Proposals. If no assumptions or qualifications are listed, the Consultant will be held to the Scope as presented herein.

1. Prior to submission of a Proposal, the Proposer shall thoroughly review the Project documents and field conditions, and, based on the stated Project schedule, prepare its Proposal to provide the number and caliber of qualified personnel necessary to inspect and monitor all aspects of the Project Work, materials incorporated into the Work, maintenance and protection of traffic procedures, and the Contractor’s methods and procedures for compliance with the Contractor’s safety plan. The Proposer’s staffing levels shall be commensurate with the level of ongoing construction activities.

## C. COST PROPOSAL REQUIREMENTS

A separate **detailed** Cost Proposal should be prepared (**but not submitted**) and shall cover all anticipated costs of any nature incident to and growing out of the Scope of Services including, but not limited to: labor, travel expenses, profit, administrative and overhead fees, material costs, taxes, fringe benefits, subconsultant costs, and other direct costs, including the cost of obtaining the required insurance coverages. Any subconsultant Cost Proposals must be presented in the same format as the prime Proposer, and shall be included as a part of the prime Proposer’s Proposal.

***NOTE: Each Cost Proposal must be submitted to the DRPA electronically, via email, in PDF and Excel format - but only at the time requested by the Authority.***

**Proposals shall be valid for a minimum period of one-hundred eighty (180) days from the Proposal Due Date.**

## 1. General Requirements

The Cost Proposal should be broken down by each major task activity, and must delineate the maximum compensation proposing firm would expect to receive for performing the assignment based on the Scope of Services as described in Section III, including:

1. Anticipated direct personnel expense, plus related overhead. The Proposer must submit a detailed, audited list of all items, including its fringe benefits

and overhead expenses being requested for this Project. Criteria for determining allowable costs will be in accordance with Subpart 31 of the Federal Acquisition Regulations (“FAR”).

1. The profit arrangement (maximum 10%) expected for this Project.

1. Direct reimbursable expenses.

1. Subconsultant expenses.

## 2. Summary Sheet

A Summary Sheet, including subconsultant and direct expenses, showing the estimated total cost for all services and expenses will be provided at the beginning of the Cost Proposal as shown on the Quotation Submission Form.

1. Direct Labor Cost

The direct labor cost for each of the Proposer’s personnel assigned to the work shall be computed and billed as the number of hours spent engaged in Project-related matters multiplied by the hourly wage rate for each individual.

The Cost Proposal shall clearly indicate the job classifications (exactly as they are to appear on monthly invoices) of all personnel who are expected to participate in the Work, along with the corresponding hourly wage rate. The Consultant will be permitted to adjust the hourly labor rates to reflect salary increases of its personnel only at the end of each consecutive 12 month period following the Notice to Proceed. The Proposer’s Cost Proposal shall provide a direct billing rate and a maximum billing rate for direct labor for each category of personnel. The Consultant shall not be permitted to bill the Authority in excess of the maximum billing rate for each category. The contract value should be based on an average of the direct rate and the maximum rate. Not to exceed cost is final and will not be adjusted due to wage rates.

The DRPA shall not pay premium time for overtime by professional and technical staff. The Cost Proposal shall outline the Proposer’s policy regarding premium payments for overtime for any clerical and nontechnical staff that may be required to provide support to this Project.

1. Overhead

Overhead shall include normal operating expenses and a portion of the cost of mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

Overhead shall be limited to the audited overhead rate of the Proposer’s direct labor expenses.

The Cost Proposal shall include an audited field overhead rate and an audited office overhead rate. The field overhead rate will be applied for the portion of Work which is conducted from a location other than the Proposer’s office location (i.e., work conducted at the DRPA’s office or at an Authority facility). The office overhead rate will be applied for the portion of Work conducted from the Proposer’s office location. Please note that a fully furnished field office will be provided by the Contractor. Therefore, this must be a consideration when determining overhead rate for field office personnel.

The Proposer’s Cost Proposal shall include a copy of the most recent detailed, audited overhead rate computations. These computations shall clearly indicate all items included in the fringe benefits and overhead expenses being requested for this Project. Criteria for determining allowable costs will be in accordance with Subpart 31 of the Federal Acquisition Regulations (“FAR”).

1. Profit

The Cost Proposal shall indicate the profit arrangement expected for this Project, which shall not exceed 10% of the sum of the direct labor cost and overhead. Proposer understands that the profit is not a fixed fee and that the profit will be paid in direct proportion to the sum of the direct labor cost and overhead actually expended in the course of the work.

1. Reimbursable Expenses

Include expenses incurred by the Proposer and subconsultant(s) in direct connection with the Project as follows:

* 1. Direct expenses of transportation (except daily commutation), long distance communications and, if necessary, fees paid for securing approvals of government authorities interested in the Project.

* 1. Direct expenses of reproduction, postage and handling of drawings, specifications, and other documents.

* 1. Reimbursement will not be made for daily commutes, subsistence, or housing costs, if incurred.

* 1. Insurance costs.

## 3. Retainage

The DRPA will retain an amount equal to ten percent (10%) of the sum of the Consultant’s direct labor and overhead costs. Direct expenses and payments to the Consultant’s subconsultant(s) are not subject to retainage.

The amount of retainage may be reduced at the sole discretion of the DRPA upon request by the Consultant for phases or stages of Work that have been completed and accepted by the DRPA.

## 4. Payment of Services

Payment of Services described in Section III, along with reimbursable expenses, will be made monthly in amounts as set forth in monthly invoices describing expenses incurred and hours spent on the Project by each employee of the Consultant and its subconsultants.

The DRPA may, in its discretion, withhold the disbursement due the Consultant and request additional documentation demonstrating the Services accomplished and costs paid. Where additional supporting documentation has been requested from Consultant, payment shall be forwarded to Consultant within thirty (30) days of receipt of additional supporting information which is satisfactory to DRPA.

## 5. No Additional Payments

The sum of estimated compensation for each phase of Services and estimated reimbursable expenses to accomplish all the Work required herein shall constitute an aggregate maximum of charges to be paid under the executed Agreement. No separate payments beyond the maximum will be made without a written supplemental agreement.

## 6. Subconsultants

For subconsultant compensation, the basis and method of compensation, as set forth in the sections above, will be applied in identical form to Services provided under contract to the Consultant. The Consultant shall not apply a profit factor to subconsultant expenses.

## D. SUBMISSION OF PROPOSALS

1. The Proposer must submit its Proposal as per the requirements listed in this RFP. All Proposals must be submitted by **2:00 pm EST on Monday, October 18, 2021 at 2:00 pm EST, via Ariba**.

***NOTE:******Responses to this RFP must be submitted electronically, via the Ariba Network. Faxed, e-mailed, and/or hardcopies will not be accepted. The Ariba submission requirement is mandatory and non-waivable.***

1. Technical Proposal: The Proposer must submit a binding Technical Proposal based on the Scope of Services requirements detailed in this RFP and should be named**:**

**“Technical Proposal - FRANKLIN SQUARE”,** via SAP Ariba.

One electronic copy of the following documents should be attached and **in PDF format.**

Exhibit C - DBE/SBE Solicitation Sheet

Exhibit F - Certifications of Restrictions on Lobbying

Exhibit G - Debarment, Suspension & Other Voluntary Exclusions

1. **Cost Proposal**: It is the intention of the Authority to evaluate each proposal in conjunction with those received from other firms. This will lead to a negotiation with the firm(s) deemed most technical qualified under the Authority’s criteria, final selection and an executed Agreement for this work. **Cost Proposals will NOT be submitted at the Proposal Due Date. Firms are advised to prepare, but NOT SUBMIT a Cost Proposal until it is requested by the DRPA. Once a Cost Proposal is requested, the firm will have three business days to submit it to the**

**DRPA.**

The Proposer must submit, via e-mail, a binding Cost Proposal on the Quotation

Submission Form (“Exhibit A”) and should be named: “**Cost Proposal - FRANKLIN SQUARE”**. **BUT, ONLY AT THE TIME REQUESTED BY THE AUTHORITY.**

One electronic copy of the following documents should be attached and **in PDF format.**

Exhibit D - DBE/SBE Commitment Sheet

Exhibit E - DBE/SBE Quote Confirmation (if applicable)

1. **Political Contribution Forms**: Proposers are required to submit a completed copy of the “Political Contribution Disclosure Form” and the “Certification Regarding Prohibition on Contracting with Entities Who Make Certain Political Contributions Form.” and should be named “**Political Contribution Forms** - **FRANKLIN SQUARE”,** via SAP Ariba.

1. **Certificate of Insurance**: Proposers are required to attach a sample Certificate of Insurance evidencing the coverage types and the minimum limits required as described in Section VI of this RFP. If the minimum limits required are not met, Proposers must submit a formal and current Certificate of Insurance and accompanying letter stating that they will be in compliance with the stated insurance limits if an award is made. The DRPA requires this information to facilitate completing Contract formalities in a timely manner.

***All of the requirements listed above (Section IV) must be complied with in order to be considered responsive to this RFP. Failure to submit any or all of the items may subject Proposer to disqualification.***

**SECTION V**

# SELECTION PROCESS

## A. EVALUATION CRITERIA

The DRPA intends to award a Construction Monitoring Contract to the most qualified, responsible firm submitting a responsive Proposal. Ranking will be based on a maximum of 100 points, weighted as indicated below. In determining the number of points a Proposal will receive in each category, the DRPA will consider the Proposal material submitted, oral interviews (if applicable), and any other relevant information about a given Proposer. The following criteria will be used in the evaluation of the Proposals:

## 1. Understanding and Approach 0 - 20 points

Technical Proposals will be evaluated to ensure that the Proposer has demonstrated an understanding of each of the following elements:

1. The Proposer’s understanding of the particular purpose and needs of the

Project.

1. Scope of Services. The Proposer’s overall approach to achieving the Project purpose will be assessed for its effectiveness, feasibility, and responsiveness to the Scope of Services, and thoroughness.

## 2. Qualifications and Experience 0 - 55 points

The capabilities of each responding Proposer, as set forth in the Technical Proposal, will be evaluated in these specific areas:

1. Experience and qualifications of proposing firm (including proposed subconsultants) managing similar projects.

1. Experience and qualifications of staff (including subconsultants) to be assigned to the Project, including the proposed staff committed (identified by name), the quality of such staff, and the proper balance of relevant skills.

