

**THE PORT AUTHORITY OF NY & NJ**

**REQUEST FOR QUALIFICATION INFORMATION  
FOR**

**BRIDGE AND ROADWAY PAVING  
CONTRACTS: 2009-2011**

**COLLECTIVE NO: 17257**

*January 2009*

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**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**  
**REQUEST FOR QUALIFICATION INFORMATION**  
**FOR**  
**BRIDGE AND ROADWAY PAVING CONTRACTS**  
**JANUARY 2009-2011**

**I. INTRODUCTION**

The Port Authority of New York & New Jersey (the “Port Authority” or the “Authority”) is a body corporate and politic created by Congress between the States of New York and New Jersey with the consent of the Congress of the United States. The Port Authority, together with its wholly-owned subsidiaries, provides the region with integrated transportation and trade services and operates facilities in connect therewith, including, but not limited to, four major regional airports, interstate traffic through four bridges and two tunnels, a bus terminal, a bus station, the PATH rapid transit system, the Hoboken-lower Manhattan ferry service, the World Trade Center site and certain New York-New Jersey port facilities.

The Port Authority seeks to pre-qualify prospective firms to submit bids for future paving contracts for the years 2009-2011, also referenced herein as the “Projects”, more fully described in Scope of Work and General Requirements. These Projects are located in the Port District in New York and New Jersey, within a 25-mile radius of the Statue of Liberty.

Responses to this Request for Pre-qualification Information (“RFPQ”) are due on the Response Due Date set forth on the advertisement of this RFPQ. Responses received after that date and time may not be accepted.

**Only pre-qualified firms who have received written approval from the Authority will be asked to respond to a future Request for Bids for these specific Projects.**

**II. Scope of Work:**

The Port Authority of New York and New Jersey (“Authority”) wishes to prequalify prospective bidders to bid on future bridge and roadway paving contracts (“Contracts”) at Tunnels and Bridges facilities through 2011. It is anticipated but it is not guaranteed that Work required by the Contracts may include, but may not necessarily be limited to, the following:

- A. 1. Milling and removal of asphalt and/or concrete pavements on ground, suspended concrete and steel deck.
2. Removal of waterproofing membrane on suspended concrete and steel deck.
3. Asphalt concrete paving, with Superpave or other heavy-duty paving mixes including mixes with asphalt additives such as Rosphalt, etc.

4. Waterproofing membrane placement.
  5. Concrete repairs to the underlying concrete base course as required.
  6. Portland cement concrete pavement placement using cast-in-place or precast concrete.
  7. Resetting of loose and/or replacement of broken roadway castings.
  8. Striping, lane markers and reflectors.
  9. Associated utility work.
  10. Restricted work hours and staging of the work, including maintenance and protection of traffic, to maintain the roadway areas fully operational during peak traffic periods and during the removal and replacement of existing pavement on highly trafficked highway and bridge facilities.
  11. Extended work hours on weekends.
- B. The Authority estimates that the Work required by each of the individual Contracts will be in the following construction ranges:
1. Range A – Up to \$ 2,000,000
  2. Range B - \$ 2,000,000 to \$ 5,000,000
  3. Range C - \$ 5,000,000 to \$ 10,000,000

The prospective bidder shall indicate, in the submittal, which of the above cost ranges of Contracts the bidder is capable of constructing. The Authority will inform the bidder for which of the bidder's indicated cost ranges the Authority has deemed him pre-qualified, if any.

- C. It is presently anticipated but it is not guaranteed that Bid Documents for the Contracts will be available on an as-needed basis through end of 2011.

### **III. GENERAL REQUIREMENTS:**

A. The Authority will accept proposals on the Contracts only from pre-qualified bidders. Notwithstanding prequalification to bid, bidders will be required to submit certain additional information with their bids all as will be stated in the Contracts. The Authority reserves the right at any time to modify, waive, or vary the terms and conditions of this Request for Qualification Information (“RFPQ”).

B. Each bidder will be required to furnish a Bid Bond or certified check with its bid and the successful bidder may be required to furnish a Performance And Payment Bond for the Contract(s) in a penal sum equal to the full amount of the bid.

