



**State of Rhode Island
Department of Administration / Division of Purchases
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**Solicitation Information
January 10, 2017**

ADDENDUM # 5

Request for Proposals (RFP), Finalize RFP # 7554495PH2

**TITLE: Public-Private Partnership for the Providence Intermodal
Transportation Center and associated Private Development**

FINALIZED RFP: Tuesday, January 16, 2018 at 11:00 am (Local Time)

Attached Includes:

1. Updated RFQ, Finalize RFP schedule
2. Updated RFQ, Finalize RFP Exhibits

**Tom Bovis
Interdepartmental Project Manager**

*Interested parties should monitor this website, on a regular basis, for any
additional information.*

State of Rhode Island

RFQ, Finalize RFP # 7554495PH2 - Public-Private Partnership for the Providence Intermodal Transportation Center and associated Private Development

The Rhode Island Department of Administration, Division of Purchases has issued an Addendum, available at www.purchasing.ri.gov, notifying all interested parties of certain important information in connection with RFQ, Finalize RFP # 7554495PH2: Public-Partnership for the Providence Intermodal Transportation Center and associated Private Development. The Addendum issued today is attached.

➤ **RFQ, Finalized RFP Schedule Modifications**

The Finalized RFP due date is modified by striking: ~~FINALIZED RFP: Tuesday, January 16, 2018 at 11:00 am (Local Time)~~ and replacing such language with:

"FINALIZED RFP: January 19, 2018 at 11:00am (Local Time)"

➤ **RFQ, Finalized RFP ITP Exhibits and Forms Modifications**

Replace Instructions to Proposers, Draft Version 3 in its entirety with the attached Instructions to Proposers, Draft Version 4 with the following revisions:

- *Table of Contents*
- *Introduction*
- *Exhibit C PDA Preliminary Draft*
- *Exhibit D Technical Guidelines Preliminary Draft*
- *Exhibit F General Proposal Submittal Requirements*
- *Exhibit G-2 Technical Proposal Requirements*

**Public Private Partnership for the
Providence Intermodal Transportation Center and Associated Private Development
Draft Pre-Development Agreement**

dated [•], 201[•]

between

The State of Rhode Island,

acting by and through its Department of Administration

and

[●], a [•]

Draft Dated: January 9, 2018

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THIS PRE-DEVELOPMENT AGREEMENT (this "**Agreement**") is made on

[●]

BETWEEN:

- (1) **THE STATE OF RHODE ISLAND, ACTING BY AND THROUGH ITS DEPARTMENT OF ADMINISTRATION**, having a principal place of business at One Capitol Hill, Second Floor, Providence, Rhode Island 02908 (the "**State**"); and
 - (2) [●], a [●] organized under the laws of [●] (the "**Developer**")
- (together, the "**Parties**" and each a "**Party**").

RECITALS:

- (A) The State seeks in the future to enter into a project agreement with the Developer (the "**Project Agreement**") to (i) design, construct, finance, operate and maintain an intermodal transportation center (the "**PITC**") and its associated infrastructure improvements and any other related public improvements approved by the State under this Agreement, which may include relocation and retrofitting of the State Boiler House (collectively with the PITC, the "**Project**") and (ii) enter into a pre-development agreement (the "**Private Development PDA**") with the Developer to design, construct, finance, operate and maintain an associated commercial real-estate development (the "**Private Development**") adjacent to, or near, the Project.
- (B) On June 23, 2017, the State issued a Request for Qualifications for the Project.
- (C) On August 16, 2017, the Developer submitted a compliant SOQ in response to the Request for Qualifications.
- (D) On October 6, 2017, the State pre-qualified the Developer to respond to a request for proposal (the "**RFP**"), the first draft of which was issued on October 20, 2017 and the final draft of which was issued on [Date], 2018, which requires the Developer to submit an indicative proposal (the "**Indicative Proposal**") to the State for the Project;
- (E) From October 25, 2017 to [Date], the State and the Developer engaged in a thorough, interactive discussion process around the Project and this Agreement;
- (F) On [Date], the Developer submitted its Indicative Proposal and on [Date] the State notified the Developer that it determined that the Developer's Indicative Proposal was acceptable and that it was in the best interest of the State and that the Developer be selected to enter into this Agreement; and
- (G) The Parties desire to enter into this Agreement to establish the framework for a collaborative process to (i) further develop the Project's design, governmental approvals and stakeholder engagement process; (ii) enhance the ability of both Parties to refine and advance the Developer's Indicative Proposal to a fixed price lump sum committed Proposal for the Project, including a plan of finance and fully committed operations, maintenance and lifecycle plan of work (a "**Committed Proposal**"); (iii) establish a productive and interactive working relationship between the Parties and the Key Stakeholders; (iv) negotiate the terms and conditions of the Project Agreement; and (v) fulfill any other objectives and requirements set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions & Interpretations

Unless the context requires otherwise, capitalized terms in this Agreement will have the meanings given in Appendix 1 (*Definitions and Interpretations*) or the ITP.

2. EXCLUSIVE NEGOTIATIONS

2.1 Negotiating Period & Negotiating Principles

For a period of up to 6 months from the Agreement Date (the "**Negotiating Period**"), the Parties will negotiate the applicable deliverables under Section 3.1 (*Completion of Performance Milestones & Submittals*) under this Agreement in accordance with the following principles (the "**Negotiation Principles**"):

- (a) the State and Developer agree to negotiate diligently and in accordance with Good Faith;
- (b) the Program Agreements will be prepared by the State and will take into account Good Industry Practices, the Project Objectives, the Developer's Indicative Proposal, the Technical Guidelines and the RFP (the "**Base Documents**");
- (c) negotiations will be focused on those issues that agreement has not been reached between the Parties, and in such communication the Parties will follow reasonable negotiation procedures during any meetings, telephone conversations, and correspondence;
- (d) a Party will be deemed to lack Good Faith in negotiating where, among other reasons:
 - (i) the Party does not attend or actively participate in reasonably scheduled meetings between the Parties;
 - (ii) the Party insists on terms or conditions that conflict with the Project Objectives or Applicable Law; or
 - (iii) subject to (e) below, the Party, except where mutually agreed, requests a material deviation from the Base Documents;
- (e) reasonable changes to the terms in the Base Documents will be considered: (i) upon the occurrence of an Unanticipated Event that causes a material adverse effect on the Developer's ability to comply with the Base Documents or (ii) as may be accepted or proposed by the State, where determined by the State to be in its best interest; and
- (f) in the event that the Program Manager and Proposer Representative are unable to agree on certain issues during the negotiation process then they may agree, prior to formal dispute resolution, to refer the relevant issues to senior management of each Party to resolve by negotiation.

2.2 **Resourcing**

The State and the Developer will dedicate such time, personnel and resources reasonably necessary to finalize and execute the Program Agreements, and comply with the Performance Milestones and Submittals Schedule within the Negotiating Period, all in accordance with Good Industry Practice.

2.3 **Exclusive Negotiations**

During the Negotiating Period, the State and the Developer will work and negotiate exclusively with each other regarding the development of the Project and the Private Development and the State will not entertain proposals from or negotiate with any other person concerning the Project or the Private Development while this Agreement is effective. If negotiations with the Developer under this Agreement are unsuccessful and do not lead to approval and execution of the Program Agreements within the Negotiating Period and, pursuant to the terms and conditions of this Agreement, the State elects to terminate this Agreement, the State reserves the right to subsequently negotiate with any other third party for the development of the Project and the Private Development.

2.4 **Extension to Negotiation Period**

- (a) The Parties may agree to extend the Negotiating Period if the Program Agreements have not been completed or executed (as applicable) before the end of the Negotiating Period.
- (b) If the Developer has satisfied all of its requirements under this Agreement and there is a delay to achieving any date in the Performance Milestone and Submittal Schedule due to the occurrence of an Unanticipated Event then the Negotiating Period, and the applicable deadline will be extended by a reasonable period, as determined by the State in its sole and absolute discretion, to allow the Parties to fully perform the applicable requirement.

2.5 **Coordination and Cooperation**

(a) **Standards for Cooperation and Coordination**

The Parties agree to cooperate with each other, and to exercise reasonable efforts to cause their respective contractors to cooperate with each other, fairly, reasonably and in Good Faith in all respects in connection with this Agreement, and agree to identify and coordinate their efforts and interfere as little as possible with each other's activities being undertaken with respect to the Project. In particular, the Developer agrees to perform the PDA Work, any Additional PDA Work and the Site Work, (collectively, the "**Work**") under this Agreement in a manner and at times so that the State or any other contractor or State personnel who has work to perform, or contracts to execute, on behalf of the State, can do so without unreasonable delay.