1. Current workload of proposing firm and staff.

1. Experience, qualifications, and quality of subconsultants to be assigned to the Project.

## 3. Submission Requirements 0 - 10 points

Ten (10) pages or less for Proposal (***excluding*** personnel resumes/experience profiles, SF 330 forms, OSHA 300 and 300A and Experience Modification Factors, current work capacity, proposed schedule, solicitation and commitment forms, Political Contribution Disclosure Form/Certification, a Table of Contents, and a copy of this RFP.) All sheets in the Proposal must be 8 ½ x 11. No fold-outs will be permitted.

|  |  |
| --- | --- |
| **4. Utilization of Certified DBE and SBE Firms**    10% DBE / NO SBE | **0 - 10 points** |
| **5. Maintenance of a local office** | **0 - 5 points** |

Proposer and subconsultants locations

## B. SELECTION PROCESS

A screening of all Proposals will be conducted to determine overall responsiveness. Proposals determined to be incomplete or non-responsive will be disqualified.

Following the initial review and screening of the written Proposals, using the selection criteria described above, one or more Proposers may be invited to participate in the final selection process, which may include:

1. Participation in an oral interview.

1. Submission of any additional information as requested by the DRPA.

References will also be checked during the final selection process.

**Following review of the Technical Proposals and interviews (if necessary), a final evaluation will be established. At this time, the first-ranked Proposer will be asked to submit a Cost Proposal, prepared in accordance with the requirements of Section IV.C, within three (3) business days. The Cost Proposal will be opened and evaluated by comparing the Proposer’s Cost Proposal with the Authority’s independent cost estimate to determine a fair and reasonable price for the work.**

Upon completion of the final selection process, the DRPA will rank each Proposal in the competitive range in accordance with the selection criteria above. The DRPA may accept the highest ranked Proposal or negotiate the Terms and Conditions of the Contract with the highest ranked Proposer. If negotiations are unsuccessful, the DRPA will terminate the negotiations with that Proposer and may open negotiations with the next highest ranked Proposer. If negotiations with this next highest ranked Proposer fail, at its sole discretion, the DRPA may reject all remaining Proposals, or negotiate with the next highest ranked Proposer.

In making its selection, the DRPA is not required to accept the lowest Cost Proposal and may, in its sole discretion, reject Proposals which are not responsive to the requirements stated herein, or may elect to waive some or all irregularities in any Proposal. The waiver or non-waiver of any specific irregularity will not imply or compel similar treatment of any other irregularity. In addition, the DRPA may at any time revoke this Request for Proposals in its sole discretion and without assuming any liability in connection with its issuance and/or revocation.

The DRPA reserves the right to conduct pre-award negotiations with any or all Proposers and the right to award the Contract without conducting interviews or engaging in negotiations.

***This RFP does not commit the DRPA to awarding a Contract. Proposers shall bear all costs incurred in the preparation of the Proposals and participating in the Proposal process. The DRPA reserves the right to reject any and all Proposals, the right in its sole discretion to accept the Proposal it considers most favorable to the DRPA’s interests, and the right to waive minor irregularities. The DRPA further reserves the right to reject all Proposals and seek new Proposals when such procedure is reasonable and in the best interests of the DRPA. In addition, the DRPA may at any time revoke this RFP in its sole discretion and without assuming any liability in connection with its issuance and/or revocation.***

***The DRPA will neither explain its decisions nor “debrief” unsuccessful Proposers at the conclusion of the process****.*

## C. APPROVAL AND AWARD

Once the Proposal evaluation process has been completed, the DRPA staff will recommend that the DRPA’s Board of Commissioners (“the Board”) award a Contract to the Proposer whose Proposal they have deemed to be most advantageous to the DRPA.

The DRPA reserves the right to cancel the award of a Contract before execution if the DRPA deems such cancellation to be in its best interests. In no event will the DRPA have any liability for the cancellation of such award. The successful Proposer assumes the sole risk and responsibility for expenses incurred prior to execution of the Contract.

## D. EXECUTION OF AGREEMENT

Any Proposer whose Proposal shall be accepted and to whom a Contract is awarded will not be required to attend an execution of the Contract (“the Agreement”). Instead, the DRPA shall send the Agreement to said Proposer who shall in turn execute the Agreement and return same to the DRPA within ten (10) days from the date of receipt.

Said Proposer shall also certify or furnish and return, together with the aforesaid Agreement, the following documents to the DRPA:

1. Proof, satisfactory to the DRPA, of the authority of the person or persons executing the Agreement on behalf of the Proposer.

1. Original Certificate(s) of Insurance representing all non-negotiable insurance coverage prescribed by Section VI of this RFP.

The parties agree that the Agreement and all notices and disclosures made or given in connection with the Agreement may be created, executed, delivered and retained electronically. As such, the parties agree that the Agreement and any related documents may be signed electronically, and that the electronic signatures appearing on the Agreement or any related documents shall have the same legal effect for all purposes, including validity, enforceability and admissibility, as a handwritten signature.

**SECTION VI**

# STANDARD CONTRACT CLAUSES

On all projects of this nature, the DRPA has certain standard requirements that will be incorporated into any Agreement that may be executed as a result of the DRPA’s evaluation of a Proposal. These requirements, which follow herein, should be properly considered when preparing a Final Proposal.

***BY SUBMITTING A PROPOSAL, THE PROPOSER CERTIFIES THAT IT HAS READ,***

***UNDERSTANDS AND AGREES TO THE FOLLOWING “STANDARD CONTRACT CLAUSES”. THE SUCCESSFUL CONSULTANT WILL BE REQUIRED TO ENTER INTO A WRITTEN AGREEMENT WITH THE DRPA WHICH INCLUDES, BUT IS NOT***

***LIMITED TO, THE “STANDARD CONTRACT CLAUSES.”***

## A. INSURANCE REQUIREMENTS

The Consultant will be required to provide insurance of the prescribed types and minimum limits as set forth below. All required insurance policies shall be maintained in full force until all services under the Agreement are completed. Each policy shall contain the provision that there will be thirty (30) days prior written notice given to the Authority in the event of cancellation, non-renewal of or material change in the policy **and such endorsement copies shall be provided with the certificates of insurance.**

Prior to commencing any services under the Agreement, the Consultant shall furnish the

Authority with certificates of insurance evidencing that the required insurance is in force. **The certificate of insurance must reflect in the description of operations, “Construction Monitoring Services for Franklin Square Re-Opening Project”.**

**The certificate holder shall list: Delaware River Port Authority of PA & NJ One Port Center, 2 Riverside Drive Camden, NJ 08103-1949**

**Due to staff working remotely, please DO NOT mail any certificates of insurance to**

**DRPA OR PATCO.**

## ALL CERTS ARE TO BE EMAILED TO: certs@drpa.org

**All deductibles and self-insured retentions in excess of $250,000 (Two Hundred Fifty Thousand dollars) must be declared on the certificate(s) of insurance.**

Upon specific request by the Authority, the Consultant shall furnish certified copies of any or all insurance policies related to the work under the Agreement. The Authority shall not be liable for the payment of any premiums, deductibles, claims or co-insurance under the foregoing.

The insurance companies indicated in the certificates of insurance shall be authorized to do business in the Commonwealth of Pennsylvania and State of New Jersey and shall be acceptable to the Authority. The Financial Rating and Admitted Status of Insurance Companies shall have an A.M. Best Rating of A- (Excellent) or Higher, and an A.M. Best Financial Size Category of Class VII or Higher.

Neither approval by the Authority nor failure to disapprove certificates of insurance furnished by the Consultant shall release the Consultant from full responsibility for all liability as set forth in the indemnification clause, entitled, "Save and Hold Harmless".

The minimum requirements of insurance to be carried by the Consultant shall be as follows:

1. **Workers' Compensation and Employers’ Liability Insurance**:

**Coverage A, Workers' Compensation** - Statutory benefits as required by the Workers’ Compensation laws of the Commonwealth of Pennsylvania and The State of New Jersey and reference to such compliance made on all certificates of insurance.

**Coverage B, Employers’ Liability**: Employers’ Liability Limits not less than:

Bodily Injury by Accident: $1,000,000 Each Accident

Bodily Injury by Disease: $1,000,000 Each Employee Bodily Injury by Disease: $1,000,000 Policy Limit

1. **Commercial General Liability Insurance:** Bodily Injury, Property Damage and Personal Injury (including Premises - Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Broad Form Property Damage).

Occurrence Form with the following limits:

General Aggregate: $2,000,000

Products/Completed Operations

Aggregate: $1,000,000

Each Occurrence: $1,000,000

Personal and Advertising Injury: $1,000,000

1. **Commercial Automobile Liability:** Coverage to include:

All Owned, Hired and Non-Owned Vehicles (Any Auto)

Per Accident Combined Single Limit: $1,000,000

1. **Commercial Umbrella Liability:**

Occurrence Limit: $5,000,000

Aggregate Limit: $5,000,000

Policy to apply following form of the Commercial General Liability, Commercial Automobile Liability and Employers’ Liability insurance policies.

1. **Professional Liability/Errors & Omissions Insurance:** Consultant shall maintain insurance covering losses rendered by Professional Services that arise from the operations described under the scope of services of the Agreement.

Per Claim Limit: $1,000,000

Aggregate Limit: $2,000,000

If coverage is written on a Claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Agreement and that continuous coverage will be maintained or an Extended Discovery Period will be purchased for a period of three (3) years beginning when the work under the Agreement is completed.

1. **Loss or Breach of Data/Cyber Liability**: The Consultant shall provide and maintain insurance covering first and third party losses, damages, claims and/or occurrences related in any manner to the alleged or actual theft, loss, unauthorized access and/or dissemination of personal, financial, health, proprietary, security and/or otherwise confidential information and/or the unauthorized access of or entry into the Consultant’s computer network(s). The policy shall also include network security coverage that shall include, but not be limited to, coverage for the failure to prevent and/or mitigate any unauthorized access, unauthorized use, denial of service attack or receipt or transmission of a malicious code. The insurance policy required under this Section shall not exclude coverage on any of the following grounds: (1) that the actual or alleged event was caused by the Authority (DRPA/PATCO) and/or any of its employees; (2) that the actual or alleged event relates to a liability assumed by contract; (3) that the actual or alleged event was caused by an act of war or terror; and/or (4) that the actual or alleged event was cause by negligent or intentional act of an employee of the Consultant. The insurance policy required under this Section **shall include a partial waiver of subrogation** preventing the insurance carrier from asserting any subrogation claim(s) against the Authority (DRPA/PATCO) related to a Data privacy Claim and shall include coverage for regulatory fines and/or penalties, including but not limited to payment card industry fines and/or penalties.