C. Prequalification to bid does not preclude the Director of Procurement from subsequently concluding, based upon either (a) analysis of additional information which may come to her attention or upon further analysis of the information upon which her approval was based, or (b) analysis of any information required pursuant to the Clause entitled “Qualification Information” of the “Information for Proposers” section of the Contracts, that a respondent is not qualified to

perform the Contracts. Further, no approval shall limit or impair the reservation by the Authority of the unqualified right, in its sole and absolute discretion, to waive bid defects, reject all bids, or to accept that bid, if any, which in its judgment will under all circumstances best serve the public interest, as will be more fully set forth in the Contracts.

D. The Authority will entertain requests for prequalification from joint ventures. If a joint venture is pre-qualified to submit a response, or if two or more entities separately pre-qualified to respond elect to submit a response as a joint venture, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the bid.

If the prospective bidder cannot demonstrate that it meets all of the referenced qualifications, then the prospective bidder may with others form a joint venture and request that the joint venture be deemed to the prospective bidder (i.e. members of the joint venture may meet the qualification requirements collectively).

E. It is presently anticipated that each of the Contracts will include a provision that the Contractor shall use and document every good faith effort to meet the stated goals for firms owned and controlled by minorities and firms owned and controlled by women and certified by the Authority as Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) all as will be further set forth in the Contracts.

F. The Contracts will contain Contractor's Integrity Provisions such as, but not limited to, Clauses entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, etc.; Disclosure of Other Required Information" and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee." (Copies of the Clauses currently being utilized are attached). By bidding on the Contract, the prospective bidder (and the other persons and entities connected with the prospective bidder to whom such Clauses by their terms apply) will be deemed to have made the certifications included in the Contract documents unless the prospective bidder submits a statement with its bid explaining why any such certification (s) cannot be made.

#### **IV: SUBMISSION REQUIREMENTS:**

Each Contractor shall submit the information requested below in 8½ in. by 11 in. bound volumes in the order listed below. The information shall be presented in an organized fashion, and shall be categorized and sub-categorized in exact accordance with the following paragraphs. The bound volumes shall include tabs for quick reference to the various sections described below. Prequalification information that is not submitted as described above may not be taken into consideration.

The Contractor may be requested to furnish additional information and clarification of information submitted. This information must be promptly furnished.

The Contractor must provide the following information in accordance with and utilizing the attached “Contractor’s Qualification Statement”. To be considered, the Contractor shall submit a complete and thorough response to this Request for Pre-qualification, using the format provided. The signatures required shall be by an official authorized to bind the respondent.

*Note: This Document provides pre-qualification information and pre-qualification instruction only. This is not a Request for Proposal (RFP) or Request for Bids (RFB). Only pre-qualified Responders who have received approval from the Authority may be asked to submit a future Request for Proposals (RFP) or Request for Bids (RFB) for these specific Projects.*

## **1. GENERAL INFORMATION**

A. Name and address of the prospective Contractor/joint venture.

B. Company organizational chart showing each partner as well as for any joint venture or contractor team showing division of responsibility within its organization, and listing titles, duties and job descriptions for key personnel (management, technical, quality control and safety).

C. A statement on whether the Contractor will be proposing as a single entity, joint venture, or contractor team. If proposing as a joint venture, all the information that is required for a single entity must be submitted for each participant in the joint venture.

D. Name of contact person(s) and address(es) and telephone number(s) of proposed subcontractor(s), if any. If subcontracting is intended by the prospective proposer for any work, the prospective proposer shall submit names of the subcontractors that the firm proposes to use on these Contracts, and shall state whether such subcontractors have provided services for the proposer on previous similar projects. Verifiable references shall be submitted for each proposed subcontractor.

E. Name, title and telephone number of the person to contact in the event that further information is required by the Authority.

F. A copy of the Experience Modification Ratio (EMR) for itself and for each of its named Subcontractors as a measure of the respondent’s safety record. If the ratio exceeds 1.2, a written explanation shall be provided.

G. All Contractors must execute and submit the attached Non-disclosure & Confidentiality Agreement (Attachment A) with their RFPQ submittal package.