(b) **Progress Meetings**

This coordination between the Parties must include, at a minimum, bi-weekly progress and review meetings with RIDOT and other agencies or Key Stakeholders as the State may determine. This coordination may also include field and office reviews of plans, documents or Submittals as required in connection with the Work. The Developer will be responsible for documenting all conferences and distributing meeting minutes, including lists of all attendees, to the State. The Developer must notify the Program Manager

reasonably promptly once it becomes aware of the necessity for any potential incremental change, variance or modification from the Developer's Indicative Proposal.

(c) **The Program Manager**

RIDOT's Director ("**Director**") or designee or successor will provide all authorizations or approvals required under this Agreement. The Director designates Julie Oakley as the program manager responsible for the day to day administration of this Agreement and the Project (the "**Program Manager**"). The Program Manager will be the Director's authorized representative to administer this Agreement.

(d) **State Obligations & Discretion**

Subject to the Developer performing its obligations under this Agreement, during the Negotiating Period, the State will use Good Faith efforts to:

- (i) provide the Developer with documents in the State's possession that would assist the Developer with the due diligence activities described in this Agreement;
- (ii) respond on a reasonably timely basis (depending on the volume and complexity of the submittal) to all submittals by the Developer made in compliance with this Agreement;
- (iii) cooperate with Developer to establish a reasonable process and time schedule, within the Negotiating Period, for meetings and negotiation of the Program Agreements; and
- (iv) cooperate with the Developer to assist in its compliance with the Performance Milestones and Submittals Schedule.

2.6 **Developer's Organization**

(a) **Key Project Staff**

The Key Project Staff set out in Appendix 8 (*PDA Personnel and Developer Key Project Staff*) will serve as the primary personnel to perform and oversee the Work. The Developer will also maintain directly or through subcontractors additional qualified professional personnel and technicians necessary to perform the applicable Work. The personnel must possess the qualifications required in the Project Requirements and Applicable Law.

(b) **Replacing Key Project Staff**

- (i) The Developer must obtain the State's prior approval, such approval not to be unreasonably withheld, prior to replacing any of its Key Project Staff. Qualifications for the replacement personnel must be greater than or equal to those of the replaced Key Project Staff member. The State must respond to the Developer's written notice regarding replacement of Key Project Staff within 7 days after the State receives the list of changes. If the State or its designated representative does not respond within that time, the changes will be deemed to be approved.
- (ii) If, during the term of this Agreement, the State is unsatisfied with the performance of any of the Developer's approved personnel or subcontractors, the State may

notify the Developer and give the Developer a time period to correct this performance. If following the applicable time period the State has determined that performance has not improved, the State may then require the Developer to reassign or replace such personnel or subcontractor. If the State notifies the Developer that its personnel or subcontractor must be replaced, the Developer will use its best efforts to complete such replacement within 10 Business Days from the date of the State's notice. Actions taken by the State under this provision will not relieve the Developer of its obligation to comply with this Agreement.

2.7 **Proposal Security**

- (a) The Developer must deliver Proposal Security with its Committed Proposal that:
- (i) is in an amount equal to 5% of the construction price payable to the Design-Builder;
 - (ii) has a term at least equal to the Committed Proposal Validity Period;
 - (iii) is issued by an Eligible Surety; and
 - (iv) is a bond substantially in the form set forth in Form H (*Form of Proposal Security*).
- (b) The Developer must promptly notify the State in writing if at any time any surety issuing Proposal Security fails to continue to be an Eligible Surety. Within 10 days of the earlier of:
- (i) the date of the State's receipt of this notice; and
 - (ii) the date the State notifies the Developer that at least one of its sureties is no longer an Eligible Surety,

the Developer must deliver new Proposal Security, to the State from one or more replacement Sureties. Upon the State's receipt of the replacement Proposal Security, the State will promptly return any of the existing non-compliant bonds to the Developer.

(c) **Non-Compliant Proposal Security**

Where the Developer has failed to submit compliant Proposal Security, the State may choose to:

- (i) reject any non-compliant Proposal Security; and
- (ii) terminate this Agreement for a Developer Default.

(d) **Entitlement to Draw on Proposal Security**

Following delivery of the Proposal Security, the State may draw on the Developer's Proposal Security, in whole or in part, if any of the following events occurs:

- (i) the Developer withdraws, repudiates or otherwise indicates in writing that it will not meet one or more commitments made in its Committed Proposal (except as otherwise permitted in this Agreement or by the State);
- (ii) the Developer fails to timely deliver a replacement or amended Proposal Security;
or

(iii) in accordance with Section 6.4 (*The State's Remedies*) Developer Default.

(e) **Return of Proposal Security**

(i) The State will retain the Proposal Security until the earliest to occur of:

(A) the Developer achieves Commercial Close;

(B) the State notifies the Developer that it does not accept the Committed Proposal and it has elected to terminate this Agreement in accordance with Section 6.2(a) (*Termination for Convenience*);

(C) the expiration of the Committed Proposal Validity Period.

(ii) Following the occurrence of any of the events in clause (i), the State will either:

(A) return the Proposal Security to the Developer within 5 Business Days of the occurrence of the relevant event; or

(B) at the Developer's request, retain the Proposal Security as part of the financial close security under the Project Agreement.

2.8 **Performance & Payment Bonds & Financial Close Security**

(a) If the Developer is required by the State to perform any Early Work under an Early Work Agreement, the Developer will be required to deliver a performance and payment bond in accordance with the terms of that Early Work Agreement.

(b) If the State awards the Project Agreement to the Developer, the Developer under the Project Agreement will be required to deliver (i) financial close security in an amount equal to the Proposal Security and (ii) performance and payment bonds in an amount equal to the total design-build contract price. The required terms of the performance and payment bonds and the financial close security will be specified in the Project Agreement.

2.9 **Payment of State's Transaction Costs**

The Parties acknowledge that the Project Agreement may include a requirement that, as part of Financial Close, the Developer will pay the State an agreed amount to reimburse the State for costs it has incurred in connection with the procurement of the Project and the Private Development, including the negotiation and entry into this Agreement and the Project Agreements.

3. **PERFORMANCE MILESTONES & SUBMITTALS SCHEDULE**

3.1 **Completion of Performance Milestones & Submittals**

(a) The Developer must diligently and timely achieve the Performance Milestones and satisfy the requirements of the Submittals Schedule in the Performance Milestones and Submittals Schedule in Appendix 2. As Performance Milestones are completed, the State will coordinate with the Developer to refine and further advance the level of specificity for achieving the remaining Performance Milestones.

- (b) The Performance Milestone and Submittal Schedule includes three separate phases which are broadly described below and are set out in more detail in the Performance Milestone and Submittal Schedule:
- (i) The "**Scope Development Phase**" which will consist of the following
- (A) the Parties will, among other things, participate in multiple collaborative dialogue meetings ("**CDMs**") to:
 - (aa) finalize the Performance Milestone and Submittals Schedule,
 - (bb) negotiate and finalize the GA Plan and CE Plan;
 - (cc) finalize the Committed Proposal Submittals Requirements. Appendix 3 (*Draft Committed Proposal Submittals Requirements (Technical)*) contains the draft technical submittals requirements for the Committed Proposal. The administrative and financial submittals requirements and the evaluation criteria for the Committed Proposal will be proposed by the State during the Scope Development Phase and will developed from the submittals requirements and evaluation criteria from the ITP;
 - (dd) refine the Project's scope; and
 - (ee) collaboratively develop and advance the Project Requirements;
 - (B) community and stakeholder engagement in coordination with the State;
 - (C) the State will issue a draft of the Project Agreement and the Developer will submit its initial comments on the Project Agreement prior to expiration of the Scope Development Phase;
 - (D) the Developer will submit an interim submission of its Committed Proposal (an "**ISoP**"), which will include a more advanced version of the design, pricing and financial plan included in its Indicative Proposal ("**ISoP # 1**");
 - (E) once received, the State will evaluate ISoP # 1 to determine whether ISoP #1 is (i) in compliance with the Base Documents, any State approved deviations and the requirements in this Agreement and (ii) in the State's best interest to proceed with such design and approach;
 - (F) prior to issuing any notice to proceed, if the State determines ISoP # 1 does not satisfy (E)(i), the State may request that the Developer modify ISoP # 1 and the Developer must re-submit ISoP #1 until the State approves ISoP # 1 and issues a notice to proceed to the Developer. In the notice to proceed, the State may include comments with respect to ISOP #1 that it requires the Developer to address during the Committed Proposal Phase and ISOP #2; and
 - (G) once the State approves ISoP #1 and issues a notice to proceed to the Developer, the Developer may advance to the Committed Proposal Phase. Where the Developer has complied with its obligations under this Agreement, but the State does not approve any submitted or re-submitted

ISoP #1, then the State may terminate this Agreement in accordance with Section 6.2(a) (*Termination for Convenience*) or request further modifications to the Developer's ISoP #1.