Each Occurrence Limit: $5,000,000

Aggregate: $5,000,000

If coverage is written on a Claims-made basis, the Consultant warrants that any retroactive data applicable to coverage under the policy precedes the effective date of the Agreement; and that continuous coverage will be maintained or an Extended Discovery Period will be purchased for a period of three (3) years beginning when the services under the Agreement are completed.

**NOTE: The Professional Liability/Errors & Omissions insurance policy may also include the Loss or Breach of Data/Cyber Liability insurance, however the total limits required are an each occurrence limit of $5,000,000 subject to an annual aggregate of $5,000,000.**

1. The Authority (DRPA, PATCO, including their agents, employees, representatives, officers, directors, members and managers) shall be added as ADDITIONAL INSURED on all liability policies, except for the Workers’ Compensation, Professional Liability and Loss or Breach of Data policies. The coverage offered to the ADDITIONAL INSURED on the Consultant’s liability policies shall be **primary coverage to any other coverage maintained by the ADDITIONAL INSURED and shall not permit or require such other coverage to contribute to the payment of any loss.** Consultant shall determine the nature and extent of all insurance coverages necessary to afford the Authority (DRPA/PATCO) the full protections arising out of any subcontracted Scope of Work. In addition to maintaining its own coverages as required in this Section, the Consultant shall verify that each and every sub consultant maintains appropriate insurance coverages and limits and otherwise complies with the requirements of this Section.

1. **Owned or Leased Equipment,** **Materials &/or Supplies Stored on Premises:** The Consultant shall maintain insurance on their owned or leased equipment or tools. The Consultant is responsible for any damage to their work, materials, equipment, tools, etc. If under the scope of work to be performed under the Agreement there is a need to store on DRPA/PATCO premises, any equipment, machinery, tools, supplies or other materials, under no circumstances will the Authority assume any liability or otherwise offer to indemnify any party for loss, theft, damage or disappearance of such items stored on its premises throughout the duration of the Agreement.

1. Any type of insurance or any increase in limits of liability not described above which the Consultant requires for its own protection or on account of statute shall be its own responsibility and at its own expense.

1. The Consultant’s insurance will not be canceled, non-renewed, or materially changed without at least thirty (30) days advance written notice to the Authority. An endorsement or the equivalent of, to all insurance policies, shall contain a thirty (30) day notice of nonrenewal or cancellation except for non-payment of premium ten (10) days as provided under the PA or NJ Changes Cancellation and Nonrenewal Policy as issued by the insurance companies **and such endorsement copies shall be provided with the insurance certificates.**

1. **Waiver of Recovery/Subrogation**: The Consultant waives all rights of recovery and shall cause its Insurers to waive their rights of subrogation against the Authority (DRPA, PATCO, and any of their agents and employees) for loss or damage covered by any of the insurance maintained by Consultant pursuant to the Agreement and such endorsement copies shall be provided with the insurance certificates. **The Loss or Breach of Data/Cyber Liability policy has its own waiver of subrogation outlined above.**

1. The amount of insurance provided in the aforementioned insurance policies, shall not be construed to be a limitation of the liability on the part of the Consultant or any of their sub consultants. The carrying of insurance described shall in no way

be interpreted as relieving the Consultant of any responsibility or liability under the Agreement.

1. The obligations of the Consultant to maintain insurance and provide Indemnification shall survive any termination of the Agreement or the suspension, completion and/or acceptance of the services or any part thereof, or final payment to Consultant, it being agreed that such rights and obligations are and shall be of a continuing nature and effect.

1. Self-Insured Retentions: If any of the policies of insurance required of the Consultant by the Agreement contain self-insured retentions in excess of $250,000 (Two Hundred Fifty Thousand Dollars), the Authority may request financial information from the Consultant for verification of their financial capability to support such a self-insured retention.

## B. INDEMNIFICATION

Consultant agrees to indemnify and protect and hold harmless (and defend, if requested) the AUTHORITY and the Indemnified Parties defined below, from and against any and all suits, claims, liabilities, losses, judgments, demands and damages arising from claims by third parties, of whatsoever kind or nature, including, but not limited to, reasonable expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or other expenses recoverable under applicable law), which may be suffered by or accrue against, be charged to or recoverable from the Indemnified Parties regardless of whether a suit has been filed or initiated but only upon receipt of a written notice alleging a wrongful act (collectively “Claims”) to the extent arising from the willful misconduct or negligent performance of or omission of performance of the services provided under the Agreement. This includes but is not limited to Claims caused in part by the Indemnified Parties or which are based on strict liability. However, Indemnitor shall not be required to defend or indemnify the AUTHORITY, its officers, commissioners, directors, members, agents, servants and employees for that portion of any claim, suit, action, damage or cost which is caused by the willful misconduct, negligent act or omission of the AUTHORITY, its officers, commissioners, directors, members, agents, servants and employees.

In any and all Claims against the AUTHORITY alleging its own independent fault by any employees of the Consultant, anyone directly or indirectly employed by the Consultant or anyone for whose acts the Consultant may be liable, Consultant explicitly and unequivocally agrees to indemnify the AUTHORITY and the indemnification obligation under the Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant under workers’ compensation acts, disability benefit acts, or other employee benefits acts or any other legal or contractual provisions.

Promptly after receipt by the AUTHORITY of notice of any claim, liability or expense, the AUTHORITY shall give timely written notice to Consultant, but the omission to so notify the Consultant promptly will not relieve the Consultant from any liability except to the extent that Consultant shall have been materially prejudiced as a result of the failure or delay in giving such notice. Consultant understands and agrees that the defense and indemnification of the Indemnified Parties under the terms and conditions of the Agreement begins when a claim is brought against the Indemnified Parties or the moment the Indemnified Parties receive notice of the Claim.

The "**Indemnified Parties**" are and shall include: (i) the AUTHORITY; (ii) the AUTHORITY's beneficiaries, officers, commissioners, directors, members, agents, servants and employees; (iii) any and all parents, subsidiaries, partners and affiliates of the foregoing and all of their respective shareholders, directors, officers, partners, members, agents and employees of all of the foregoing; and (iv) anyone else acting for or on their behalf.

The obligations of the Consultant shall survive the termination of the Agreement or the completion by Consultant of its obligations under the Agreement.

## C. TERMINATION AND MODIFICATION

If the AUTHORITY, in its sole discretion, determines that the Consultant has not met its obligations hereunder, the AUTHORITY shall provide Consultant with written notice of any event of default. Commencing on the date that the notice was sent, Consultant shall have ten (10) calendar days to cure the default, unless extended in writing at the discretion of the DRPA. If Consultant fails to cure an event of default, the AUTHORITY reserves the right, in addition to all of its rights at law, in equity, and as elsewhere provided in the Agreement, to terminate the Agreement upon giving not less than ten (10) days’ written notice to Consultant. In the event the AUTHORITY exercises such right of termination, the AUTHORITY shall only be responsible for payments, if any, as outlined in the Agreement, for Services which were completed to the satisfaction of the AUTHORITY at the time of termination. After termination, the AUTHORITY shall be without further liability whatsoever to Consultant under the Agreement. The Consultant agrees that it is not entitled to any damages whatsoever in the event of such termination.

Notwithstanding the provisions of the paragraph above, it is understood and agreed that the AUTHORITY hereby reserves unto itself the right to terminate or modify the Agreement at any time, for any reason whatsoever, including, but not limited to, termination for the convenience of the AUTHORITY, upon giving not less than thirty (30) days prior written notice to the Consultant. In the event the AUTHORITY exercises such right of termination, the AUTHORITY shall be without further liability whatsoever to Consultant under the Agreement other than to reimburse Consultant for expenses appropriately incurred prior to Consultant’s receipt of the notice of termination. In the event that the AUTHORITY exercises its right to modify the Agreement, Consultant shall have only such rights as may be stated in the modified Agreement and shall retain no other rights. The Consultant agrees that it shall not be entitled to any damages of any nature whatsoever in the event of such termination or modification, other than the aforesaid referenced payments.

## D. WORK PRODUCTS

All materials, calculations, computations, specifications and drawings developed and prepared by and equipment required by the Consultant in the performance of its Services herein shall become the property of the AUTHORITY and shall be turned over to the AUTHORITY at or prior to final payment or other termination of this Agreement or by written request thereof by the AUTHORITY.

## E. DUTY OF CONFIDENTIALITY AND NON-DISCLOSURE

Notwithstanding the existence of any specifically designated Confidential and Privileged/ Security Sensitive Information, and not limiting the Consultant’s duties as to such information, the Consultant shall comply with the following policy regarding Confidential Information:

1. Confidential Information

As used in this Agreement, the term “Confidential Information” means all information provided to Consultant; all information to which Consultant has access, including but not limited to reports, correspondence, plans, specifications, files, photos, and internal documents which relate to, address or concern the Project; any information disclosed to Consultant relating to AUTHORITY activities; and any information which Consultant becomes aware of or which is revealed to Consultant as a result of its participation in bidding for and participating in the Project. Confidential Information does not include: (i) information which, at the time of disclosure to the Consultant by AUTHORITY, is published, known publicly or is otherwise in the public domain; or (ii) information which, after disclosure to Consultant by the AUTHORITY, is published, becomes known publicly, or otherwise becomes part of the public domain, through no fault of Consultant; or (iii) any report, studies, recommendations, data or information relating to, or made or developed in the course of the Scope of Work; or (iv) as the result of the performance of this Agreement.

1. Obligation of Confidentiality

Consultant agrees to obtain, receive, and hold all Confidential Information in strict trust and confidence and that such Confidential Information will not be used by Consultant for any purpose other than in connection with the bidding for and participation in the Project without the AUTHORITY's prior written consent. Consultant agrees that it shall not disclose, disseminate, publish, reproduce or otherwise use or communicate Confidential Information to any third party. It is also agreed that in the event such information is disclosed to a third party or associate, Consultant will obtain prior written consent of the AUTHORITY and will advise the third party beforehand of the confidential nature of the information and require them to enter into a written agreement to protect the confidentiality of such information. The obligation for confidentiality under the provisions of this Agreement shall be continuing and shall survive the completion or other termination of the Agreement.

