

MEMORANDUM OF UNDERSTANDING

between

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

and

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY

This **MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as an "MOU"), dated OCTOBER 19, 2012, is made by and between the CITY OF NEW YORK, acting through its **DEPARTMENT OF SMALL BUSINESS SERVICES** ("SBS") with offices located at 110 William Street, 7th Floor, New York, NY 10038 and **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** ("PANYNJ") with offices located at 225 Park Avenue South, New York, NY 10003 (collectively, the "Parties").

WITNESSETH:

WHEREAS, SBS, pursuant to Title 66, Chapter 11, subchapter B of the Rules of the City of New York ("City Rules"), is authorized to certify Minority- and Women-Owned Business Enterprises ("M/WBEs") for participation in the New York City procurement process; and

WHEREAS, PANYNJ, pursuant to Resolutions adopted by its Board of Commissioners on August 27, 1980, March 10, 1988, June 10, 1993, and June 24, 2004 undertakes to certify Minority- and Women-Owned Business Enterprises ("M/WBEs") for participation in the PANYNJ procurement process; and

WHEREAS, SBS and PANYNJ are mutually recognized partners that currently operate M/WBE programs which are similarly designed to assist in the growth and development of businesses owned and controlled by women and minorities as well as to provide technical assistance and contracting opportunities to certified M/WBEs; and

WHEREAS, the Parties share a desire to expand both the pool of qualified M/WBEs and to promote the participation of those businesses owned and controlled by women and minorities involved in procurement opportunities with the City and the PANYNJ; and

WHEREAS, SBS and PANYNJ acknowledge that the purpose of this MOU is to promote and encourage the participation of M/WBEs in the economic mainstream through the following two (2) collaborative efforts: (1) Establish an "Expedited M/WBE Certification Review Process" for the timely review by SBS and the PANYNJ of certain M/WBE Certification Applications described in this MOU; and (2) Establish a process for the simultaneous submission

of M/WBE Certification Applications to either SBS or PANYNJ. Both of the above-referenced processes are set forth below in this MOU; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1. TERM

This MOU shall have a term of three (3) years commencing on the date first written above (“Term”), unless sooner terminated or extended pursuant to Article 7 of this MOU.

ARTICLE 2. SCOPE OF GEOGRAPHIC MARKET COVERED BY MOU

- A. This MOU shall only apply to the following counties within New York State and the State of New Jersey (“Certifying Market Area”):
1. **New York State**. The certifying market area covered by this MOU shall be limited to the following counties in New York State: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk and Westchester.
 2. **New Jersey**. The certifying market area covered by this MOU shall be limited to the following counties in the State of New Jersey: Bergen, Hudson and Passaic.

ARTICLE 3. EXPEDITED M/WBE CERTIFICATION REVIEW PROCESS

- A. **SBS Expedited M/WBE Certification Review Process**
1. SBS shall conduct an expedited review of M/WBE Certification Applications submitted by business enterprises who have been certified by the PANYNJ and who are considered to be in “good standing” (*e.g.*, the business enterprise’s M/WBE Certification with PANYNJ has not expired) upon receipt of the following from Applicant:
 - a. Properly Completed SBS “M/WBE 1,2,3 Certification Application”;
 - b. Properly Completed SBS Certification Affidavit;
 - c. Copy of PANYNJ’s Letter of Certification; and
 - d. Copy of the PANYNJ’s Completed M/WBE Certification Application (excluding attachments).
 2. Once an Applicant has submitted the requested documents to SBS, SBS will verify that the Applicant is listed as a certified M/WBE using the “PANYNJ Online Directory of Certified M/WBEs.” Subsequent to online verification, SBS will conduct a review of all documentation submitted by Applicant in connection with this Expedited M/WBE Certification Review Process. SBS will notify Applicant of its determination with respect to M/WBE Certification with the City.
 3. All Applications submitted to SBS pursuant to the Expedited M/WBE Certification Review are subject to all applicable Federal, State and Local Laws, including SBS’ own rules (*e.g.*, City Rules) and procedures.
 4. The M/WBE Certification for all Applicants certified by SBS pursuant to the Expedited M/WBE Certification Review Process expires upon the expiration of

the firm's PANYNJ certification or three (3) years following the date of the commencement of its SBS M/WBE Certification, whichever is sooner.

5. Applicants that fail to meet any of the requirements set forth in this Section (A) of Article 3 for certification pursuant to the Expedited M/WBE Certification Review Process must complete and submit SBS' Standard M/WBE Certification Application for review of eligibility by SBS if they still would like to pursue M/WBE Certification with the City.