(ii) **Committed Proposal Phase:** The "**Committed Proposal Phase**" will commence upon the Developer's receipt of the above notification of approval of ISoP # 1 and will include:

- (A) further negotiation and finalization of the Project Agreement;
- (B) finalization of the Project Labor Agreement, to the extent one is determined to be required;
- (C) negotiation and finalization of any other agreements (e.g. guarantees, direct agreements, etc) as deemed necessary and appropriate by the Parties to implement the Project (collectively (A)-(C) the "**Program Agreements**");
- (D) initial Site Work (as described below);
- (E) the Developer will submit a second ISoP in accordance with the Submittals Schedule ("**ISoP # 2**");
- (F) the Developer will submit its Committed Proposal in accordance with Section 4.5 (*Committed Proposal Submission*) and the Committed Proposal Submittals Requirements; and
- (G) the State will evaluate the Developer's Committed Proposal in accordance with the evaluation criteria included in the Committed Proposal Submittals Requirements and will notify the Developer if it accepts and determines the Developer's Committed Proposal is in the best interest of the State. Where the Developer has complied with its obligations under this Agreement, but the State does not approve any submitted or re-submitted Committed Proposal, then the State may terminate this Agreement in accordance with Section 6.2(a) (*Termination for Convenience*) or request further modifications to the Developer's Committed Proposal.

(iii) **The Commercial Close Phase**

Upon receipt of the notification that the Developer's Committed Proposal is in the best interest of the State, the commercial close phase (the "**CC Phase**") will commence and will include the following:

- (A) the Developer's delivery, in accordance with the Submittals Schedule, of all conditions precedent to Commercial Close; and
- (B) finalization and execution of the Project Agreement and all other required Program Agreements.

(c) If the Parties have not signed the Program Agreements by the expiration of the Negotiating Period and the Negotiating Period has not been extended in accordance with this Agreement, then this Agreement will automatically terminate and be of no further force or effect, except as otherwise provided in this Agreement.

- (d) The State will endeavor to review and, where required, respond to submittals (including ISOP #1 and ISOP #2) within two weeks of receiving the relevant submittal from the Developer.

3.2 **Early Work**

During the Negotiating Period, to the extent requested by the State, the Developer will negotiate and finalize a separate Early Work Agreement establishing the terms and conditions for certain Early Work to be performed by the Developer prior to Commercial Close. All terms and conditions governing Early Work will be set out under the Early Work Agreement. The State may require the Developer to perform any Early Work which is appropriate, reasonable and necessary to deliver the Project in accordance with the Project Objectives.

3.3 **Private Development**

During the Negotiating Period the Parties will negotiate and finalize the Private Development PDA, which will include further detail on:

- (a) the Developer's rights and obligations to deliver the Private Development within a fixed period of time;
- (b) certain economic benefits to be delivered to the State, the City of Providence and the Developer;
- (c) any applicable labor and work requirements;
- (d) design and energy efficiency requirements; and
- (e) other principles establishing the framework for the Private Development.

The State will issue a draft of the Private Development PDA in accordance with the Performance Milestone and Submittal Schedule.

3.4 **Performance Milestones Relief**

The State reserves the right, in its sole discretion, to waive or extend the times for performance of the Work and achievement or completion of the Performance Milestones or Submittals for any reason and at any time (including for a breach by the State). The State may also condition the right to such waiver or extension on the Developer completing Additional PDA Work and achieving additional Performance Milestones or other conditions required by the State, in its sole discretion.

3.5 **Progress Reporting**

The Developer must submit to the State a written report every 30 days during the Negotiating Period describing the status of the Performance Milestones and Submittals Schedule.

4. THE WORK

4.1 Performance of the Work

(a) Performance Requirement

- (i) Unless otherwise provided under this Agreement, the Developer must diligently and in Good Faith perform all of the Work in accordance with this Agreement, the Project Requirements, Applicable Law, the Developer's Indicative Proposal, Good Industry Practice, and any written direction by the State. The Developer must also perform any other additional work not contemplated under this Agreement, but required by the State (the "**Additional PDA Work**"). Unless otherwise mutually agreed, the Developer will not be required to perform any such Additional PDA Work that materially increases the Developer's costs, burdens or risks during the Negotiating Period.
- (ii) The Developer must complete all Work no later than the relevant deadlines provided in the Performance Milestones and Submittals Schedule.

(b) Performance Standards

Where any provisions or requirements under this Agreement, the Project Requirements, Applicable Law, the Developer's Indicative Proposal, Good Industry Practice or any written direction by the State conflict, the provision that contains the most stringent standard will prevail, to the extent that those more stringent standards do not violate Applicable Law.

(c) At-Risk Work

The Developer will perform and complete the Work for no consideration other than (i) in the event of a termination of this Agreement, any Termination Payment that may be due and payable to the Developer or (ii) any amounts that might otherwise be paid under the Project Agreement for Work.

4.2 Site Access & Site Investigation/Validation

(a) Site Access & Site Investigation

Once the State has approved in writing the Developer's completion of any condition precedent to commencing Site Work, the State grants a limited nontransferable license to the Developer and its contractors, subcontractors, engineers, surveyors, attorneys, employees and any other authorized personnel or agents (collectively "**Advisors**") to enter onto the Project Site and make such reasonable investigations, studies and tests as the Developer deems necessary or advisable (collectively the "**Site Work**"). The Developer will conduct all Site Work strictly in accordance with the Project Requirements and the following procedures:

- (i) the Developer must not contact or test groundwater without the specific written consent of the State and must deliver to the State copies of all tests performed under this Agreement;
- (ii) confirm any and all matters which the Developer may reasonably desire to confirm with respect to the Project Site, including confirming the accuracy of any applicable

Available Documents, including geotechnical reports and archaeological studies, surveys, and environmental reports;

- (iii) ascertain and confirm the suitability of the Project Site for the Developer's and State's intended use;
 - (iv) deliver to the State a complete package of the foregoing due diligence materials and other information obtained as part of the Developer's Site Work;
 - (v) must be conducted during normal business hours, unless the State otherwise approves in writing, in its sole discretion;
 - (vi) at least 3 Business Days prior to accessing the Project Site, the Developer must provide to the State a written notice of both the Developer's intent and purpose for entering the Project Site and a general description of its activities while accessing the Project Site; and
 - (vii) a representative of the State will have the right, but not the obligation, at all times to monitor and inspect the Developer's performance of the Site Work.
- (b) While performing Site Work or otherwise accessing the Project Site under this Agreement, the Developer must ensure that no Developer-Related Entity nor any of their Advisors, employees, agents or subcontractors take any action which:
- (i) interferes with the use, occupancy or enjoyment rights of any tenants or occupants of on or around the Project Site or of such tenant's or occupant's employees, contractors, customers or guests or causes traffic or congestion in violation of the Project Requirements, except to the extent that such interference, traffic or congestion is unavoidable. Where interference, traffic or congestion is unavoidable the Developer must ensure that all reasonable steps are taken in accordance with Good Industry Practice (including communication and coordination with the affected stakeholders) to reduce and mitigate that interference, traffic or congestion;
 - (ii) causes injury or bodily harm to any person on or around the Project Site; or
 - (iii) causes damage to any property on or around the Project Site.

4.3 **Governmental Approvals & Stakeholder/Community Engagement**

(a) **Governmental Approvals**

- (i) **Responsibility for Governmental Approvals** – Subject to Section 4.3(a)(ii) the Developer will have the sole responsibility for obtaining all Governmental Approvals necessary to perform the Work. The State will provide reasonable and customary support to the Developer in obtaining Governmental Approvals, and will submit such Governmental Approvals, where required, for and on behalf of the Project.
- (ii) **Governmental Approvals Plan** – Unless otherwise approved by the State, prior to taking any action to obtain any Governmental Approvals, the Developer must first (i) update as necessary and relevant its Governmental Approvals Plan submitted with its Indicative Proposal and (ii) obtain the State's prior written

approval of such updated version of its Governmental Approvals Plan (the "**GA Plan**"). The State may make any reasonable modifications to the GA Plan as the State determines are consistent with the Project Objectives and are in its best interest. The Developer will use its best efforts to ensure that no actions by any Developer-Related Entity relating to the Project will or may adversely affect the State's relationship with any Governmental Authority. The Developer must follow any and all written directions issued by the State to the Developer with respect to Governmental Approvals, including, where (i) the State determines, at any time and for any reason, that it must intercede with respect to the GA Plan or any Governmental Authority and (ii) the State directs the Developer to cease all communications and interactions with any Governmental Authority.