1. Security

Consultant shall institute any and all security procedures necessary to ensure that the Confidential Information is not disclosed to third parties in violation of this Agreement. Consultant may disclose the Confidential Information only to those officers, directors, employees, and agents, and representatives of Consultant approved by the AUTHORITY who need access to the Confidential Information for the Project Services. All such officers, directors, employees, agents, and representatives must be informed of the existence and nature of this provision. The parties hereto are responsible for the compliance of such officers, directors, employees, agents, and representatives with the terms and conditions of this provision.

1. Return of Confidential Information

Consultant hereby agrees that within thirty (30) days of the expiration or termination of this Agreement, Consultant shall return to the AUTHORITY all copies in its possession of Confidential Information as well as all copies of any and all other documents and information obtained by Consultant or any of its representatives, agents, employees, officers, directors, or shareholders, whether originally supplied by the AUTHORITY or prepared on the AUTHORITY’s behalf by or under Consultant’s direction.

1. Disclosures and Discovery Requests

If a subpoena, discovery request, court order, Freedom of Information Request, or any other request or demand authorized by law seeking disclosure of the Confidential Information is received by the Consultant, Consultant shall notify the AUTHORITY thereof with sufficient promptness so as to enable the AUTHORITY to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as it deems appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the AUTHORITY, of only that part of the Confidential Information as is legally required to be disclosed. If at any time Confidential Information is disclosed in violation of this Agreement, the Consultant shall immediately give the AUTHORITY written notice of that fact and a detailed account of the circumstances regarding such disclosure.

**F. NON-DISCRIMINATION PROVISIONS - FTA REQUIREMENTS**

## DRPA’s Disadvantaged Business Enterprise Program, including Small Business Participation Element - Amendment

1. Statement of Purpose

The DRPA opposes unlawful discrimination of any kind. The DRPA is an Equal Employment Opportunity Employer, and is firmly committed to providing equal employment and business opportunities for all persons.

The DRPA receives federal financial assistance from the Department of Transportation (“DOT”) and the Federal Transit Administration (“FTA”). As a condition of receiving this assistance, the DRPA has signed an assurance that it will comply with 49 CFR Part 26. Accordingly, the DRPA has established a

Disadvantaged Business Enterprise (“DBE”) Program in accordance with regulations of the U.S. DOT, 49 CFR Part 26. Our program is narrowly tailored in accordance with applicable law.

On January 28, 2011, 49 CFR Part 26.39, “Participation by Disadvantaged Business

Enterprises in Department of Transportation Programs,” was published, requiring recipients of federal funding to add a Small Business Enterprise (“SBE”) program element to their approved DBE Programs. On February 28, 2012, pursuant to the Final Rule set forth in the Federal Register [76 FR 5083 - Disadvantaged Business

Enterprise: Program Improvement], the DRPA submitted an amendment to its DBE Program, entitled SBE Participation Element to the FTA for review and approval.

The FTA approved the DRPA’s proposed SBE Participation Element on September 17, 2012. In approving the same, the FTA stated that the Authority’s SBE Participation Element meets the requirements set forth in the U.S. DOT’s DBE regulations.

1. Establishing DBE and SBE Participation Goals

The DRPA establishes its DBE goal by carefully reviewing each project individually. On a project-by-project basis, staff reviews the scope of the project, the overall dollar value of the project, and the work typically subcontracted by a prime contractor/consultant on similar projects. This review will determine the subcontracting and supplier opportunities the project may likely yield. **The DBE goal for this project is 10%.**

In addition to establishing a DBE participation goal, where appropriate, the DRPA will also establish a SBE participation goal. The DRPA’s SBE Participation Element has been established to provide contracting opportunities for firms that are independently owned and operated, organized for profit, and not dominant in their field. The SBE Participation Element gives small businesses, with annual gross receipts up to $22.41 million, the opportunity to participate in DRPA’s federallyassisted contracting and procurement opportunities.

***NOTE: The SBE Participation Element applies only to DRPA projects funded in whole or in part with federal financial assistance. There is NO SBE goal set for this project.***

1. DBE and SBE Certifications

The DRPA does not certify firms as DBEs or SBEs. However, the Authority will recognize the SBE certifications performed by certifying entities, provided the firms meet the following criteria:

* 1. Business Size Determination: The business (including its affiliates) must be a small business as defined by SBA standards. It must not have annual gross receipts over $22.41 million in the previous three fiscal years.

* 1. Personal Net Worth: Only persons having a Personal Net Worth (“PNW”) of less than $1.32 million can be considered as a potential qualified SBE.

Items excluded from a person’s net worth calculation include an individual’s ownership interest in the applicant firm, and his or her equity in their primary residence.

* 1. Independence: The business must not be tied to another firm in such a way as to compromise its independence and control.

* 1. Control: An owner seeking certification must possess the power to direct or cause the direction of the management and policies of the firm. The owner must also have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged.

* 1. Burden of Proof Allocation: Applicants carry the initial burden of proof regarding their eligibility and must demonstrate that they meet all requirements concerning group membership or individual disadvantage, business size, ownership, and personal net worth.

* 1. Certified DBEs: In accordance with 49 CFR §26.39, certified DBEs that meet the size criteria established under the program are eligible to participate in the SBE Participation Program Element.

The U.S. DOT only requires the DRPA to count the DBE participation when reporting progress toward meeting DBE goals. SBE participation will not be counted. However, the DRPA will track and monitor the participation of certified DBEs and SBEs on all projects where DBE and SBE participation goals have been established.

1. DBE and SBE Verification Procedures

The DRPA is a non-certifying member of the New Jersey Unified Certification Program (“NJUCP”) and the Pennsylvania Unified Certification Program (“PAUCP”). Given limited staffing resources, the DRPA does not perform DBE certifications. Instead, the DRPA accepts the DBE and SBE certifications that are duly performed by certifying entities within the NJUCP and PAUCP. The DRPA also accepts DBE and SBE certifications performed by other approved entities in the State of New Jersey and the Commonwealth of Pennsylvania.

The Consultant has the sole responsibility of obtaining verified DBE/SBE firms for use on any federally-assisted project on which DBE/SBE goals have been established. Each DBE/SBE the Consultant intends to use as a subconsultant must have a current DBE/SBE verification issued by an entity recognized by the DRPA.

Only a firm whose verification status as a DBE/SBE is current, at the time of Contract execution, shall be recognized as a certified firm.

1. DBE and SBE Directory

As a non-certifying member of the NJUCP and PAUCP, the DRPA has a link directly to the DBE directories created by both UCPs. The directories can be found at: **www.njucp.net and www.paucp.com**.

In addition to the above directories, the DRPA maintains a directory of certified small and disadvantaged companies. The directory can be accessed at:

**www.drpa.org/obdeo**.

1. Monitoring & Recordkeeping Requirements

* 1. The DRPA will only count DBE participation when reporting progress towards meeting DBE goals. Until advised otherwise by the U.S. DOT, SBE participation will be tracked internally by the DRPA, but not reported to the FTA.

* 1. Attainment of any DBE/SBE goal that may be established shall not be a measure of proposal responsiveness, but will be considered in measuring whether a firm is responsible.

* 1. In the event a DBE/SBE goal is established on a federally-funded project, at the time the proposal is submitted, the Consultant shall be required to submit proof of its DBE/SBE solicitation efforts and commitments to the DRPA’s Office of Business Development & Equal Opportunity. The DBE/SBE solicitation and commitment information shall be recorded on the appropriate forms included in the bid/proposal documents. The completed Solicitation, Commitment and Quote Confirmation Forms shall become part of the Agreement and will thereby be incorporated herein by reference. Consultants who do not meet the established goals will be required to submit evidence of their good faith efforts to solicit and commit to DBE/SBE firms.

* 1. The DRPA may, at any time, require such other information or inspections as it deems necessary to determine the compliance of any Consultant with the terms and spirit of these nondiscrimination provisions. The Consultant shall fully cooperate with a compliance review. Unreasonable delays or failures to provide requested information or otherwise to cooperate with the DRPA may result in the withholding of contract payments and may be deemed a breach of this Agreement.

***NOTE: Subcontractor Quote Confirmation Form(s) MUST be signed by each DBE subcontractor and submitted at the time the Cost Proposal is submitted. Failure to submit required forms may result in a finding of “not responsive” and/or rejection of bid.***

1. Ongoing Monitoring

* 1. In the event a DBE/SBE goal is established on a federally-assisted project, at the pre-construction/kick-off meeting, the Consultant will be required to submit a copy of a fully executed subcontract or purchase order between the Consultant and each DBE/SBE subconsultants it will use on the project.

* 1. Each month the Consultant shall submit the original "Monthly Payment Status Report" to the DRPA along with the partial payment estimate. **The Monthly Payment Status Report must be submitted each month even when no DBE/SBE subconsultants worked on the project.**

1. Use and Termination of DBE Subconsultants

* 1. The Consultant shall utilize, and shall not terminate, the specific DBE subconsultants listed to perform the work and supply the materials for which each is listed on the DBE Commitment Sheet unless the Consultant obtains the Authority’s prior written consent as provided in this section. Absent such consent, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

* 1. The Authority may provide such written consent only if the Consultant has good cause to terminate the DBE firm. For purposes of this section, good cause includes, but may not be limited to, the following circumstances:

* + 1. The listed DBE subconsultants fails or refuses to execute a written contract.

* + 1. The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of the Consultant.

* + 1. The listed DBE subconsultant fails or refuses to meet the Consultant’s reasonable, nondiscriminatory bond requirements.

* + 1. The listed DBE subconsultant becomes bankrupt, insolvent, or exhibits credit unworthiness.

* + 1. The listed DBE subconsultant is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.

* + 1. The Authority determines that the listed DBE subconsultant is not a responsible contractor.

* + 1. The listed DBE subconsultant voluntarily withdraws from the project and provides the Consultant and/or Authority with written notice of its withdrawal.

* + 1. The listed DBE is ineligible to receive DBE credit for the type of work required.