H. All Contractors must execute and submit the attached Agreement On Terms Of Discussion (Attachment B) with their RFPQ submittal package.

I. The Contractor and/or proposed sub-contractors must have all required NJ, NYS and / or NYC certifications and / or licenses to perform the work in accordance with codes, rules and regulations. Such certifications and/or licenses include but are not limited to those for the following work:

## **2. PRE-QUALIFICATION MEETING**

There will be no public meeting on this Request for Pre-Qualification.

## **3. PROJECT REQUIREMENTS:**

All responses to this RFPQ will be reviewed by the Authority to determine if they contain all required submissions and if the Contractor meets the preconditions required for prequalification, which are those set forth below in 3A and 3B

### **A.**

1. The prospective bidder must demonstrate the following to the satisfaction of the Authority that: The prospective bidder must have satisfactorily completed as a prime or general contractor, a minimum of two (2) paving contracts of size, type and complexity comparable to the work described in section II-A above. The work must have been completed skillfully in a satisfactory manner and on time. Each contract must have been performed in the last five (5) years. Each contract must have been in excess of the minimum amount indicated for the selected prequalification ranges as listed below:

\$ 500,000 minimum for range A - Up to \$ 2,000,000

\$ 2,000,000 minimum for range B - \$ 2,000, 000 to \$ 5,000,000

\$ 5,000,000 minimum for range C - \$ 5,000,000 to \$10,000,000

The prospective bidder shall provide a brief description of each such contract, including the construction cost, unique features, compliance with schedules, and the name and telephone number of the owner's representative familiar with the work.

2. The prospective bidder must be able to obtain a Performance And Payment Bond for the maximum applicable amount indicated in paragraph I-B from a surety company whose name appears on the current list of the Treasury Department of the United States as acceptable as a surety upon federal contracts.

3. The prospective bidder's Project Manager/Superintendent must have a minimum of five (5) years construction experience on contracts comparable in size, type and complexity to those on which the prospective bidder intends to bid. A resume of the Project Manager/Superintendent must be provided.

The prospective bidder must demonstrate that any subcontractor to be used to perform portions of the Work is qualified to perform his portion of the Work as listed above. If the prospective bidder is deemed qualified based upon the qualifications of proposed subcontractor(s) submitted by the prospective bidder, the Authority may approve such prospective bidder subject to his utilizing the submitted subcontractor(s).

If the prospective bidder, or any participant in a joint venture, cannot demonstrate all of the above-mentioned qualifications, then the prospective bidder, or such joint venture participant, shall submit any information requested by the Director of Procurement, to demonstrate to the satisfaction of the Director of Procurement that the prospective bidder, or such joint venture participant, has the capability to complete the Work of the Contract.

**B.** The prospective bidder must submit the information requested on the attached Contractor's Qualification Statement and Schedules A, B and C.

**V: SUBMISSION INSTRUCTIONS:**

**Clearly Mark Packages on the outside with RFQ# 17257 & Title**

A. The prospective bidder shall submit six (6) copies of the required qualification or preferably, one (1 ) hard copy and 6 CD-Rom copies of the required information to [spremchan@panynj.gov](mailto:spremchan@panynj.gov) in sufficient time so that the Authority receives it no later than 4:00 p.m. on January 12, 2009.

Suchetha Premchan  
The Port Authority of New York and New Jersey  
Procurement Department  
One Madison Avenue-7<sup>th</sup> Floor  
New York, NY 10010

B. In order to expedite the evaluation of the qualification information furnished, the prospective bidder must complete and submit the attached Contractor's Qualification Statement and related attachments. Responses that fail to adhere to this stipulation may be excluded from consideration.

C. Company brochures alone shall not be submitted for the purpose of demonstrating experience and technical expertise. Submittals should be tailored to the specific requirements of this RFPQ.

Any questions concerning this RFPQ should be directed to Suchetha Premchan either in writing to the Port Authority of New York and New Jersey, at the address above or (preferably) by email to [spremchan@panynj.gov](mailto:spremchan@panynj.gov). Neither Ms. Premchan, nor any employee of the Authority is authorized to interpret the RFPQ or give additional information as to its requirements. Such interpretation or additional information will only be given by written addendum to this RFPQ.