B. PANYNJ Expedited M/WBE Certification Review Process

1. For purposes of this MOU, the phrase "Expedited Review" shall mean that M/WBE applications to be reviewed by PANYNJ pursuant to the process described herein shall receive priority consideration. However, PANYNJ reserves the right to accord first consideration to M/WBE applications received by PANYNJ outside of the process described herein where considerations of operational efficiency compel a deviation from these procedures (*e.g.*, there exists an actual contract opportunity for an M/WBE Certification Applicant that would be prejudiced by undue delay in evaluating the application).
2. PANYNJ shall conduct an expedited review of M/WBE Certification Applications submitted by business enterprises who have been certified by SBS and who are considered to be in "good standing" (*e.g.*, the business enterprise's M/WBE Certification with SBS has not expired) upon receipt of the following from Applicant:
 - a. Properly Completed "PANYNJ M/WBE Fast Track Addendum";
 - b. Properly Completed PANYNJ Acknowledgement and Verification;
 - c. Copy of SBS' Letter of Certification; and
 - d. Copy of SBS' Completed M/WBE Certification Application (excluding attachments).
3. Once an Applicant has submitted the requested documents to PANYNJ, PANYNJ will verify that the Applicant is listed as a certified M/WBE using the "SBS Online Directory of Certified M/WBEs." Subsequent to online verification, the PANYNJ will conduct a review of all documentation submitted by Applicant in connection with this Expedited M/WBE Certification Review Process. PANYNJ will notify Applicant of its determination with respect to M/WBE Certification with PANYNJ.
4. All Applications submitted to PANYNJ pursuant to the Expedited M/WBE Certification Review are subject to all applicable Federal, State and Local Laws, including PANYNJ's own rules and procedures for such reviews.
5. The M/WBE Certification for all Applicants certified by PANYNJ pursuant to the Expedited M/WBE Certification Review Process expires upon the expiration of the business enterprise's SBS M/WBE Certification or three (3) years following the date of the commencement of its PANYNJ M/WBE Certification, whichever is sooner.
6. Applicants that fail to meet any of the requirements set forth in this Section (B) of this Article 3 for certification pursuant to the M/WBE Expedited M/WBE Certification Review Process must complete and submit PANYNJ's Standard

M/WBE Certification Application for review of eligibility by PANYNJ if they still would like to pursue M/WBE Certification with the PANYNJ.

ARTICLE 4. SIMULTANEOUS SUBMISSION OF M/WBE CERTIFICATION APPLICATIONS TO SBS AND THE PANYNJ

A. SBS Process for Standard M/WBE Certification Applications Submitted to the City with Completed PANYNJ Addendum Attached

1. If an Applicant is certified by SBS as an M/WBE and has completed the PANYNJ M/WBE Certification Application Addendum (“PANYNJ M/WBE Fast Track Addendum”), SBS shall forward a copy of the completed SBS Standard M/WBE Certification Application as well as a copy of the PANYNJ M/WBE Fast Track Addendum to the PANYNJ for review of Applicant’s certification eligibility. The PANYNJ reserves the right to request further documentation as part of the review process to determine program eligibility.
 - a. If the PANYNJ determines that the PANYNJ M/WBE Fast Track Addendum satisfies the requirements for M/WBE Certification pursuant to its standards and procedures, it shall notify the Applicant that its application for M/WBE Certification has been approved.
 - b. If the PANYNJ determines that the PANYNJ M/WBE Fast Track Addendum fails to satisfy the requirements for M/WBE Certification described above, it shall notify the Applicant that its application for M/WBE Certification has been denied.
2. If an Applicant completes and submits both the SBS Standard M/WBE Certification and the PANYNJ M/WBE Fast Track Addendum, but based on a review of the Applicant’s eligibility requirements SBS denies M/WBE Certification with the City, SBS shall notify the Applicant that its application for M/WBE Certification has been denied. The PANYNJ shall receive a copy of said notification of denial. In addition, SBS agrees to include the following language in the notification of denial sent to Applicants: *“Failure to certify with SBS may or may not preclude a business entity from eligibility for M/WBE Certification with the PANYNJ. An Applicant may choose to submit a properly completed PANYNJ Standard M/WBE Certification Application to the PANYNJ. Please note that as a result of this determination to deny your application for M/WBE Certification with the City, SBS **will not forward** your completed PANYNJ M/WBE Fast Track Addendum, enclosed with this notice, to the PANYNJ for review.”*

B. PANYNJ Process for Standard M/WBE Certification Applications Submitted to PANYNJ with Completed SBS Addendum Attached

1. If an Applicant is certified by PANYNJ as an M/WBE and has completed the SBS M/WBE Certification Application Addendum (“Addendum for M/WBE Certification with SBS”), PANYNJ shall forward a copy of the completed PANYNJ Standard M/WBE Certification Application (excluding attachments) as well as a copy of the completed Addendum for M/WBE Certification with SBS to SBS for review of Applicant’s certification eligibility.