(iii) **Communication** - Unless otherwise approved by the State:

(A) prior to contacting or submitting any documentation to a Governmental Authority, the Developer must submit such documents or anticipated communications for the State's prior approval, not to be unreasonably withheld; and

(B) the Developer may only submit documentation or communicate directly with a Governmental Authority if either (i) the State fails to respond to the Developer's submittal or request within 10 days of its receipt or (ii) the State has provided its written approval to such submittal or request.

(iv) **No Representation or Warranty** - The State has made no representation or warranty that the necessary Governmental Approvals to allow for the development of the Project can be obtained. Whenever the State is responsible for any Governmental Approval for the Project, the State will remain in an independent regulatory role with respect to such approval. Accordingly, no presumption exists that any of the Governmental Approvals required for the development of the Project (including those required by the State) will be issued by the appropriate Governmental Authority and the State's status as a Governmental Authority will in no way limit the obligation of the Developer to obtain approvals from any Governmental Authority that has jurisdiction over the Project.

(b) **Stakeholder Engagement**

The State may request the Developer to support the State in the coordination with Key Stakeholders and other entities, including other Governmental Authorities. Unless otherwise approved by the State, the Developer will only undertake such coordination upon direction by, and in partnership with the State. As the Project sponsor the State will maintain final decision-making authority with respect to matters concerning Key Stakeholders with input from the Developer, as appropriate.

(c) **Community Engagement**

(i) The Developer must (i) update its Community Engagement Plan (the "**CE Plan**") from the plan submitted with its Indicative Proposal and (ii) prior to implementing the CE Plan, present and obtain the State's prior written approval of the updated CE Plan. The CE Plan must include the Developer's updated proposed plan for conducting outreach to various community groups and stakeholders for educating and soliciting input from the public with respect to the Project, and for informing the

City Council, the Capital Center Commission, the Historical Preservation and Heritage Commission and other Governmental Authorities about the Project.

- (ii) The CE Plan must include an updated budget for publicizing the Project (e.g. mailers, brochures, and forums for educating the public), along with the Developer's strategy for utilizing various forms of traditional and non-traditional media to promote the Project and for keeping the appropriate Governmental Authorities apprised of the Project's development status.
- (iii) The State, in its sole discretion, may direct reasonable revisions or changes to the proposed CE Plan. The Developer will, subject to this Agreement, maintain a strong professional working relationship with the Key Stakeholders, the State's constituents, the public and any other relevant Governmental Authorities only in accordance with the approved and then current CE Plan.

4.4 **ISoP Submittal**

In accordance with the Performance Milestone and Submittals Schedule the Developer must submit two ISoPs in order to allow for the Developer and the State, prior to submittal of its Committed Proposal, to:

- (a) confirm a mutual understanding and approach to achieving the Project Objectives;
- (b) clarify any discrepancies or ambiguities regarding the Project Requirements; and
- (c) enable the State to review the Developer's further advancement of the Project's design, and:
 - (i) provide feedback and comments on these designs;
 - (ii) clarify any issues or ambiguities in this Agreement or the Project Requirements relating to the Project design concepts; and
 - (iii) enable the State to review interim financial information to assess whether the Project continues to represent the best interest of the State.

4.5 **Committed Proposal Submission**

(a) **Design Advancement**

The Developer must advance and further develop its conceptual design in accordance with the Performance Milestone and Submittals Schedule, the design submittals requirements and the design review process prescribed in the Technical Guidelines and the Project Requirements, as applicable. The Developer's design must be advanced to a sufficient stage of development to enable the Developer to submit a Committed Proposal for the design, construction, financing, operations and maintenance of the Project.

(b) **Committed Proposal**

- (i) The Developer's Committed Proposal must be submitted on an Open Book Basis, will be subject to the State's comments and may be subject to modification where reasonably requested by the State. The State will notify the Developer once it determines that the Committed Proposal is acceptable and in the State's best

interest and the Committed Proposal will be used as a basis for entering into the Project Agreement.

- (ii) Unless otherwise permitted under this Agreement or the Project Agreement, during the CC Phase the Developer cannot modify its Committed Proposal.

(c) **Financing Plan**

The Developer will be required to develop and submit, in accordance with the Committed Proposal Submittals Requirements, a plan of finance for the Project. The Developer's plan of finance will be subject to the State's prior written approval in accordance with the Performance Milestone and Submittals Schedule.

(d) **Validity Period**

- (i) The Committed Proposal will be valid for a period of 180 days commencing on the Committed Proposal Due Date ("**Committed Proposal Validity Period**").
- (ii) The Developer may elect or agree, in its discretion, to extend the validity of its Committed Proposal beyond the Committed Proposal Validity Period.
- (iii) If the Developer elects or agrees to extend the validity of its Committed Proposal beyond the Committed Proposal Validity Period, the Developer must provide an amended or replacement Proposal Security with a term at least to the end of the extended Committed Proposal Validity Period.

5. **CHANGES TO THE PROJECT & RETENTION OF DISCRETION**

5.1 **State Changes**

The State may require modifications or changes to the Project ("**State Changes**") from that described in the RFP, this Agreement, the Developer's Proposal or the Project Requirements, including, changes in response to the request, guidance or requirements of any Governmental Authority or Key Stakeholder, as a result of civic engagement, the occurrence of a Unanticipated Event, or if the State believes, in its sole and absolute discretion, such changes to be in the best interests of the State or the Project. The State will present the State Changes (except for State Changes resulting from civic engagement, which will be tracked and compiled by the Developer) to the Developer to incorporate into the Project. The State will present to the Developer a detailed description of each of the State Changes. The State will have sole and absolute discretion to incorporate State Changes into the Project for any reason and at any time. To account for any State Changes, the State, in its sole and absolute discretion, will permit modifications to the Developer's Indicative Proposal and Committed Proposal, the terms and conditions of this Agreement, the Project Requirements and any resulting Program Agreement(s) relating to the Project, such modifications may include changes to the cost and schedule for the Project to be equitably adjusted in accordance with any State Changes.

5.2 **Developer Changes**

- (a) The Developer may propose modifications or changes to the Project ("**Developer Proposed Changes**") from that described in the RFP, this Agreement, the Developer's Indicative Proposal or Committed Proposal or the Project Requirements, if such changes are (i) in response to the request, guidance or requirements of the Key Stakeholders or

any Governmental Authority (including the State), as a result of civic engagement, or in connection with the occurrence of a Unanticipated Event and (ii) approved by the State. The Developer must present, in accordance with Section 6.2(b) (*The State's Events of Default*), the Developer Proposed Changes to the State for approval by submitting a Developer Change Proposal. The State will have the sole and absolute discretion to approve or disapprove any Developer Proposed Changes for any reason. Upon approval of any Developer Change Proposal, the Parties will meet and confer to adjust the terms and conditions, as necessary, of this Agreement, the Project Requirements, the Developer's Indicative Proposal and Committed Proposal and any resulting Program Agreement(s); however, any such modifications will be subject to the State's approval, in its sole and absolute discretion.

- (b) In order to request a Developer Proposed Change, the Developer must, within 30 days of becoming aware of the necessity for such Developer Proposed Change, submit a written request that includes a sufficient level of detail for the State to be able to evaluate the reasonableness of the proposed adjustment, including:
- (i) the reason for the Developer Proposed Change;
 - (ii) any dates when a decision by the State is required;
 - (iii) any Governmental Approvals, or other consents or permits that will be required as a result of the Developer Proposed Change;
 - (iv) any implications the Developer Proposed Change may have on the Project Schedule and Project cost; and
 - (v) any other supporting documentation as may be reasonably requested by the State (collectively, a "**Developer Change Proposal**").

5.3 Retention of Discretion by the State

(a) **Retention of Discretion Committed Proposal and the Program Agreements**

The Parties acknowledge and agree that the State is reserving the right to exercise discretion as to all matters which, by law, the State is entitled or required to exercise in its sole and absolute discretion, including, but not limited to, the approval of the Program Agreements, the approval of the Developer's Committed Proposal, and approval of any and all plans, permits, financial plans and strategies, or any other acts or activities requiring the subsequent independent exercise of discretion by the State or any agencies or departments of the State. The Parties understand that the State has complete and unfettered discretion to reject and refuse the Committed Proposal and any Program Agreements.