**VI: NOTIFICATION**

Notification as to whether a prospective bidder has been pre-qualified will be made only by a notice in writing, signed by the Director of Procurement or her designated representative on behalf of the Authority and mailed or delivered to the office designated by the prospective bidder in its response to this RFQ.

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**Contractor's Qualification Statement**  
For  
**BRIDGE AND ROADWAY PAVING CONTRACTS**  
**Collective #17257**  
**January 2009**

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*< Please type or print clearly >*

**A. Contractor's General Business Information**

Statement submitted by:

- Name of Firm: \_\_\_\_\_
- Name of Individual: \_\_\_\_\_
- Title: \_\_\_\_\_
- Business Address: \_\_\_\_\_
- E-mail Address \_\_\_\_\_
  
- Telephone No.: \_\_\_\_\_
- Name & Telephone No. \_\_\_\_\_  
of Contact Person if \_\_\_\_\_  
other than above: \_\_\_\_\_

Check how bid will be submitted:

- Single Entity       Joint Venture

If prospective bidder is a Joint Venture, each participant in such Joint Venture must submit all the information that is required for a single entity.

- Indicate the Contract cost range that you are submitting qualifications for:

- Range "A" - Up to \$ 2,000, 000
- Range "B" - \$ 2,000, 000 to \$ 5,000,000
- Range "C" - \$ 5,000, 000 to \$ 10,000,000

- Indicate which type of paving Contract you wish to be pre-qualified for (one or both) in accordance with paragraph II-A-1 of the attached Request For Qualification Information:

- Asphalt concrete pavement
- Portland cement concrete pavement - cast-in-place and/or pre-cast

- Indicate the type of work generally performed with your own work force.

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- Indicate which part of the work indicated in paragraph II.A, B, & C of the attached Request For Pre- Qualification Information ("RFPQ") you plan on performing with your own forces and what work you plan on sub-contracting to another firm.

- Work to be performed with own forces:

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- Work to be performed by sub-contractors:

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**B. Relevant Experience and Past Performance:**

- ❑ ON **SCHEDULE A**, ATTACHED, LIST CONSTRUCTION CONTRACTS COMPLETED BY YOUR FIRM, WHICH DOCUMENT **YOUR FIRM'S MEETING OF THE REQUIREMENTS INDICATED IN PARAGRAPH II.A, B, & C**. IF A JOINT VENTURE, LIST EACH JOINT VENTURE PARTNER'S PROJECTS SEPARATELY. INDICATE IF THE CONTRACT WAS PERFORMED BY YOUR FIRM'S OWN FORCES OR BY A SUB-CONTRACTOR.
- ❑ ON **SCHEDULE B**, ATTACHED, LIST THE NAME AND QUALIFICATIONS OF THE INDIVIDUAL WHO WILL FUNCTION AS THE **PROJECT MANGER** AS WELL AS THOSE OF ANY OTHER **KEY CONSTRUCTION SUPERVISION PERSONNEL** TO BE ASSIGNED TO THE CONTRACT ALONG WITH THE ANTICIPATED FUNCTION AND RELEVANT EXPERIENCE OF EACH PERSON.
- ❑ ON **SCHEDULE C**, ATTACHED, LIST CURRENT PROJECTS CURRENTLY UNDER CONSTRUCTION (**WORK ON HAND**) BY YOUR FIRM. IF JOINT VENTURE, LIST EACH JOINT VENTURE PARTICIPANT'S PROJECTS SEPARATELY.

Does your firm have the required certification(s) and/or license(s) required under paragraph II.A, B, & C, if required?

- YES       NO       NOT APPLICABLE

➤ If No, indicate how you plan on meeting this requirement:

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➤ Submit documentation of required certification(s) and/or license(s)

- ❑ INDICATE IN WHICH STATE YOUR FIRM WISHES TO BE CONSIDERED TO RECEIVE WORK.

- NEW YORK    NEW JERSEY    BOTH STATES

- ❑ HAS YOUR FIRM EVER FAILED TO COMPLETE ANY CONSTRUCTION CONTRACT AWARDED IT?