- a. If SBS determines that the Addendum for M/WBE Certification with SBS satisfies the requirements for M/WBE certification pursuant to the City Rules, it shall notify the Applicant that its application for M/WBE Certification has been approved.
 - b. If SBS determines that the Addendum for M/WBE Certification with SBS does *not* satisfy the requirements for M/WBE Certification pursuant to the City Rules, it shall notify the Applicant that its application for M/WBE Certification has been denied.
2. If an Applicant completes and submits both the PANYNJ Standard M/WBE Certification and the Addendum for M/WBE Certification with SBS, but based on a review of the Applicant's eligibility requirements PANYNJ, denies M/WBE Certification with the PANYNJ, PANYNJ shall notify the Applicant that its application for M/WBE Certification has been denied. SBS shall receive a copy of said notification of denial. In addition, PANYNJ agrees to include the following language in the notification of denial sent to Applicants: *"Failure to certify with PANYNJ may or may not preclude a business entity from eligibility for M/WBE Certification with SBS. An Applicant may choose to submit a properly completed SBS Standard M/WBE Certification Application to SBS. Please note that as a result of this determination to deny your application for M/WBE Certification with the PANYNJ, PANYNJ **will not forward** your completed Addendum for M/WBE Certification with SBS, enclosed with this notice, to SBS for review.*

ARTICLE 5. REPORTING AND INFORMATION SHARING

- A. SBS agrees to provide the PANYNJ with each signed original PANYNJ M/WBE Fast Track Addendum previously forwarded to the PANYNJ for M/WBE Certification Eligibility Review pursuant to Article 4 of this MOU on a quarterly basis. Similarly, the PANYNJ agrees to provide SBS with each signed original Addendum for M/WBE Certification with SBS previously forwarded to SBS for certification pursuant to Article 4 of this MOU on a quarterly basis.
- B. SBS M/WBE Certification Quarterly Reporting Requirements
 1. SBS agrees to provide the PANYNJ, on a quarterly basis, with the following information pertaining to the total number of *Standard M/WBE Certification Applications* received by SBS with a completed *PANYNJ M/WBE Fast Track Addendum* attached:
 - a. Total Number of Applicants certified as an M/WBE with SBS (and completed *PANYNJ M/WBE Fast Track Addendum* forwarded to the PANYNJ for review).
 - b. Total Number of Applicants **denied** certification as an M/WBE with SBS (where completed *PANYNJ M/WBE Fast Track Addendum* was **not** forwarded to the PANYNJ for review), including a list of each Applicant denied M/WBE Certification by SBS.

2. SBS agrees to provide the PANYNJ, on a quarterly basis, with the following information pertaining to the total number of Addenda for M/WBE Certification with SBS forwarded to SBS by the PANYNJ for review.
 - a. Total Number of Applicants SBS certified as M/WBEs based on the *Addendum for M/WBE Certification with SBS* forwarded to SBS by the PANYNJ along with a copy of the completed the *PANYNJ Standard M/WBE Certification Application* submitted to the PANYNJ by Applicant, including a list of each Applicant certified as an M/WBE by SBS.
 - b. Total Number of Applicants SBS **denied** M/WBE certification based on the *Addendum for M/WBE Certification with SBS* forwarded to SBS by the PANYNJ, including a list of each Applicant denied M/WBE certification by SBS.

C. PANYNJ M/WBE Certification Quarterly Reporting Requirements

1. PANYNJ agrees to provide SBS, on a quarterly basis, with the following information pertaining to the total number of *Standard M/WBE Certification Applications* received by PANYNJ with a completed *Addendum for M/WBE Certification with SBS* attached:
 - a. Total Number of Applicants certified by PANYNJ as M/WBEs (and completed *Addendum for M/WBE Certification with SBS* forwarded to SBS for review).
 - b. Total Number of Applicants **denied** M/WBE Certification by PANYNJ (where completed *Addendum for M/WBE Certification with SBS* was **not** forwarded to SBS for review), including a list of each Applicant denied M/WBE Certification by PANYNJ.
2. PANYNJ agrees to provide SBS, on a quarterly basis, with the following information pertaining to the total number of *PANYNJ M/WBE Fast Track Addendum* forwarded to PANYNJ by SBS for review.
 - a. Total Number of Applicants certified as M/WBEs by PANYNJ based on *PANYNJ M/WBE Fast Track Addendum* forwarded to PANYNJ by SBS along with a copy of the completed *SBS Standard M/WBE Certification Application* submitted to the City by Applicant, including a list of each Applicant certified as an M/WBE by PANYNJ.
 - b. Total Number of Applicants **denied** M/WBE Certification by PANYNJ based on the *PANYNJ M/WBE Fast Track Addendum* forwarded to PANYNJ by SBS, including a list of each Applicant denied M/WBE certification by PANYNJ.