(b) **Review and Approval of all Discretionary Actions**

The negotiation of the Program Agreements is subject to approval of the State and such approval will be conditioned upon the successful review and approval of all necessary findings and conclusions which the State is required to make by Applicable Law, including all necessary findings and determinations required under State environmental law, and state and local land use provisions. As to those matters, neither anything in this Agreement, or to be contained in the Program Agreements will obligate the State to

exercise its discretion in any particular manner, and any exercise of discretion required by Applicable Law, other than abuse of discretion, will not be deemed to constitute a breach of the State's duties under this Agreement.

6. DEFAULT AND REMEDIES

6.1 Default

(a) Developer Events of Default

The occurrence of any of the following (each, a "**Developer Default**") will constitute a default by the Developer after the expiration of the applicable cure period, if any:

- (i) the Developer fails to pay any sums due under this Agreement or to any Subcontractor or subconsultant, when due and payable (and not under good faith dispute) under such subcontract, within 30 days after written notice by the State, subconsultant or Subcontractor, as applicable, has been given to the Developer;
- (ii) the Developer fails to achieve any Performance Milestone by the applicable deadline and any conditions provided in any written notice of default delivered by the State to the Developer, and such failure is not remedied within 15 days;
- (iii) the Developer fails to negotiate the Program Agreements in accordance with the Negotiation Principles, and such failure is not remedied within 15 days;
- (iv) the Developer assigns this Agreement in breach of Section 8.18 (*Assignment*);
- (v) failure to perform or abide by any other provision of this Agreement or any other agreement with the State in connection with this Project, if such failure is not cured within 30 days after the State has delivered a default notice to the Developer. If the Developer Default cannot reasonably be cured within 30 days, the Developer will not be in default of this Agreement if the Developer diligently commences to cure the Developer Default in accordance with Good Industry Practice within the 30 day cure period and diligently and in Good Faith continues to seek to cure the Developer Default; provided that in no event (unless otherwise approved by the State, in its sole discretion) will the cure period exceed 50 days;
- (vi) either: (i) the filing by the Developer or a Developer Member of a petition to have the Developer or Developer Member adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by the Developer or a Developer Member for the benefit of creditors; or, (ii) the filing by or against the Developer or Developer Member of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of the Developer or Developer Member or any substantial part of Developer's or Developer Member's assets; or
- (vii) the occurrence of a "**Change of Control**" of the Developer or a Developer Member which means the sale, disposal or other transfer of more than 50% of the ownership interests (in one or more transactions), or the controlling interest with power to vote, in the Developer or a Developer Member (other than to any other

owner of the Developer or Developer Member or any subsidiary or affiliate of any owner of the Developer or Developer Member, including any fund or investment company having a common manager with such owner or its affiliates) without the consent of the State.

(b) **The State's Events of Default**

The occurrence of any of the following:

- (i) abandonment of the Project by the State; or
- (ii) any material breach of any material provision in this Agreement which adversely impacts the Developer's performance under this Agreement,

will constitute a "**State Default**" if such failure or breach under (i) or (ii) is not cured within 30 days after written notice has been given to the State by the Developer and there is no concurrent Developer Default; provided, that, if the State Default cannot reasonably be cured within 30 days, the State will not be in default of this Agreement if the State commences to cure the State Default within the 30 day period and diligently and in Good Faith continues to seek to cure the State Default.

6.2 **Termination**

(a) **Termination for Convenience**

The State, upon written notice to the Developer may terminate this Agreement for its convenience at any time and for any reason (a "**Termination for Convenience**"), such termination to be effective upon the Developer's receipt of the State's notice. The State will pay the Developer the Termination Payment under Section 6.3(a) (*Exclusive Remedies of the Developer*) for any Termination for Convenience.

(b) **Developer Default Termination**

Following the occurrence of a Developer Default including the lapse, where applicable, of its associated cure period, the State may terminate this Agreement following delivery of a termination notice to the Developer and may exercise its remedies under Section 6.4 (*the State's Remedies*). Upon a termination for a Developer Default, the Developer will not be entitled to any termination compensation or to make any other Claim of any kind, including for its losses or damages incurred under this Agreement.

(c) **State Default Termination**

Following the lapse of any applicable cure period for a State Default, the Developer may terminate this Agreement following delivery of a termination notice to the State. Any termination will not be effective until after the State has received written notification establishing the nature and reasons for such termination. The Developer will be entitled to a Termination Payment in accordance with Section 6.3 (*Developer Remedies*) if the Developer terminates this Agreement for a State Default and no Developer Default has occurred.

6.3 Developer Remedies

(a) Exclusive Remedies of the Developer

The Developer's exclusive remedies and Claims for its Losses for a State Default or Termination for Convenience under this Agreement are to receive a termination payment ("**Termination Payment**") from the State as provided below following termination of this Agreement.

- (i) If termination occurs before successful completion of Performance Milestone 1 (*Pre-Application Meeting and Approval of GA Plan and CE Plan*), the Developer will not be entitled to a Termination Payment.
- (ii) If termination occurs after successful completion of Performance Milestone 1 (*Pre-Application Meeting and Approval of GA Plan and CE Plan*), the Termination Payment will equal the reasonable actual out-of-pocket Allocable Costs incurred by the Developer not to exceed the following maximum amounts:
 - (A) where termination occurs after successful completion of Performance Milestone 1 (*Pre-Application Meeting and Approval of GA Plan and CE Plan*) but before successful completion of Performance Milestone 2 (*Submit ISoP # 1*), the maximum Termination Payment will be \$50,000 (subject to Section 6.3(a)(iii));
 - (B) where termination occurs after successful completion of Performance Milestone 2 (*Submit ISoP # 1*) but before successful completion of Performance Milestone 3 (*Submit ISoP # 2*), the maximum Termination Payment will be \$200,000 (subject to Section 6.3(a)(iii));
 - (C) where termination occurs after successful completion of Performance Milestone 3 (*Submit ISoP # 2*) but before successful completion of Performance Milestone 4 (*Submission of Committed Proposal*), the maximum Termination Payment will be \$500,000 (subject to Section 6.3(a)(iii)); or
 - (D) where termination occurs after successful completion of Performance Milestone 4 (*Submission of Committed Proposal*), the maximum Termination Payment will be \$1,000,000.

(iii) Where:

- (A) Section 6.3(a)(ii)(A), 6.3(a)(ii)(B) or 6.3(a)(ii)(C) applies; and
- (B) at the time of termination the Developer has completed the Site Work Performance Milestone,

the maximum Termination Payment referred to in Section 6.3(a)(ii)(A), 6.3(a)(ii)(B) or 6.3(a)(ii)(C) (as applicable), will be increased by an additional \$200,000.

(b) **Payment of Termination Payment**

- (i) The State, subject to Sections 6.3(b)(ii) and 6.6 (*Appropriations*), will pay the Termination Payment to the Developer within 30 days after the Developer satisfies its obligations under Section 6.5 (*Post-Termination or Expiration Obligations*).
- (ii) In no event will the Developer be entitled to a Termination Payment if a Developer Default has occurred and is continuing under this Agreement. Additionally, no Termination Payment will exceed the Developer's actual Allocable Costs incurred in connection with its performance of the Work as of the date of the termination of this Agreement.

(c) **Waiver**

Except for the Termination Payment, in no event will the Developer have the right, and the Developer expressly waives the right, to seek monetary damages or Claims of any kind (including but not limited to actual damages, incidental damages, economic damages, consequential damages, lost profits, or any other damages from the State for termination of this Agreement or for the occurrence of any State Default or any action related to this Agreement, nor will the Developer have any other right or remedy against the State, including any action for equitable relief or specific performance. The State shall be entitled to recover from the Developer all attorney fees and costs that it incurs in any steps that it takes (including bringing any legal proceedings) to enforce this Section 6.3(c).

6.4 **The State's Remedies**

If a Developer Default remains uncured or is deemed to be an incurable default by the State, the State in its sole and absolute discretion, may do one or more of the following:

- (a) terminate this Agreement upon written notice to the Developer as provided above;
- (b) prior to receipt of the Proposal Security, seek to enforce the State's rights under this Agreement and Applicable Law, including the Developer's indemnity obligations;
- (c) following receipt of the Proposal Security, draw on the Developer's Proposal Security or seek to enforce the State's rights under Applicable Law, including the Developer's indemnity obligations, as determined in the State's sole and absolute discretion; and
- (d) enforce its right under Section 6.5 (*Post-Termination or Expiration Obligations*).

The foregoing remedies are not exclusive, but will be cumulative with any remedies now or later allowed by Applicable Law.