- YES       NO

IF YES, DESCRIBE THE CIRCUMSTANCES ON A SEPARATE PIECE OF PAPER.

- ❑ IN THE LAST FIVE YEARS, HAS YOUR FIRM EVER FAILED TO SUBSTANTIALLY COMPLETE A CONTRACT IN A TIMELY MANNER?

- YES       NO

IF YES, DESCRIBE THE CIRCUMSTANCES ON A SEPARATE PIECE OF PAPER.

- ❑ Identify prior contracts that contained stated goals for M/WBE participation and how such goals were met or exceeded:

Contract	Stated Goals	Actual % Obtained	Comments

**Financial Information:**

- ❑ Can your Firm provide a Performance And Payment Bond for the full amount required?

Yes                       No

- ❑ Indicate approximate total bonding capacity: \_\_\_\_\_

- ❑ Indicate name of your proposed surety company and name, address and phone number of agent:

➤ Name: \_\_\_\_\_

➤ Address: \_\_\_\_\_

➤ Telephone No. \_\_\_\_\_

- ❑ **Submit letter from your surety documenting your ability to submit the required Bond.**

**D. CERTIFICATION**

I hereby certify that the information submitted herewith, including attachments is true to the best of my knowledge and belief.

\_\_\_\_\_  
(Type or print business name of Firm)

By: \_\_\_\_\_  
(Signature of officer of Firm)

\_\_\_\_\_  
(Type or print name of officer of Firm)

\_\_\_\_\_  
(Type or print title of officer of Firm)

\_\_\_\_\_  
(Type or print date)

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**SCHEDULE A**

**CONTRACTS COMPLETED**

**FIRM:** \_\_\_\_\_

<b>Project Name, Location and Description</b>	<b>Owner *</b>	<b>Design Engineer *</b>	<b>Date Completed</b>	<b>Contract Price **</b>	<b>Percent of Work Performed By Own Forces</b>

**Notes:**     \* **Include Name, Address and Phone No. of Reference Contact**  
              \*\***Indicate amount of Firm's contract and if work was done as a prime or general contractor**

**SCHEDULE B  
KEY CONSTRUCTION SUPERVISION PERSONNEL**

**FIRM:** \_\_\_\_\_

<b>Name</b>	<b>Position</b>	<b>Date started with this organization</b>	<b>Date started in construction</b>	<b>Prior positions and experience in construction</b>

**SCHEDULE C  
WORK ON HAND / BIDS SUBMITTED**

**A. FIRM:** \_\_\_\_\_

**WORK ON HAND:**

<b>Project Name, Location and Description</b>	<b>Owner *</b>	<b>Design Engineer *</b>	<b>Contract Price **</b>	<b>Scheduled Completion Date</b>

**BIDS SUBMITTED:**

<b>Project Name, Location and Description</b>	<b>Owner *</b>	<b>Design Engineer *</b>	<b>Bid Price **</b>	<b>Low Bidder (Yes or No)</b>	<b>Anticipated Award Date/ Contract Duration</b>

**Notes:**     \* Include Name, Address and Phone No. of Reference Contact  
               \*\*Indicate amount of Firm's contract and if work was done as a prime or general contractor

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**AGREEMENT A**  
**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**  
**BETWEEN**

**(INSERT NAME OF COMPANY)**

**AND**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the “**Port Authority**”) a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 225 Park Avenue South, New York, New York, 10003, and \_\_\_\_\_ having an office and place of business at \_\_\_\_\_(address) (“**Recipient**”).