* + 1. A DBE owner dies or becomes disabled with the result that the listed DBE consultant is unable to complete its work on the contract.

* + 1. Other documented good cause that the Authority determines compels the termination of the DBE subconsultant. Provided, that good cause does not exist if the Consultant seeks to terminate a DBE it relied upon to obtain the contract so that the Consultant can selfperform the work for which the DBE consultant was engaged or so that the Consultant can substitute another DBE or non-DBE consultant after contract award.

* 1. Before transmitting to the Authority its request to terminate and/or substitute a DBE subconsultant, the Consultant must give notice in writing to the DBE subconsultant, with a copy to the Authority, of its intent to request to terminate and/or substitute, and the reason for the request.

* 1. The Consultant shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination, if any, and why the Authority should not approve the Consultant’s action.

* 1. When a DBE subconsultant is terminated or fails to complete its work on the contract for any reason, the Consultant shall make good faith efforts to find another DBE subconsultant to substitute for the original DBE and immediately notify the Authority in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for this procurement. Failure to comply with these requirements will be in accordance with the Determination of Non-Compliance Section.

1. Prompt Payments

* 1. When a Consultant who has contracted with the DRPA has received a payment or payments from the DRPA for work performed, the Consultant must deliver within ten (10) calendar days from the receipt of payment from the DRPA, the proportionate share of the payment for the work performed to subconsultants specified in the contract. In the event that the Consultant has not made such payments, he or she will be required to submit a written explanation satisfactory to the DRPA for failure to make such payments.

* 1. Other than as required by the work to be performed for the DRPA, the Consultant shall not impose upon DBE/SBE subconsultants more restrictive insurance and bonding requirements than are placed upon other subconsultants on the project.

1. Determination of Non-Compliance

In the event DBE and/or SBE goals are established on a project, the following shall constitute compliance concerns:

* 1. documentation or information furnished by the Consultant which fails to demonstrate that verified DBE and/or SBEs are performing the work as indicated by the Consultant on the forms included in the Consultant’s proposal.

* 1. unreasonable failure, refusal or delay by the Consultant to furnish forms and other information requested by the DRPA’s Office of Business Development & Equal Opportunity in support of its monitoring efforts.

* 1. discovery of information that is contrary to information previously submitted by the Consultant.

* 1. failure of the Consultant to execute a written contract or purchase order with its verified DBE and/or SBE subconsultants.

* 1. failure of the Consultant to deliver to its subconsultants within ten (10) business days, their proportionate share of the payment for the work performed.

* 1. such other reasons that reasonably indicate that the Consultant is not in compliance with the DRPA’s DBE Program, including the Small Business Participation Element to the DBE Program.

In the event the Authority determines it has reasonable cause to believe that a Consultant is not in compliance with the provisions of the DRPA’s DBE Program and/or Small

Business Participation Element to the DBE Program, the DRPA’s Office of Business Development & Equal Opportunity (“OBD&EO”) shall promptly cause written notice to be sent by mail to the Consultant. The notice shall clearly state the areas of non-compliance and require the Consultant to show cause within five (5) calendar days why it should not be found in breach of contract.

Based upon information supplied by the Consultant, if any, the DRPA shall make a final recommendation as to whether the Consultant is in compliance with contract requirements. If a recommendation of non-compliance is rendered, the OBD&EO shall notify the

DRPA’s General Counsel and make recommendations regarding appropriate remedies. The DRPA’s General Counsel, in consultation with its Chief Executive Officer and the DRPA’s OBD&EO, shall make a final determination regarding non-compliance and take such steps as are appropriate under the circumstances.

This project is funded with substantial assistance from the U.S DOT and the FTA. As a condition of receiving this assistance, the DRPA has signed an assurance not to discriminate on the basis of race, color, national origin or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program. To that end, the DRPA will require that the following clause is placed, verbatim, in every DOTassisted contract and subcontract:

***NOTE: The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the consultant 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 Delaware River Port 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 Consultant from future bidding as non-responsible.***

## G. SUBCONTRACTING OR SUBLETTING

Prior written approval of the AUTHORITY is required for subcontracting any Services covered by this Agreement, other than those included in the Consultant’s Proposal. Requests for authorization to subcontract must be submitted in writing to the DRPA’s Chief Engineer, accompanied by a description of the specific Services to be subcontracted, the total value of such sublet Services, and by proof that the organization which will provide the subcontracted Services is particularly equipped and capable to provide such Services. The right to qualify, accept or reject any subcontractor/subconsultant is reserved expressly for the AUTHORITY.

## H. APPLICATION OF LAWS AND REGULATIONS

By entering into this Agreement, the AUTHORITY does not consent, either expressly or impliedly, to the jurisdiction or application of any laws, regulations, procedures or requirements of any governmental, quasi-governmental or other political entity which would otherwise not be applicable to the AUTHORITY.

## I. AUDIT AND INSPECTION OF RECORDS

The Consultant shall permit the authorized representatives of the AUTHORITY to inspect and audit all data and records of the Consultant (and any of its subconsultants) relating to its performance under this Agreement.

## J. CONSULTANT - INDEPENDENT CONTRACTOR

The Consultant is an independent contractor, and under no circumstances shall it, its servants, agents or employees be or become employees of the AUTHORITY as a consequence of its work on this Project nor be entitled to workers’ compensation, retirement, insurance or other benefits accorded to employees of the AUTHORITY.

Nothing contained in this Agreement will be construed to create the relationship of principal and agent, partnership or joint venture, or any other fiduciary relationship. The Consultant may not act as agent for or on behalf of the AUTHORITY, nor represent the AUTHORITY, nor bind the AUTHORITY in any manner.

## K. GOVERNING LAW

The subject matter of this Agreement, including its performance, construction, interpretation and enforcement, shall be governed by and construed in accordance with the law of the Commonwealth of Pennsylvania, without regard to conflict or choice of law rules, provisions or principles.

## L. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and shall be binding on their respective executors, administrators, legal representatives, successors and assigns. This Agreement may not be amended or altered without the written consent of both parties hereto.

## M. WAIVER

A waiver by any party of a breach or default by the other party of any provision of this Agreement shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.

## N. CAPTIONS

All headings preceding the text of the several sections and paragraphs hereof are inserted solely for the convenience and reference of the parties and does not constitute a part of the Agreement, nor shall they affect their meaning or interpretation thereof.

## O. SEVERABILITY

If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, such provision and this Agreement shall be deemed and construed to be modified or restricted to the extent that and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement as the case may require.

## P. NO THIRD PARTY BENEFICIARIES

The parties to this Agreement do not, by entering into this Agreement, intend to confer any benefit to a third party.

## Q. INTELLECTUAL PROPERTY

Consultant acknowledges and agrees that all work produced pursuant to this Agreement is work made for hire and accordingly, all copyright, trademark, and intellectual property rights are owned exclusively by DRPA.

## R. ASSIGNMENT

This Agreement may not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld.

**S. CONFLICT OF INTEREST**

The Consultant shall be ineligible to participate in any capacity in AUTHORITY contracts, subcontracts, or proposals (solicited and unsolicited), which stem directly from the Consultant's performance of work under this RFP for a period of two (2) years after the completion of this Work. Furthermore, unless so directed in writing by the Procurement Officer, the Consultant shall not perform any advisory and assistance services work under this Agreement on any of its products or services or the products or services of another firm if the Consultant is or has been substantially involved in their development or marketing.

If, under this Agreement, the Consultant prepares a complete or essentially complete Statement of Work or Specifications to be used in competitive acquisitions, the Consultant shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such Statement of Work or Specifications. The Consultant shall not incorporate its products or services in such Statement of Work or Specifications unless so directed in writing by the Contracting Officer.

If the Consultant, in the performance of this Agreement, obtains access to information, such as reports, studies, financial plans, internal data protected by the Privacy Act of 1974, or data which has not been released or otherwise made available to the public, the Consultant agrees that without prior written approval of the contracting officer it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the AUTHORITY based on such information for a period of six (6) months after either the completion of this Agreement or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal which is based on such information until one (1) year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the AUTHORITY.

## T. QUALITY CONTROL/QUALITY ASSURANCE

Within ten (10) days of the Notice to Proceed, the Consultant will submit a Quality Control/Quality Assurance (QA/QC) Plan to the AUTHORITY. This Plan will describe the Consultant’s in-house methods and procedures for reviewing and checking all Project deliverables including, but not limited to: drawings, reports, quantities, calculations, estimates, schedules, and specifications. The QA/QC Plan will be Project specific and will identify the Consultant’s Quality Control Officer, who is the individual within the

Consultant’s organization who will be responsible for implementing all QA/QC measures.

The Consultant’s QA/QC Plan will include, at a minimum, provisions for performing an independent review of all deliverables (Plans, Specifications, estimates, calculations, etc.) Prior to each milestone submission, deliverables will be split between the AUTHORITY and the Independent Review Team. The independent review will be performed by members of the Consultant’s staff who are not assigned to the Project, but who have specific expertise in each relevant discipline. One member of the Construction Inspection Group will be assigned to the Independent Review Team. This chosen construction inspection staff member must have on-site experience with construction of similar projects. The experience of this individual must be incorporated with the resumes of the proposed staff members. Independent Review Team comments and responses shall be documented in writing and shall be submitted to the AUTHORITY with each milestone submission. Along with the review comments, the Consultant will also provide with each submission a written certification stating that all deliverables have received an independent QA/QC review in accordance with the QA/QC Plan. This certification shall be signed by the Consultant’s QA/QC officer.

## U. PUBLIC CONVENIENCE AND SAFETY

The safety, protection and convenience of the public are of primary importance and shall be provided for by the Consultant in an adequate and satisfactory manner.

The Consultant shall at all times exercise caution for the protection of persons and property. The safety provisions of applicable laws, rules and regulations, and codes shall be observed, as well as the provisions of DRPA’s Safety Administrative Manual, as current. Machinery, equipment and other hazards of whatever character shall be guarded in accordance with the safety provisions of the current “Manual of Accident Prevention in Construction”, published by the Associated General Contractors of America, to the extent that such provisions are not inconsistent with applicable federal, state and local laws and regulations.

The Consultant shall instruct its employees and personnel regarding the hazards involved while working within the vicinity of moving vehicles.