6.5 **Post-Termination or Expiration Obligations**

(a) **Work Product**

Upon termination or expiration of this Agreement, the Developer will, within 15 days of written notice from the State and without cost to the State:

- (i) satisfy all outstanding fees relating to the Work Product and Intellectual Property that are then due and payable or will become due and payable for the Work rendered by the Developer, any of the Developer Project Consultants or any other

Developer-Related Entity up to the date of withdrawal, abandonment, termination, or expiration, as prescribed above, and provide written evidence of this satisfaction to the State;

- (ii) assign to the State, by way of legally binding instruments, all of the Developer's existing rights and interest in the Work Product and Intellectual Property, and
- (iii) deliver or have delivered from the appropriate parties all Work Product and Intellectual Property to the State in their native file format.

(b) **Ownership of Work Product**

Upon termination or expiration of this Agreement,:

- (i) the State will own all rights, title and interest in the Work Product (free and clear of all Claims, liens, encumbrances, and security interests); and
- (ii) the State will own all Intellectual Property in the Work Product.

If requested by the State, the Developer must (at no cost to the State) promptly execute all documents and perform all other acts that the State determines may be necessary or appropriate (if any) to ensure that the State's right, title and interest in the Work Product are protected and enforceable.

(c) **Permitted Uses of Work Product**

The Developer acknowledges that as a result of the rights conferred on the State under this Section 6.5 (*Post-Termination or Expiration Obligations*), without limiting any other rights the State may have, the State may use the Work Product without any obligation to notify, or seek permission from, the Developer.

Upon termination of this Agreement, the Developer and each Developer-Related Entity will be deemed to waive and release the State from any claims of proprietary rights or interest by the Developer or any other Developer-Related Entity in the Work Product and Intellectual Property, and the Developer agrees that the State may utilize any or all of the Work Product and Intellectual Property for any purpose, including pursuing the same or a similar project with another party.

(d) **No warranty with respect to Work Product**

- (i) Subject to Section 6.5(d)(ii):
 - (A) the Developer makes no warranty or representation, express or implied, regarding the Work Product's fitness for any purpose;
 - (B) the State acknowledges that the Work Product may be incomplete and may require additional development to be completed; and
 - (C) other than as set forth in Section 5.1, the Developer shall not be liable for any Losses incurred by the State arising out of the use of the Work Product and shall not be liable for Losses arising out of injury or damage to persons or property arising out of the Work Product.

- (ii) If the Developer enters into the Project Agreement, Section 6.5(d)(i) will not affect any representations, warranties, obligations and liabilities of the Developer under the Project Agreement or an Early Work Agreement with respect to its Work Product.

(e) **Enforcement**

If the Developer has failed to fully comply with the requirements of this Section 6.5 (*Post-Termination or Expiration Obligations*), the State may withhold any Termination Payment due to the Developer or pursue any other remedy available at law, or under this Agreement, to enforce the Developer's compliance with this Section 6.5 (*Post-Termination or Expiration Obligations*) and this Agreement. Any Losses incurred by the State through exercising its rights under this provision will be deducted from any Termination Payment due and payable to the Developer.

6.6 **Appropriations**

- (a) The State's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Rhode Island State General Assembly, paid into the treasury of the State, and encumbered for the purpose of this Agreement. The State does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not create a multiple-fiscal year direct or indirect debt or financial obligation of the State.
- (b) The State must make all payments under this Agreement in accordance with the obligation set forth under Section 6.6(a). The State has no obligation to make payments from other sources or issue additional bonds to satisfy these payments. The State is not under any obligation to make any future encumbrances or appropriations for this Agreement, nor to amend this Agreement to increase any of the Termination Payment amounts set out above.

7. **STATE REQUIREMENTS**

7.1 **RIDOT Standards**

RIDOT-issued standards and guidelines will apply to the Work, except as otherwise expressly provided in this Agreement or as specifically approved in writing by the State.

7.2 **Conflict of Interest**

The Developer agrees that as of the Indicative Proposal Due Date the Developer has disclosed to the State in writing all organizational conflicts of interest of the Developer and its Developer-Related Entities, of which the Developer was actually aware, and between the Indicative Proposal Due Date and the date of this Agreement, the Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to the Developer or its Developer-Related Entities or other related entities identified in its Indicative Proposal that have not been approved in writing by the State. For the purpose of this Section 7.2 (*Conflict of Interest*), "organizational conflict of interest" means a conflict of interest that the Developer was required to disclose to the State in accordance with the ITP.

7.3 Labor Harmony and Prevailing Wages

- (a) The Developer must ensure labor harmony during all phases of the Project, including construction and any reconstruction. Among other remedies, failure to maintain labor harmony will be grounds for termination of this Agreement for default. The Developer must require that prevailing wages be paid for all Work in accordance with Applicable Law.
- (b) The Developer must require prevailing wages to be paid for labor performed on the Project in accordance with the requirements of R. I. Gen. Laws Chapter 37-13. In addition, the Developer must provide certified weekly payroll reports that affirm that all applicable employees working on the Project have been paid wages in accordance with the prevailing wage rate requirements and maintain a certified prevailing wage daily log at the Project Site.

7.4 Insurance Requirements¹

- (a) Professional Liability Insurance
- (b) Workers Compensation
- (c) Automobile Insurance
- (d) General Liability

7.5 Nondiscrimination

The Developer and its Developer-Related Entities must not discriminate on the basis of race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin in the performance of the Work. Failure to carry out this requirement is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the State deems appropriate.

8. GENERAL PROVISIONS

8.1 Developer Representations & Warranties

The Developer represents and warrants to the State as follows:

- (a) **Existence and Good Standing**

The Developer is a [●] duly organized, validly existing and in good standing under the laws of [●].

- (b) **Good Standing and Qualification**

The Developer is in good standing and qualified to do business in Rhode Island.

- (c) **Power and Authority**

¹ More detailed insurance requirements will be specified before entry into this Agreement, but it is envisaged they will include these insurances.

The Developer has the power and authority to execute, deliver and perform its obligations under this Agreement.

(d) **Authorization**

- (i) The execution, delivery and performance of this Agreement has been (or will be) duly authorized by all necessary [corporate]/[limited liability company] action of the Developer.
- (ii) Each Person executing this Agreement on behalf of the Developer has been (or at the time of execution will be) duly authorized to execute and deliver this Agreement on behalf of the Developer.

(e) **Execution**

This Agreement has been (or will be) duly executed and delivered by the Developer.

(f) **Enforceability**

This Agreement constitutes (or at the time of execution and delivery will constitute) a legal, valid and binding obligation of the Developer, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(g) **No Contravention**

The execution, delivery and performance by the Developer of this Agreement does not (and at the time of execution will not) conflict with or result in a default under or a violation of:

- (i) the Developer's organizational documents;
- (ii) any other material agreement or instrument to which the Developer is a party or which is binding on the Developer or any of its assets; or
- (iii) any Applicable Law or court or judicial orders, decrees or actions.

(h) **No Litigation**

There is no action, suit, proceeding, investigation or litigation pending or, to the Developer's knowledge, threatened that:

- (i) could reasonably be expected to have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement;
- (ii) challenges either the Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement; or
- (iii) challenges the authority of the Developer's representative executing this Agreement.

(i) **No Developer Default**

No Developer Default has occurred and is continuing.

(j) **Licenses, Skill and Expertise**

The Developer and all Developer-Related Entities have all required authority, license status, professional ability, skills and capacity (as applicable and necessary) to perform the Work.

(k) **Applicable Law**

The Developer has familiarized itself with the requirements of all Applicable Laws and the conditions of any required Governmental Approvals. The Developer has no reason to believe that any Governmental Approval required to be obtained by the Developer is unlikely to be granted in due course and remain in effect so as to enable the Work to proceed in accordance with this Agreement.

8.2 **State Representations and Warranties**

The State represents and warrants to the Developer that:

(a) **Existence**

RIDOT and RIDOA are validly existing departments of the government of the State and have the requisite authority to carry on their present activities and those proposed under this Agreement.

(b) **Power and Authority**

The State has the power and authority to execute, deliver and perform its obligations under this Agreement.

(c) **Authorization**

(i) The execution, delivery and performance of this Agreement has been (or will be) duly authorized by all necessary action of the State.

(ii) Each Person executing this Agreement on behalf of the State has been (or at the time of execution will be) duly authorized to execute and deliver this Agreement on behalf of the State.

(d) **Execution**

This Agreement has been (or will be) duly executed and delivered by the State.

(e) **Enforceability**

This Agreement constitutes (or at the time of execution and delivery will constitute) a legal, valid and binding obligation of the State, enforceable against it in accordance with its terms.