**WHEREAS**, the Port Authority desires, subject to the terms and conditions set forth below, to disclose to Recipient Confidential Information (as defined below) in connection with \_\_\_\_\_(insert description of project/work) (collectively, the “**Project(s)**”, or “**Proposed Project(s)**”); and

**WHEREAS**, the Recipient acknowledges that the Port Authority, in furtherance of its performance of essential and critical governmental functions relating to the Project, has existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Project site and surrounding areas and related public welfare matters; and

**WHEREAS**, in furtherance of critical governmental interests regarding public welfare, safety and security at the Project site, the Port Authority has collected information and undertaken the development of certain plans and recommendations regarding

the security, safety and protection of the Project site, including the physical construction and current and future operations; and

**WHEREAS**, the Port Authority and Recipient (collectively, the “**Parties**”) acknowledge that in order for Recipient to undertake its duties and/or obligations with regard to its involvement in the Project, the Port Authority may provide Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority, which may contain or include confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the Project or its occupants or other matters, the unauthorized disclosure of which could result in significant public safety, financial and other damage to the Port Authority, the Project, its occupants, and the surrounding communities; and

**WHEREAS**, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures implemented for the protection against terrorist acts or for law enforcement, investigation and prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

**WHEREAS**, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to such information to a strict need to know basis, the Port Authority requires, as a condition of its sharing or providing access to such confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Agreement and that its Related Parties thereafter acknowledge and agree that they will be required to treat as strictly confidential and/or privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto; and

**WHEREAS**, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the provision by Port Authority of Information for Project Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

2. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **“Authorized Disclosure”** means the disclosure of Confidential Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to all Confidential Information, only to a Related Party that has a need to know such Confidential Information strictly for Project Purposes and that has agreed in writing to be bound by the terms of this Agreement by executing a form of Acknowledgment as set forth in Exhibit A; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by the Port Authority, and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Project.

(b) **“Confidential Information”** means and includes collectively, Confidential Proprietary Information, Confidential Privileged Information, and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such Information is confidential, privileged, sensitive or proprietary in nature. The term Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others. The following Information shall not constitute Confidential Information for the purpose of this Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority, provided that such source is not subject to a confidentiality agreement, or similar obligation, or understanding with or for the benefit of the Port Authority, with respect to such Information and that the identity of such source is not itself part of such Confidential Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party in violation of this Agreement.

(b) **“Confidential Privileged Information”** means and includes collectively, (i) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York, and/or New Jersey state laws or Federal laws, (ii) Critical Infrastructure Information, (iii) Sensitive Security Information, and (iv) Limited Access Safety and Security Information.

- (c) “**Confidential Proprietary Information**” means and includes Information that contains financial, commercial or other proprietary, business Information concerning the Project, the Port Authority, or its facilities.
- (d) “**Confidentiality Control Procedures**” means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Confidential Information that are required under applicable federal or state law, the Port Authority Handbook, or by the terms of this Agreement.
- (e) “**Critical Infrastructure Information**” (CII) has the meaning set forth in the Homeland Security Act of 2002 (42 U.S.C. §5195c(e)) and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 (6 U.S.C. §131-134). CII may also be referred to as “Protected Critical Infrastructure Information” or “PCII”, as provided for in the referenced rules and regulations.
- (f) “**Information**” means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.
- (g) “**Limited Access Safety and Security Information**” means and includes sensitive Information, the disclosure of which would be detrimental to the public interest and might compromise public safety and/or security as it relates to Port Authority property, facilities, systems and operations, and which has not otherwise been submitted for classification or designation under any Federal laws or regulations.
- (h) “**Port Authority Handbook**” means the Port Authority of N.Y. & N.J. Information Security Handbook, a copy of which is attached hereto as Exhibit B, as may be amended by the Port Authority, from time to time.
- (i) “**Project Purposes**” means the use of Confidential Information strictly and only for purposes related to Recipient’s and its Related Parties’ participation and involvement in the Project, and only for such period of time during which Recipient and its Related Parties are involved in Project related activities.

(j) “**Related Party**” and “**Related Parties**” means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient’s outside consultants, advisors, accountants, architects, engineers or subcontractors or subconsultants (and their respective directors, employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.

(k) "**Sensitive Security Information**" has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

**3. Use of Confidential Information.** All Confidential Information shall be used by the Recipient in accordance with the following requirements:

(l) All Confidential Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, including, without limitation, the Port Authority Handbook, receipt of which is acknowledged by Recipient and shall be acknowledged in writing by each Related Party by signing the Acknowledgment attached hereto as Exhibit A, and applicable legal requirements. Confidential Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

(m) Recipient and each Related Party acknowledges and agrees that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Agreement relating to Confidential Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(n) Recipient and each Related Party covenants to the Port Authority that it has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Confidential Information to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure,

modification, loss or misuse of Confidential Information. Recipient and each Related Party shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Confidential Information is compartmentalized, such that all Confidential Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures. The Confidentiality Control Procedures shall, at a minimum, adhere to, and shall not be inconsistent with, the procedures and practices established in the Port Authority Handbook.