If any operation, practice or condition during the course of the work is deemed by the AUTHORITY to be unsafe, the Consultant, upon notice, shall take corrective action. Where any operation, practice or condition endangers persons or property, it shall be discontinued, and adequate remedial action taken before such work is resumed. However, the AUTHORITY shall have no responsibility for supervision of safety requirements.

## V. SUPERVISION

The Consultant shall, at all times when field work is in progress, keep a competent representative or superintendent in charge of the Work in the field who shall have full authority to receive and give orders to Consultant’s personnel.

The Consultant shall give the Work the constant attention necessary to facilitate the progress thereof and shall cooperate with the AUTHORITY, and with other consultants and contractors authorized to perform work adjacent to or within the physical limits of the work area.

## W. SITE USE

The Consultant shall confine operations at the site to those permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.

The Consultant shall perform its operations in such a manner as not to interrupt or interfere unduly with any operation or activity or the work of the AUTHORITY, or of any other contractor or subcontractor, at or near the location of the Work.

The AUTHORITY reserves the right to do work with its own or with the employees of or by other contractors, and to permit public utility companies and others to do work during the progress and within the limits of, or adjacent to, the Work. The Consultant shall conduct its work and cooperate with such contractors, consultants, utility companies and others so as to cause as little interference as possible with their work. Further, the Consultant shall allow such other contractors, consultants, utility companies and their agents access to their work within the site of the Work.

The Consultant shall and hereby does agree to make no claims against the AUTHORITY for additional compensation due to delays or other conditions created by the necessary operations of such other parties, unless such delays are markedly different in extent from those which could be reasonably anticipated for the type of work engaged in by such other parties.

In the event of a disagreement concerning the respective rights of the Consultant and other parties performing work within the limits of, or adjacent to, the work, the AUTHORITY will determine the respective rights of the various parties involved, in order to secure the completion of the AUTHORITY’s work in general harmony and in a satisfactory manner. The AUTHORITY determination shall be final and binding, and shall not be cause for claims by the Consultant or any subconsultant performing work under this Agreement.

## X. MATERIALS

The Consultant shall furnish, construct and maintain whatever may be necessary of walkways, platforms, ladders, stairways and other facilities of usual and suitable character and adequate strength to provide properly for all operations required to inspect and perform its work on the site.

## Y. LIGHT, POWER AND WATER

The Consultant shall provide, at its own expense, all light, power and water necessary for the performance of the field work.

## Z. STORAGE YARD

The AUTHORITY will provide the Consultant with a storage area.

The AUTHORITY does not guarantee the security of this area and will not assume responsibility for loss or damage of materials or equipment stored therein.

**AA. BRIDGE TOLL - INTENTIONALLY OMITTED**

## BB. TRAFFIC RULES

The Consultant is cautioned that all of its operations on the site of the work will be governed by the following traffic rules:

1. The Consultant shall conform and adhere to the approved Maintenance of Traffic Plan prepared by the Consultant and approved by the AUTHORITY.

1. The AUTHORITY’s Police will effectuate all lane closings and openings.

These foregoing may be augmented or modified at the discretion of the AUTHORITY.

## CC. TRAFFIC EMERGENCY

The AUTHORITY’s Police may, in the event of a serious accident or major traffic demand, declare an emergency condition without advance notice. The Consultant is required in such case to cooperate fully and immediately with directions received, which may include ceasing operations and clearing the work area. No extra payment for such an occurrence will be made by the AUTHORITY. The Consultant shall not make a claim for damages against the AUTHORITY for such an occurrence.

## DD. MAINTENANCE AND PROTECTION OF TRAFFIC

At least ten (10) working days prior to the time the Consultant intends to start operations affecting traffic, the Consultant shall submit complete details of the methods they intend to employ for the safe restriction to the movement of traffic required for the operation. These methods will be reviewed by the AUTHORITY and its Police Department and, when satisfactory, approved. Methods not approved will be returned for revision and shall be resubmitted for further review. The Consultant’s methods submitted for approval shall include complete information, data and/or sketches covering the means proposed by the Consultant for the protection of the public and the Consultant’s personnel and equipment, including layouts and schedules showing the anticipated lane closings, truck access points, locations of all devices for lane closings and protection of traffic, and anticipated dates and rates of progress of work.

If the approved methods of operations submitted by the Consultant are not strictly adhered to by the Consultant, the AUTHORITY shall have the right to order all work which, in the opinion of the AUTHORITY, affects the maintenance and protection of traffic, to be summarily discontinued. Such work shall not be resumed until the AUTHORITY is assured and satisfied that the Consultant will perform the work in conformity with the approved methods of operations. The Consultant shall have no claim against the AUTHORITY for the losses or delays caused by such work stoppage.

The AUTHORITY’s approval of traffic control plans and/or its failure to approve such plans shall in no way shift responsibility for traffic safety from Consultant to the AUTHORITY, and the Consultant shall remain liable to indemnify and hold the AUTHORITY harmless from and against any loss, cost, or expense relating to such traffic control plans, consistent with the provisions of Section B.

The Consultant shall erect or place, and maintain in good condition, barricades, temporary wiring and directional signs, lights, flares, approved electric flasher units, traffic cones and other warning and danger signals and devices, appropriate and adequate for the specific needs, at working sites, at standing equipment and other obstructions, at points where the usable traffic width of the roadway is reduced, at points where traffic is deflected from its normal courses or lanes, and at other places of danger to vehicular or pedestrian traffic under, on, or adjacent to the work area.

The Consultant shall be responsible for transporting all its personnel to and from enclosed or closed-off areas. Personal vehicles will not be permitted to park anywhere within AUTHORITY or private properties, except in areas designated by the AUTHORITY.

Whenever the Consultant’s vehicles operate in lanes open to traffic, travel shall always be with and not across or against traffic.

Vehicles shall enter and leave work areas in a manner which will not be hazardous to or interfere with traffic. During lane closings when a flagman is not on duty, automobiles operated solely for the transportation of supervisory personnel, flagmen, or approved inspectors will be allowed access to the work site provided such vehicles are operated in a safe manner.

Vehicles shall not park or stop in roadways, except within the closed lane(s).

The Consultant’s vehicles will not be permitted to make U-turns, across the roadway or in the toll plaza area. Any vehicle making any illegal turn will be subject to a summons by the Police.

Points for leaving and re-entering the traffic flow shall be, in general, at the beginning and end respectively of a lane closing. Uniformed flagpersons provided by Consultant shall be on duty, as directed by the AUTHORITY, at all locations where and when the Consultant’s vehicles leave or enter traffic. Each flagperson shall be an intelligent, English speaking person, properly trained, instructed and experienced in flagperson duties, and shall be uniformed as specified below. Each flagperson shall be subject to the approval of the AUTHORITY. Any flagperson performing duties unsatisfactorily, in the opinion of the AUTHORITY, shall be immediately removed from duty as a flagperson and shall be replaced by an approved flagperson. Each flagperson shall wear an approved police-type uniform with billed cap. Uniform and cap shall be navy blue. Over the uniform the flagperson shall wear at all times, a sleeveless vest entirely covered with three inch width alternate vertical stripes of phosphorescent red and “Scotchlite” Silver Reflective PressureSensitive Sheeting No. 3270. AUTHORITY shall have no obligation to supervise or review flagpersons. Consultant shall be solely liable for the actions or inactions of flagpersons under all circumstances.

## EE. IDENTIFICATION OF EMPLOYEE

As a requirement to obtain authorized access to the Project work site, the Consultant’s and subconsultants’ on-site personnel shall be required to prominently display a valid Transportation Workers’ Identification Credential (hereinafter referred to as “TWIC”) and a company identification badge which will include specific Project information. The identification badge shall contain the following:

1. Employer name
2. Employee name
3. Employee photo
4. AUTHORITY Contract name
5. AUTHORITY Contract number

The reverse side of the identification badge shall contain the following:

1. AUTHORITY Public Safety telephone number
2. Employer telephone number

Any person not possessing both a valid TWIC card and company identification will be immediately removed from the Project work site by the AUTHORITY Police and will not be permitted to return to the work site until proper identification is provided.

All visitors to the Project work site shall report to a designated area to obtain a visitor's badge prior to entering the Project work site. All visitors must be escorted by an authorized person.

All authorized personnel and visitor information will be entered into the AUTHORITY Authorized Personnel Accountability List which will be updated as necessary and provided to the Project Team, which will include the AUTHORITY Project Manager and the AUTHORITY Homeland Security Officer.

In the event of lost or stolen identifications, Consultant must immediately contact the AUTHORITY Project Manager and the AUTHORITY Homeland Security Officer.

When an employee no longer needs access to the AUTHORITY property, the company Project identification badge must be immediately retrieved and retained by the employer and the employment end date entered into the AUTHORITY Authorized Personnel Accountability List.

## FF. HOURS OF OPERATION

Time of performance and completion of work are of the essence. The Consultant shall prosecute the work in an orderly and efficient manner using sufficient manpower and equipment to ensure timely completion of the work. Roadway traffic on the bridge shall be maintained at all times in accordance with the approved Maintenance of Traffic Plan submitted by the Consultant. The Consultant shall schedule and perform its operations so that the full width of roadway curbs is available for vehicular traffic. No additional payment will be made by the AUTHORITY for work at night or on weekends and holidays.

The Consultant shall occupy only one side of the bridge while performing any work from the roadway level.

## GG. NIGHT WORK

If the Consultant desires to work at times other than the normal daylight shift, they shall first obtain approval from the AUTHORITY to perform such work. The Consultant on such occasions shall have a responsible supervisor and sufficient personnel present to perform such work. No additional payment will be made by the AUTHORITY for said night work.

## HH. WORKING IN TRACKWAY

The DRPA, through its wholly-owned subsidiary PATCO, operates a rapid transit commuter system between Lindenwold, New Jersey, and Philadelphia, Pennsylvania, on tracks along each side of the Benjamin Franklin Bridge (BFB) beneath the walkways. The track system consists of rails mounted on ties affixed to the structure of the BFB. This track system is open to the ground and river below the BFB. The system is powered by an electrified 750 Volt D.C. third rail which runs alongside each track and which carries high voltage electrical current. The rapid transit system operates on a frequent schedule with trains running as often as every two minutes.