(f) **No State Default**

No State Default has occurred and is continuing.

8.3 Indemnifications by the Developer

- (a) The Developer will release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss or expense (including for attorney fees, court costs and other fees and costs of litigation) arising from any claims (including claims, demands, causes of action, suits, judgments, investigations, legal or administrative proceedings and demands) arising out of, relating to or resulting from:
- (i) the breach or alleged breach of any provision of this Agreement by any Developer-Related Entity;
 - (ii) the failure or alleged failure by any Developer-Related Entity to comply with Applicable Law or Governmental Approvals (including any applicable environmental laws or laws regarding hazardous materials management);
 - (iii) any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to the State or another Indemnified Party pursuant to this Agreement;
 - (iv) the performance of the Work;
 - (v) the act or omission of any Developer-Related Entity in or associated with performance of the Work or in connection with this Agreement;
 - (vi) any and all claims by any Governmental Authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Developer-Related Entity with respect to any payment for the Work made to or earned by any Developer-Related Entity;
 - (vii) any and all stop notices or liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or lien, and any other liability to subcontractors for failure to pay sums due for their work or services; provided, however, that pursuant to R.I. Gen. Laws § 34-28-31, mechanics liens may not be placed against the Project;
 - (viii) any actual or threatened release of hazardous materials by a Developer-Related Entity;
 - (ix) the claim or assertion by any other:
 - (A) State contractor or contractor that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by such other State contractor or contractor, or failed to cooperate reasonably with such other State contractor or contractor, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work; or

- (B) State contractor or contractor that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by such other contractor or contractor, so as to cause inconvenience, disruption, delay or loss, to the extent such claim arises out of the act or omission, negligence, breach or misconduct of any Developer-Related Entity;
 - (x) the Developer's performance of, or failure to perform, the obligations under any utility agreement, or any dispute between contractor and a Utility Company as to whether work relating to a utility adjustment constitutes a betterment;
 - (xi) any Developer-Related Entity's breach of or failure to perform an obligation that the State owes to a third person, including Governmental Authorities, under law or under any agreement between the State and a third person, where the State has delegated performance of the obligation to the Developer under this Agreement or acts or omissions that render the State unable to perform or abide by an obligation that the State owes to a third person, including governmental entities, under any agreement between the State and a third person, where the agreement was expressly disclosed to the Developer;
 - (xii) the fraud, bad faith, arbitrary or capricious acts, or violation of law by any Developer-Related Entity in or associated with the performance of its obligations under this Agreement or the Project Agreements;
 - (xiii) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of:
 - (A) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of this Agreement, project management plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts;
 - (B) the intentional misconduct or negligence of any Developer-Related Entity;
or
 - (C) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity;
 - (xiv) errors, inconsistencies or other defects in the design or construction of the Project or of utility adjustments included in the Work; and
 - (xv) any claim by a Developer-Related Entity arising out of, relating to, or resulting from the performance by the State of material inspection and testing services pursuant to this Agreement.
- (b) In addition to any other remedies the State may have under this Agreement or Applicable Law, the State will have the right to withhold from any amounts otherwise payable to the Developer under this Agreement, such amount as may be required to cover any claims under this this Section 8.3.

(c) **Exclusions from Indemnity**

Subject to the releases and disclaimers in this Agreement, the Developer's indemnity obligations under this Section 8.3 will not extend to any third party loss to the extent caused by:

- (i) the negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party;
- (ii) the State's breach of any of its obligations under this Agreement; or
- (iii) an Indemnified Party's material violation of any Applicable Laws or Governmental Approvals.

(d) **Developer-Related Entity Claims**

The indemnification obligations under this Section 8.3 will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or its Developer-Related Entities under workers' compensation, disability benefit or other employee benefits laws.

(e) **Third Parties**

For purposes of this Section 8.3, "third party" means any person or entity other than an Indemnified Party and the Developer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party that is within the scope of the indemnities and is not covered by the Indemnified Party's worker's compensation program.

8.4 **Release**

To the maximum extent permitted by law, the Developer releases and discharges the State from any and all duty and obligation to cause permitting, relocation of utilities, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project or the Project Site by the Developer to satisfy the standards and requirements provided in this Agreement, except for the State's duties and responsibilities expressly provided in this Agreement.

8.5 **No Relief from Responsibility**

No rights of the State described in Section 8.3 (*Indemnifications by the Developer*), no exercise or failure to exercise such rights, no failure of the State to meet any particular standard of care in the exercise of such rights, no issuance of permits or certificates of completion or acceptance and no final acceptance will:

- (a) relieve the Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;
- (b) relieve the Developer of any of its obligations or liabilities under this Agreement;
- (c) be deemed or construed to waive any of the State's rights and remedies under this Agreement; or

- (d) be deemed or construed as any kind of representation or warranty, express or implied, by the State.

8.6 Right to Rely

Notwithstanding the provisions of Section 8.4 (*Release*) and Section 8.5 (*No Relief from Responsibility*), the Developer will be entitled to rely on specific written deviations to this Agreement provided and authorized by the State in writing and in accordance with the terms and conditions of this Agreement.

8.7 Rhode Island Law; Compliance with Laws & Dispute Resolution

This Agreement will be governed and construed in accordance with the laws of the State of Rhode Island. The Developer must comply with, and ensure that all subcontractors comply with, all requirements of all Applicable Laws. In the event of any dispute arising under this Agreement or the Project Agreements, the State Purchasing Agent appointed pursuant to the provisions of the State Purchases Act, R. I. Gen. Laws § 37-2-1 et seq. will serve as the initial decision maker in accordance with the procedures established by the Rhode Island Department of Administration and the provisions of the State Purchases Act and the State of Rhode Island Procurement Regulations. For any dispute not resolved by such procedures, the method of dispute resolution will be determined in accordance with the provisions of the State Purchases Act, the Public Works Arbitration Act, R. I. Gen. Laws §§ 37-16-1 et seq., the Administrative Procedures Act, R. I. Gen. Laws §§ 45-35-1 et seq., and the State of Rhode Island Procurement Regulations.

8.8 Examination of Records

The Developer must keep, pursuant to generally recognized accounting principles, records of the Developer's direct personnel, the Developer and reimbursable expenses pertaining to the Project and records of accounts between the State and Developer. Developer agrees that the Director and the Auditor of the State or any of their duly authorized representatives will have access to and the right to examine any of Developer's books, documents, papers and records involving transactions related to this Agreement until the expiration of three years after the final payment under this Agreement (or, if applicable, final payment under the Project Agreement). This access and right to examine exists without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program. Developer, upon request by the Director, Auditor of the State, or any of their duly authorized representatives will make these books and records available for examination and copying in Providence, Rhode Island.

8.9 No Gift or Dedication

- (a) Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Project, Project Site, or Work to the State or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Project Site, Site Work, or Work except as expressly set forth in this Agreement.
- (b) The Developer must not, other than as provided by Applicable Law, directly or indirectly, give, offer or promise anything of value to any present or former State employee, for or because of any official act performed or to be performed by the present or former State employee.

8.10 Use of Police and Other Powers

Nothing in this Agreement limits the authority of the State to exercise its regulatory, statutory and police powers granted by law, including its powers of eminent domain with respect to all or any part of the Project, the Project Site and any of the Developer's rights under this Agreement.

8.11 No Third Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward, any person or entity not a party to this Agreement, except rights expressly contained in this Agreement for the benefit of the Indemnified Parties.

8.12 Notices, Demands and Communications Between the Parties

(a) Notices under this Agreement must be in writing and:

- (i) delivered personally;
- (ii) sent by certified mail, return receipt requested;
- (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
- (iv) sent by e-mail communication,

to those persons designated by the Developer and the State at any time.

(b) In addition, copies of all notices to proceed and suspension, termination and default notices forwarded by the State or the Developer must be delivered to the following persons:

To the State:

With copy to:

To the Developer:

With copy to:

(c) All communications to the State must be clearly marked to identify this Agreement and the Project name and location. Subject to clause (d), below, notices will be deemed received when actually received in the office or e-mail address of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery.

(d) Notices sent by email after 4:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. will be deemed received on the first Business Day following delivery.

- (e) The Developer's representatives must be available at all reasonable times for consultation with the State. The Developer must forward a copy of all written correspondence pertaining to the Project between the Developer and any Utility Company and any representative of any Governmental Authority to the Person or Persons designated by the State.

8.13 **Non-liability of State Officials and Employees**

No officer, official, employee, consultant, agent or contractor of the State will be personally liable to the Developer in the event of any default or breach by the Developer or the State for any amount which may become due to the Developer, or upon any obligations prescribed by the terms of this Agreement.