(o) The Port Authority may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Confidential Information as a precondition for its disclosure. The Port Authority may decline any request by the Recipient or any of its Related Parties to provide such item of Confidential Information if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(p) Nothing in this Agreement shall require the Port Authority to tender or provide access to or possession of any Confidential Information to the Recipient or its Related Parties, whether or not the requirements of this Agreement are otherwise satisfied. However, if such Confidential Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Agreement.

(q) The Recipient and each Related Party agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority's prior written consent, neither the Recipient, nor any of the Related Parties shall disclose to any third party, person or entity: (i) any Confidential Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Agreement or any "Acknowledgement" of its terms or (ii) the fact that Confidential Information has been made available to the Recipient or such Related Parties, or the content or import of such Confidential Information. The Recipient is responsible for collecting and managing the Acknowledgments signed by Related Parties pursuant to this Agreement. Recipient shall, at the Port Authority's request, provide the Port Authority a list of all Related Parties who have signed an Acknowledgment, and copies of such Acknowledgments.

(r) As to all Confidential Information provided by or on behalf of the Port Authority, nothing in this Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

**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 Recipient or any Related Party, Recipient shall notify the Port Authority thereof with sufficient promptness so as to enable the Port 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 Port 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 Recipient shall immediately give the Port Authority written notice of that fact and a detailed account of the circumstances regarding such disclosure to the Port Authority.

4. **Retention Limitations; Return of Confidential Information.** Upon the earlier occurrence of either the Port Authority's written request or completion of Recipient's need for any or all Confidential Information, such Confidential Information, all writings and material describing, analyzing or containing any part of such Confidential Information, including any and all portions of Confidential Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority at Recipient's expense. In addition, as to Confidential Information that may be stored in electronic or other form, such Confidential Information shall be completely removed so as to make such Confidential Information incapable of being recovered from all computer databases of the Recipient and all Related Parties. The Recipient may request in writing that the Port Authority consent to destruction of Confidential Information, writings and materials in lieu of delivery thereof to the Port Authority. The Port Authority shall not unreasonably withhold its consent to such request. If the Port Authority consents to such destruction, the Recipient and each Related Party shall deliver to the Port Authority a written certification by Recipient and such Related Party that such Confidential Information, writings and materials have been so destroyed within such period as may be imposed by the Port Authority. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, the Recipient may retain a copy of Confidential Information, provided that (a) the Port Authority is notified in writing of such retention, and (b) Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Confidential Information.
5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Agreement shall be perpetual (unless otherwise provided in this Agreement) or until such time as the Confidential Information is no longer considered confidential and/or privileged by the Port Authority.

6. **Severability.** Each provision of this Agreement is severable and if a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
7. **Injunctive and Other Relief.** Recipient and each Related Party acknowledges that the unauthorized disclosure and handling of Confidential Information is likely to have a material adverse and detrimental impact on public safety and security and could significantly endanger the Port Authority, its facilities (including, without limitation, the Project site), its patrons and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Agreement by Recipient or its Related Parties. The Port Authority shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as it may deem appropriate for any breach of this Agreement, without being required to show any actual damage or to post any bond or other security.
8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Agreement and its enforcement. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this Agreement. “**Port Authority Legislation**” shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).
9. **Notices.** Any notice, demand or other communication (each, a “**notice**”) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x) hand delivery, or (y) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it, provided that such designation must be made by notice given in accordance with this Paragraph 9.