1. Whenever it is necessary for the Consultant’s personnel to work in, near, or above the track area, the Consultant shall first request permission to occupy said area. The request shall be made in writing to the Assistant General Manager, Engineering and Maintenance, Port AUTHORITY Transit Corporation, Lindenwold, NJ 08021. Each request shall be made at least one week in advance of the need for the use of such track area.

1. In addition to performing all work in compliance with all the terms, conditions, covenants and requirements of this Agreement, the Consultant agrees that all work performed in, near, or above the PATCO track area shall be performed in compliance with all of the AUTHORITY’s rules and regulations and conditions set forth herein.

1. It is the duty of the Consultant to obtain from PATCO information regarding PATCO’s scheduling, operations, and procedures.

1. Conditions of Access to PATCO Areas

1. Access during off-peak hours:

During certain off-peak hours (refer to Table “A”, below) PATCO trains are operated with less frequency. The CONSULTANT may request PATCO to make a track area available during the off-peak hours, subject to the following:

* 1. Not more than one track area, Eastbound or Westbound, will be available simultaneously;

* 1. PATCO shall have complete discretion regarding track availability.

* 1. Table A - Track Availability Times Westbound Track Out of Service:

9:00 p.m. to 5:00 a.m. Monday night through Friday morning

9:00 p.m. Friday until 5:00 a.m. Monday

Eastbound Track Out of Service:

11:00 p.m. to 5:00 a.m. Monday night through Friday morning

11:00 p.m. Friday until 11:00 a.m. Saturday

7:00 p.m. Saturday until 5:00 a.m. Monday

No track outages will be allowed between Thanksgiving Day and

New Year’s Day.

1. Access during all other hours:

During all other hours, PATCO trains operate frequently. PATCO’s trains cannot cease their regular operations during these hours. The Consultant shall not be permitted access to any area in, near, or above the track area without first obtaining the express written permission of PATCO. Any such use of the track area shall be subject to all of the terms and conditions herein, and such further limitations as may be imposed by PATCO.

The Consultant shall be prohibited from working overhead of the track areas during the transit rush hour periods defined as 5:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m., Monday through Friday.

In the event of an emergency condition or a high demand requirement relating to PATCO operation, PATCO may withhold track availability from the Consultant or order the Consultant’s forces to withdraw from the track area and the Consultant shall comply with such orders.

1. When it is necessary for Consultant’s personnel to work in or near the track areas, PATCO reserves the right to determine the number of, placement of, and need for

PATCO watchpersons. It is expressly understood that these PATCO watchpersons

shall be present solely for the protection of PATCO’s property, facilities and operations. When staffing is available, the Authority will provide watchperson/flagmen at no cost to the Consultant.

1. Work in the vicinity of NJ Transit Rail Line

The AUTHORITY is the owner of a rail right-of-way between Lindenwold, NJ where the rail properties of the AUTHORITY abut the rail properties of NJ Transit Corporation (“NJ Transit”) and Woodcrest (DRPA Milepost 11.79) and between Woodcrest and West Haddonfield where the rail properties of the AUTHORITY abut the train properties of NJ Transit (all referred to as “Rail Properties”). A standing Trackage Rights Agreement between the AUTHORITY and New Jersey Transit Corporation (“NJ Transit”) establishes the construction rights, operating rights, and maintenance responsibilities between the AUTHORITY and NJ Transit along these Rail Properties.

Certain AUTHORITY projects may require that work be done on or adjacent to the rail line in this area. In such cases, the Consultant shall be solely responsible for coordinating its work with NJ Transit, including obtaining permissions, permits, safety training, and insurance requirements.

When working within the vicinity of NJ Transit’s track, the Consultant shall obtain permission and/or necessary NJ Transit permits at least 30 days prior to initiating applicable Work. The Project may require the Work to be done with NJ Transit flagperson protection and consistent with NJ Transit’s safety policies. Regularly scheduled passenger trains operate in both directions on this track and their operation will need to be protected. The Consultant shall schedule its work to avoid any interference with train operations while assuring that the work proceeds in a scheduled manner.

All of the Consultant/subconsultant site personnel shall be required to attend a **mandatory** NJ Transit briefing in Newark, NJ. The Consultant shall be subject to the provisions of “Guidelines for Working within or in the Vicinity of NJ Transit’s Right-of-Way”.

1. The Consultant shall safeguard the traffic, tracks and appurtenances and other property of PATCO.

1. The failure or inability of the Consultant to coordinate its activities with PATCO Operations shall not relieve it of its duties to perform the work hereunder within the contemplated time.

## II. ACCIDENT

The Consultant shall provide such equipment and facilities as are necessary or required for first aid service to any employee or personnel who may be injured in the progress of the

Work, and it shall have standing arrangements with local hospitals for the removal and hospital treatment of any employee or personnel who may be injured or who may become ill.

The Consultant shall keep, in a bound book, records of all accidents, including in such reports such data as may be required by the Department of Labor of the respective states in which the work is being performed.

The Consultant must promptly report in writing to the AUTHORITY and the Claims Department of the AUTHORITY, all accidents whatsoever, arising out of or in connection with the performance of the Work whether on or adjacent to the site, which cause death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone to the Claims Department of the AUTHORITY.

If any claim is made by any third person against the Consultant or any subconsultant on account of any occurrence involving the Services to be rendered hereunder, the Consultant shall promptly report the fact in writing to the AUTHORITY, giving full details of the claim

## JJ. SAFETY PROGRAM

The Consultant shall perform all work with due regard to the safety of persons and property. It is a condition of this Agreement, and the Consultant agrees, that it shall be made a condition of each subcontract entered into pursuant to this Agreement, that the Consultant and any subconsultant shall not require any laborer or mechanic employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to personal health and safety, as determined under the provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, DRPA’s Safety Administrative Manual, as current, as well as any applicable OSHA regulations, to the extent not in contravention of applicable laws.

The Consultant shall take all reasonable precautions at all times to prevent injury to or death of any and all persons at or near the site of the Work or engaged in the performance of the Work, and to prevent damage to, loss or destruction of any property (including, without limitation, the Work to be performed hereunder) located at or near the site. Such precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any dangerous or potentially dangerous conditions at or near the site of the Work, all measures necessary to protect the Work against weather and other conditions of the Work, the enforcement of reasonable safety regulations among all persons at the site, and compliance with any safety requirements imposed by any governmental authority having jurisdiction.

In the event of any injury to any person, or to any public or private property by, or as a consequence of, or during the progress of any operations under the executed Agreement, including any act or omission on the part of the Consultant or its agents, personnel or employees, the Consultant shall make good such damage in such manner as may be required, at its own expense and cost. In case of failure by the Consultant to remedy such damage promptly, the AUTHORITY shall have the right to deduct the cost of such work from any monies due or which thereafter become due the Consultant under this Agreement.

The Consultant agrees to indemnify and hold the AUTHORITY and its agents harmless for, of and from any loss, including but not limited to any fines, penalties and corrective measures which the AUTHORITY may sustain by reason of the Consultant’s failure to comply with any of the requirements of this Section, consistent with the provisions of Section B.

## KK. CONTRACT SAFETY PLAN

The Consultant shall be responsible for developing, initiating, maintaining and supervising all safety programs required for its employees and personnel in order to ensure compliance with all applicable federal, state and local safety laws, rules, regulations and codes, as well as DRPA’s Safety Administrative Manual, as current. It is the responsibility of the Consultant to ensure that the Work required hereunder is performed in a safe and workmanlike manner and in compliance with general safety standards for the performance of such Work, as promulgated by the Occupational Safety and Health Administration (OSHA) and by any other similar regulatory body or professional board or association.

Within five (5) days from award of a Contract pursuant hereto, but *before commencement of any on-site work,* the Consultant shall submit to the AUTHORITY a Contract Safety Plan which satisfies all requirements of this Section and implements fully all OSHA and other applicable federal, state and local regulations, as well as any applicable professional board or association standards of practice, as well as the DRPA’s Safety Administrative Manual for safe performance of the Work required for this procurement.

The Contract Safety Plan will define procedure for proper and safe use of all materials and equipment required for the work to be done, in accordance with manufacturer instructions.

The Contract Safety Plan shall also designate and name a supervisor(s) who shall be present at the Project work site on a regular basis and who shall be responsible for assuring that work at the work site is performed in a safe manner. Each person designated for such safety responsibility will have authority from the Consultant under the Contract Safety Plan to cause work to be halted at the work site if work practices and conditions should in any way be or become out of compliance with the Contract Safety Plan.

The Contract Safety Plan shall provide that the Consultant, through its supervisor(s), *shall stop work* in the event that any condition(s) not complying with applicable regulations or compromising safety should be present at the work site. The Contract Safety Plan shall also provide that, in the event that the AUTHORITY advises the Consultant of any such condition(s), work stoppage shall be immediate. When stopped, work shall be resumed only after the Consultant has satisfactorily corrected the offending condition(s).

Consultant understands and agrees that the requirements of safety in the conduct of the work to be performed hereunder shall be fundamental to the execution of the Work and to the preparation of Proposals. No special payment allowances other than those appearing on the Cost Proposal shall be provided to cover the costs of preparing and implementing

the Contract Safety Plan. All costs associated with the Plan shall be incorporated into the amounts recorded by the Consultant on the Summary of Estimated Costs sheet.

## LL. DRPA NO SMOKING POLICY

The Consultant must submit in its Contract Safety Plan a Company No Smoking Policy for this Project to be reviewed and approved by the AUTHORITY’s Department of Safety.

Consultant and its employees and supervisors will not be permitted to smoke in any of the AUTHORITY buildings or vehicles. It is impossible to identify all designated smoking areas for Consultant work sites on the bridges or roadway, as they vary from project to project. However, the DRPA will insist that each Consultant comply with the AUTHORITY’s No Smoking Policy in buildings, vehicles or areas containing hazardous materials.

At each job site, the Consultant and the AUTHORITY Safety Department may designate a smoking area for the Consultant and its personnel. The area will include, but not be limited to, the following conditions:

1. No smoking in immediate work areas.

1. Smoking will be permitted *only* at designated smoking areas, at least 100 feet from work areas.

1. Designated smoking areas must have a smoking sign that indicates that it is a designated smoking area. A cigarette butt container with sand must be available to extinguish smoking materials. Cigarette butts will not be permitted to be discarded on the ground or work area.

1. An approved fire extinguisher(s) will be available at the designated smoking area and within 100 feet in all directions of the designated smoking area. A cigarette butt container with sand will be provided.