ARTICLE 6. ADDITIONAL PROVISIONS PERTAINING TO M/WBE CERTIFICATION

- A. The Parties agree not to release or sell any list of the other Party's certified firms to third parties, except as they may be respectively required to do so by law or by their freedom of information policies. The Parties shall promote each other's objectives and the

M/WBE Certification review processes set forth in this MOU at M/WBE outreach events and conferences, as appropriate, within the Certifying Market Area.

- B. This MOU shall apply to firms that are newly certified by either PANYNJ or SBS after the effective date of this MOU.
- C. The Parties shall disclose to each other any decision to revoke a firm's certification where a firm has been certified by both Parties through either of the processes set forth in this MOU.
- D. The Parties shall disclose to each other any decision to deny certification to a firm seeking certification through either of the processes set forth in this MOU. The parties expressly recognize that since PANYNJ and SBS have similar but separate programs, receipt by an Applicant of a denial letter from either PANYNJ or SBS does not preclude the Applicant from applying for certification from the other party.
- E. The Parties shall disclose to each other any changes to the statutes, regulations, forms or procedures governing, authorizing and/or regulating their respective M/WBE Programs and the processes set forth in this MOU.
- F. PANYNJ and SBS shall develop and promote an ongoing relationship between their respective staffs in order to improve and maintain effective communication between the agencies.
- G. PANYNJ and SBS shall collaborate on ways to develop and improve the M/WBE Certification process as well as ways to better assist business enterprise applicants in completing the M/WBE Certification process.

ARTICLE 7. RENEWAL, TERMINATION AND MODIFICATION

- A. Renewal. This MOU may be renewed for one (1) additional three (3)-year period upon the mutual written consent of both PANYNJ and SBS.
- B. Termination. This MOU may be terminated by PANYNJ or SBS at any time upon written notification to the other Party.
- C. Modification. This MOU may only be amended by the written consent of both PANYNJ and SBS.

ARTICLE 8. MISCELLANEOUS

- A. All notices required by this MOU shall be delivered by messenger or overnight delivery service to the following:

To PANYNJ:

Manager, Certification
Office of Business Diversity and Civil Rights
The Port Authority of New York and New Jersey
233 Park Avenue South, 4th Floor
New York, NY 10003

To SBS:

Anne Rascon
Deputy Commissioner, Division of Financial & Economic Opportunity
New York City Department of Small Business Services
110 William Street, 7th Floor
New York, NY 10038

- B. If any provision contained in this MOU is held to be unenforceable by a court of law or equity, this MOU will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this MOU unenforceable.
- C. The services provided under this MOU shall be performed in accordance with all applicable provisions of Federal, State, and Local Laws.
- D. This MOU contains all the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the Parties, nor to vary any of its terms.
- E. Neither Party will be deemed to be in violation of this MOU if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the MOU after the intervening cause ceases.
- F. Neither Party will assign, transfer or delegate any rights, obligations or duties under this MOU without the prior written consent of the other party. Such prior written approval will not be unreasonably withheld, delayed, or conditioned.
- G. Applicable sections of this MOU pertaining to reporting requirements, data sharing and/or the transfer of information between PANYNJ and SBS are subject to reconsideration pending anticipated changes to the reporting, data sharing and/or information sharing methods and/or systems currently being utilized by the Parties.
- H. The Parties hereto represent and warrant that the person executing this MOU on behalf of each party has full power and authority to enter into this MOU and that the parties are authorized by law to perform the services set forth in the MOU.
- I. Nothing in this MOU shall impair SBS from implementing and/or operating its M/WBE monitoring and compliance system.

IN WITNESS WHEREOF, this MOU shall be effective as of the date first above written.

By:

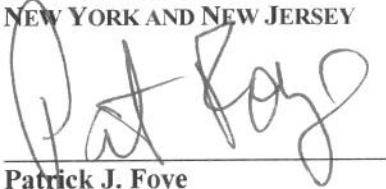
CITY OF NEW YORK
DEPARTMENT OF SMALL BUSINESS SERVICES



Andrew Schwartz
First Deputy Commissioner

By:

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY



Patrick J. Foye
Executive Director



Lash Green,
*Director, Office of Business Diversity
and Civil Rights*