If to the Port \_\_\_\_\_

Authority: \_\_\_\_\_  
The Port Authority of New York and New Jersey  
225 Park Avenue South, \_\_\_th Floor  
New York, NY 10003

with a copy to: The Port Authority of New York and New Jersey  
225 Park Avenue South - 15<sup>th</sup> Floor  
New York, NY 10003  
Attn: General Counsel

If to the \_\_\_\_\_  
Recipient: \_\_\_\_\_  
\_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**10. Entire Agreement.** This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.
12. **Parties Bound.** This Agreement shall be binding upon the Recipient and its respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Agreement or to execute and deliver an Acknowledgement hereof.
13. **Authority.** The undersigned individual(s) executing this Agreement on behalf of the Recipient below represent(s) that they are authorized to execute this Agreement on behalf of the Recipient and to legally bind such party.
14. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority of any rights by ownership, license or otherwise in any Information.
15. **No Liability.** Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Recipient with any liability, or held liable to the Recipient under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.
16. **Construction.** This Agreement is the joint product of the parties hereto and each provision of this Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

*[No further text on this page; signatures appear on next page]*

IN WITNESS WHEREOF, the Recipient has executed this Agreement as of the date first above written.

Dated: New York, New York

\_\_\_\_\_, \_\_\_\_\_

**RECIPIENT:**

\_\_\_\_\_

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

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

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

**EXHIBIT A**

**ACKNOWLEDGMENT BY RELATED PARTY ENTITY**

The undersigned, \_\_\_\_\_ (name of authorized signatory), is the \_\_\_\_\_ (Title) of \_\_\_\_\_ (name of entity), a \_\_\_\_\_ (type of entity and jurisdiction of formation) (“**Related Party**”), located at \_\_\_\_\_ (address of entity), and is duly authorized to execute this Acknowledgment on behalf of the above Related Party. The above Related Party is involved with the functions of \_\_\_\_\_ (describe scope of work of Related Party) in connection with \_\_\_\_\_ (describe Project) for The Port Authority of New York and New Jersey (the “**Port Authority**”). I acknowledge and confirm that the above named Related Party has been provided with a copy of and shall be bound and shall abide by all of the terms, requirements and conditions set forth in the Non Disclosure and Confidentiality Agreement dated \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ (the “**Recipient**”) and the Port Authority (hereinafter the “**Agreement**”), and by the Port Authority Handbook described in the Agreement. Appropriate and responsible officers and employees of the Related Party have carefully read and understand the terms and conditions of the Agreement. The Related Party has notice and acknowledges that any breach or violation of such terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against such Related Party.

Signed: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL**

I, \_\_\_\_\_ (name of employee) (“**Related Party**”), am employed as a(n) \_\_\_\_\_ (job title) by \_\_\_\_\_ (name of employer). I have been provided with and have read the Non Disclosure and Confidentiality Agreement between \_\_\_\_\_ (the “**Recipient**”) and The Port Authority of New York and New Jersey (the “**Port Authority**”) dated \_\_\_\_\_, \_\_\_\_\_ (hereinafter the “**Agreement**”), and the Port Authority Handbook attached to the Agreement. I understand that because of my employer’s relationship with \_\_\_\_\_ (name of Recipient, or the Port Authority if Related Party Individual is an employee of Recipient), both my employer and I may be provided with access to, and/or copies of, sensitive security materials or confidential information. If it is required for me to review or receive Confidential Information, as it is defined in the aforementioned Agreement, I acknowledge that I will be bound by each and every term and provision contained therein, and that failure to do so may include, but is not limited to, the imposition of disciplinary action and sanctions, and/or the institution of legal action seeking injunctive relief, monetary and/or criminal penalties for violation of law and/or Port Authority policies and procedures, as well as for violation of federal and/or state regulations.

To the extent that I am currently in the possession of, or have previously come into contact with, marked information as it relates to the aforementioned Agreement, I agree to conform my handling procedures for Confidential Information to the practices and procedures set forth and defined herein, or risk loss of access to said Information, removal from said Project and/or subjecting myself to the aforementioned disciplinary actions and/or civil and criminal penalties.

Signed: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT B**

**BRIDGE AND ROADWAY PAVING 2009-2011**

**AGREEMENT ON TERMS OF DISCUSSION**

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

\_\_\_\_\_  
**(Company)**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Title)**

**(Date)** \_\_\_\_\_