1. Consultant and its employees must be trained in the proper use of fire extinguishers.

1. No smoking within 100 feet of flammable liquids, approved flammable liquid containers, and flammable materials.

1. No smoking within 100 feet of storage and or use of flammable compressed gas cylinders or gas cylinders that support combustion.

1. No smoking within 100 feet of combustible materials.

1. Positively NO SMOKING within 100 feet of gas pump areas.

***Violation of the terms of the AUTHORITY’s and/or the Consultant’s No Smoking Policies will result in the immediate dismissal of the offending individual.***

These provisions apply for work required to be performed by the Consultant that is independent of the Consultant’s operation.

## MM. SUBSTANCE ABUSE REQUIREMENTS

The Consultant shall establish and maintain a drug and alcohol program for the duration of this Project. The requirements in DRPA’s Safety Administrative Manual, as current, shall be used at a minimum in formulating this program. This program shall include initial testing, reasonable suspicion and post- accident/near miss testing. The intent of this program is to establish the Project work site as a drug and alcohol free workplace in order to ensure safe and productive working conditions.

# NN. JURISDICTION AND VENUE

The Consultant irrevocably submits itself to the jurisdiction of the Courts of the Commonwealth of Pennsylvania in regard to any controversy arising out of, connected with, or in any way concerning the subject matter of this Agreement, which suit shall be venued in the County of Philadelphia.

## OO. FTA REQUIREMENTS

The Work under this Agreement will be subject to a financial assistance contract between the Authority and the Federal Transit Administration (“FTA”) of the United States Department of Transportation (“USDOT”). As a result, such work will be performed pursuant to all applicable Federal laws, regulations, policies and administrative practices which are currently in effect and which may be established during the performance of the Work under this Agreement. By submitting a proposal, the Consultant certifies that Consultant has read, understands, and agrees to comply with the following Federal requirements.

The following provisions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the following contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, are hereby incorporated by reference. Additionally the DRPA will conduct all third party procurements using full and open competition as provided in 49 U.S.C. § 5325(a) and as determined by the FTA. 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any DRPA requests which would cause the DRPA to be in violation of the FTA Terms and Conditions.

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of the Agreement. Consultant’s failure to so comply shall constitute a material breach of this Agreement.

The following provisions, supplement and amend other sections of the Agreement documents. In case of conflicting requirements, the following requirements will govern:

### 1. No Federal Government Obligations to Third Parties

The Authority and Consultant acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified except to identify the subcontractor who will be subject to its provisions.

### 2. Program Fraud and False or Fraudulent Statements or Related Acts

The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant 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 underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant 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 Consultant to the extent the Federal Government deems appropriate. The Consultant 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Consultant, to the extent the Federal Government deems appropriate. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records, Reports and Sites.

1. Record Retention. The Consultant will retain, and will require its subconsultants of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

1. Retention Period. The Consultant agrees, and will require its subconsultants of all tiers to agree and to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Consultant shall maintain all books, records, accounts, and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

1. Access to Records. The Consultant shall permit the authorized representatives of the Authority, the U.S. Secretary of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to its performance under the contract, as required by 49 U.S.C. § 5325(g). The Consultant further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that the Authority, the Department of Transportation and Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, paper and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontract" as used in this clause excludes purchase orders not exceeding $10,000. The periods of access and examination described above, for records which relate to (1) litigation of the settlement of claims arising out of the performance of this contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of

1. Access to the Sites of Performance. The Consultant agrees, and will require its subconsultants of all tiers to agree to permit the FTA and its consultants access to the sites of performance under this Agreement as reasonably may be required.

### 4. Federal Changes

As stated herein, Consultant 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 Master Agreement between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of contract.

### 5. Civil Rights and Equal Opportunity

The DRPA is an Equal Opportunity Employer. As such, the DRPA agrees to comply with all applicable Federal civil rights laws and implementing regulations.

Apart from inconsistent requirements imposed by Federal laws or regulations, the DRPA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. The Consultant will include a citation to 41 C.F.R. § 60-1.4(b)(1) and (c), and the provisions of paragraphs (a) through (l) in every subcontract or Purchase Order unless exempted by Rules, Regulations or Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or Purchase Order as the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the FTA, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

Under this Agreement, the Consultant shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), disability, or age. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

1. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Federal transit laws at 49 U.S.C. § 5332 and FTA Circular 4704.1, the Consultant and all subconsultants agree to comply with all applicable equal employment opportunity requirements of United States Department of Labor (“U.S. DOL”) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Consultant agrees to comply with any implementing requirements FTA may issue. In the event of the Consultant’s noncompliance with the nondiscrimination clauses of this Agreement or

with any of the said Rules, Regulations and Orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by Rules, Regulations or Orders of the Secretary of Labor, or as otherwise provided by law.

1. Sex. In accordance with the Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., U.S. DOT regulations,

“Nondiscrimination on the Basis of Sex in Education Programs or Activities

Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of sex. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

1. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29

C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations,

“Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

1. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against individuals on the basis of disability. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

### 6. Disadvantaged Business Enterprises

1. Policy: It is the policy of the U.S. DOT that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Agreement.

1. DBE Obligation: The recipient and its consultants agree to ensure that DBE defined in 49 C.F.R. Part 26 and Federal transit laws at 49 U.S.C. § 5332 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds

provided under this Agreement. In this regard, all recipients and contractors agree to take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure achievement of DRPA DBE goals set at 10% participation and that DBE have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.

### 7. Title VI Civil Rights Act of 1964

During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Consultant”) agree as follows:

1. Compliance with Regulations: The Consultant shall comply with the Title

VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Federal transit laws at 49 U.S.C. § 5332 and Regulations relative to nondiscrimination in federally assisted programs of the U.S. DOT Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Agreement.

1. Nondiscrimination: The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the discrimination prohibited by Section 21.5 of the program set forth in Appendix B of the Regulations.

1. Solicitations for Subcontracts, Including Procurements of Materials and

Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1. Information and Reports: The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DRPA or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information the Consultant shall so certify to the DRPA, or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

1. Sanctions for Noncompliance: In the event of the Consultant’s noncompliance with nondiscrimination provisions of this Agreement, the DRPA shall impose contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

* 1. withholding of payments to the Consultant under the contract until the Consultant complies; and/or

* 1. cancellation, termination, or suspension of the contract, in whole or in part.

### 8. Incorporation of Federal Transit Administration (FTA) Terms

As stated herein, 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 4220.1F, 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply

### 9. Certification of Lower-Tier Participants Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion

The Consultant agrees to comply and assures the compliance of each subconsultant, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and

Budget (“U.S. OMB”) “Guidelines to Agencies on Government Wide Debarment and Suspension (“Nonprocurement”),” 2 C.F.R. Part 180. The Consultant agrees to, and assures that its subconsultants and other participants at any tier of the Project will, review the “Excluded Parties Listing System” at http://www.sam.gov/portal/public/SAM/ before entering into any subagreement, or other arrangement in connection with the Project. The Consultant shall not engage in any conduct, including but not limited to the commission of a fraud or any criminal offense as an incident to obtaining, seeking to obtain, or performing government business or a public contract, which conduct shall result in a suspension, debarment, or voluntary exclusion by the U.S. DOT pursuant to its regulations.

The Consultant and all subconsultants shall execute the attached certification of Lower-Tier participants regarding debarment, suspensions, and other Ineligibility and Voluntary Exclusions.

### 10. Resolution of Disputes, Breaches or Other Litigation

1. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of DRPA. This decision shall be final and conclusive unless within thirty (30) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the DRPA. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the DRPA shall be binding upon the Consultant and the Consultant shall abide be the decision.

1. Performance During Dispute - Unless otherwise directed by DRPA, Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

1. Claims for Damages - Should either party to the Agreement 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 twenty one (21) days after the first observance of such injury of damage.

1. Remedies - Unless this Agreement provides otherwise, all claims, counterclaims, disputes, and other matters in question between the DRPA and the Consultant arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the DRPA is located.

1. 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. No action or failure to act by the DRPA or Consultant shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### 11. Certification of Restriction on Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying

Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] – Consultants who apply or bid for an award of $100,000.00 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### 12. Clean Air Act and the Federal Water Pollution Control Act

1. The Consultant 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 /40 CFR 15.61/49 CFR Part 18 and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Consultant agrees to report each violation to the DRPA and understands and agrees that the Agency will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

1. The Consultant also agrees to include these requirements in each subcontract exceeding $100,000.00 financed in whole or in part with Federal assistance provided by FTA.

### 13. Employee Protections

The Consultant agrees to comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standard Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)”, 29 C.F.R. part 5.

### 14. Seismic Safety

The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in U.S. DOT Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this contract, including work performed by a subconsultant, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

15. Energy Conservation:

The Consultant agrees to comply with 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, as amended, 42 U.S.C. § 6321 et seq., and perform and energy assessment for any building constructed,

reconstructed, or modified with federal assistance required under FTA regulations,

“Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

### 16. Access Requirements for Individuals with Disabilities

The Consultant will comply with all applicable requirements of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301 (d); and any and all regulations and amendments applicable to the performance of this Agreement.

# PP. AUTHORITY PROJECT MANAGEMENT SYSTEM

The Authority has implemented eBuilder, a cloud-based Project Management Information system, to manage its Capital Projects. Consultant shall utilize the

Authority’s eBuilder System to support the Authority’s management of the Project. The Authority does not accept the use of Consultant project management systems unless expressly approved by the Authority and is substantially justified. Consultants will be provided access to the system and eBuilder tutorials made available. The eBuilder system will be used to perform construction management (including submittals, Requests for Information, Responses, and approvals), schedule management, cost control, inspections, and payment. The eBuilder system is part of the official Authority Project file.

## QQ. NOTICES

All communications which may be or are required to be given by either party to the other herein shall be in writing and send by e-mail, SAP Ariba submission, or delivered / sent by prepaid registered mail to the parties at the addresses set forth below.

If to Consultant:

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If to the DRPA:

## Delaware River Port Authority

Karen Cyphers, Acting Manager, Contract Administration

P.O. Box 1949

Camden, NJ 08101-1949

With copies to:

## Delaware River Port Authority

Raymond J. Santarelli, General Counsel

P.O. Box 1949

Camden, NJ 08101-1949