8.14 **Waivers and Amendments**

- (a) This Agreement may be amended only by a written instrument duly executed by the Parties. No oral contract or implied covenant will be held to vary the terms of this Agreement, any statute, law or custom to the contrary notwithstanding.
- (b) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the State and the Developer agree to negotiate in Good Faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes of those provisions to the extent practicable, though neither Party is obligated to agree to any amendment or replacement that would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.
- (c) No waiver by any Party of any right or remedy under this Agreement will be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one Party to any act by the other Party requiring such consent will not be deemed to render it unnecessary for any Party to obtain consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (d) No act, delay or omission done, suffered or permitted by one Party or its agents will be deemed to waive, exhaust or impair any right, remedy or power of such Party under this Agreement, or to relieve the other Party from the full performance of its obligations under this Agreement. No custom or practice between the Parties in the administration of the terms of this Agreement will be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of this Agreement.
- (e) No waiver of any term, covenant or condition of this Agreement will be valid unless in writing and signed by the obligee Party.

8.15 **Further Assurances**

Each Party to this Agreement will promptly execute and deliver to other Party all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the obligations of the Parties under this Agreement.

8.16 **Counterparts**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.17 **Severability**

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either Party under this Agreement, is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected by that holding and each other term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. It is the intention of the Parties to this Agreement, and the Parties agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the Parties in Good Faith will:

- (a) promptly meet and negotiate substitute clauses or provisions that will, to the greatest extent legally permissible, effect the original intent of the Parties; and
- (b) if necessary or desirable, apply to the court that declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations.

8.18 **Assignment**

- (a) Subject to the limitations of this Section 8.18, this Agreement will be binding upon and will inure to the benefit of the Parties to this Agreement and their respective legal successors and permitted assigns, and wherever a reference in this Agreement to any of the Parties to this Agreement, such reference also will be deemed to include, wherever applicable, a reference to the successors and permitted assigns of such Party, as if in every case so expressed.
- (b) The Developer may not, without the prior written consent of the State, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise assign this Agreement and/or encumber its rights or interests under this Agreement.
- (c) The State may transfer and assign its interests in the Project and this Agreement to any other Governmental Authority as permitted by Applicable Law, provided that the successor or assignee has assumed all of the State's obligations, duties and liabilities under this Agreement then in effect, and has provided the Developer with reasonable assurance of its legal authority and financial capacity to honor and perform the same.

8.19 **Survival²**

All covenants, agreements, representations and warranties made in or pursuant to this Agreement will be deemed continuing and made at and as of the date of this Agreement and at and as of all other applicable times during the course of the Project. All covenants, agreements, representations and warranties made in or pursuant to Sections [____] of this Agreement will survive the expiration or earlier termination of this Agreement and will not be waived by the execution and delivery of this Agreement, by completion of construction, by any investigation by the State or by any other event except a specific written waiver by the Party against whom waiver is asserted.

8.20 **Headings**

² **NTD**: Specific Sections to be updated in a subsequent later draft.

The captions of the sections of this Agreement are inserted solely for convenience. Under no circumstances is any heading to be treated or construed as part of this Agreement, except to the extent that the provision cannot be understood without the caption.

8.21 Approvals Under this Agreement

In all cases where approvals or consents are required to be provided under this Agreement by the State, the Developer or other Parties to this Agreement, such approvals or consents will not be withheld unreasonably except in cases where a different standard (such as sole or absolute discretion) is specified. In cases where sole discretion is specified, the decision will not be subject to dispute resolution under this Agreement.

8.22 Entire Agreement

This Agreement constitutes the entire and exclusive contract between the Parties relating to the specific matters covered in this Agreement. All prior or contemporaneous oral or written agreements, understandings, representations or practices relative to the foregoing are superseded, revoked and rendered ineffective for any purpose.

[SIGNATURE PAGES FOLLOW]

Appendix 1

Definitions

Section 1. Definitions

Advisors is defined in Section 4.2(a) of this Agreement.

Agreement Date means the date that this Agreement is duly executed and delivered by both Parties.

Allocable Costs means:

- (a) for services performed using Developer personnel, materials and equipment, the sum of:
 - (i) an amount equal to the reasonable fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus
 - (ii) the reasonable cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus
 - (iii) reasonable and documented out-of-pocket costs and expenses of each employee (including travel, meals, lodging costs, auto allowances, MIS and other miscellaneous costs), subject to any limitations and requirements on such costs and expenses set forth in the State's travel guidelines; plus
 - (iv) the costs for the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc., or its successors, or at any lesser hourly rate the State may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, provided, that if rates are not published for a specific type of tool or equipment, the State will establish a rate for it that is consistent with its cost and use in the industry; and
- (b) if the services are performed by a contractor or subcontractor under contract with the Developer or one of its subcontractors, the sum of:
 - (i) all reasonable amounts owing under such contract; provided, that if the contract is a contract with an Affiliate of the Developer or the applicable subcontractor, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus
 - (ii) the amount to reimburse the Developer or subcontractor for the actual and documented reasonable costs of administering the contract, but not to exceed 5% of the value of the contract; plus
 - (iii) all reasonable costs the Developer or subcontractor reasonably incur to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is with an Affiliate of the Developer or the subcontractor.

Applicable Law means any:

- (a) statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process); or
- (b) any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority,

that is applicable and binding with respect to the Project Site, the Work or any relevant person performing or responsible for performing the Work, whether taking effect before or after the Agreement Date, in each case as amended, revised, supplemented or otherwise modified from time to time.

Base Documents is defined in Section 2.1(b) of this Agreement.

Change of Control is defined in Section 6.1(a)(vii) of this Agreement.

Commercial Close means the date when the Parties have duly signed and delivered the Project Agreement.

Committed Proposal is defined in the Recitals.

Committed Proposal Due Date means the due date for submitting the Committed Proposal as set forth in the Performance Milestones and Submittals Schedule, as may be extended in accordance with this Agreement.

Committed Proposal Submittals Requirements means the administrative, technical and financial submissions to be delivered by the Developer for its Committed Proposal and the evaluation criteria for the Committed Proposal, which will be finalized in accordance with Section 3.1(b)(i)(A)(cc).

Community Engagement Plan means the Community Engagement Plan submitted by the Developer with its Indicative Proposal.

Developer Default is defined in Section 6.1(a) of this Agreement.

Developer Member means each of [Insert Marsella Development Corp Entity] and [Insert Plenary Entity]³

Developer-Related Entity means each of the following:

- (a) The Developer
- (b) The Developer Members
- (c) The Design-Builder
- (d) The DB Members
- (e) The OM&C Contractor

³ **NTD**: To the extent any entity other than those identified in the Developer's SOQ is signing the PDA, the State may request the Developer deliver a guarantee from the entity pre-qualified by the State under the RFQ.

- (f) The Guarantors
- (g) the Subcontractors;
- (h) any other Persons performing any of the Work for or on behalf of the Developer;
- (i) any other Persons for whom the Developer may be legally or contractually responsible; and
- (j) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the parties referred to in clauses (a) to (j).

Early Work means any design or construction work requested by the State for the Developer to perform under an Early Work Agreement.

Early Work Agreement is an agreement that may be entered into between the State and the Developer for the Developer to perform Early Work prior to Commercial Close.

Eligible Surety means a surety or insurance company that:

- (a) is authorized to do business and issue bonds in the State;
- (b) appears on the current list of the Treasury Department of the United States as acceptable sureties to the Treasury Department of the United States and whose aggregate underwriting limitations on any one risk equals or exceeds the design-build contract price included in the Committed Proposal;
- (c) rated in the top 2 categories by 2 of the 4 major rating agencies or have a then-current A.M. Best's Financial Strength Rating and Financial Size of at least "A-/VIII"; and
- (d) is approved by the State for this Project.

Force Majeure Event means the occurrence of any of the following events after the date of this Agreement that directly causes either Party (the "**Affected Party**") to be unable to comply with all or a material part of its obligations under this Agreement:

- (a) war, civil war, invasion, violent act of foreign enemy or armed conflict;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project Site by the Developer or a Developer-Related Entity, or is a result of any breach by the Developer of the terms of this Agreement;
- (c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near the Project Site by the Developer or a Developer-Related Entity, or is a result of any breach by the Developer of the terms of this Agreement; and
- (d) an act of terrorism.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, maintenance contractor or operator or developer seeking in Good Faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental

Approvals, using accepted design and construction standards and criteria normally used on similar projects in Rhode Island, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

Governmental Approvals means all approvals, permits, permissions, consents, licenses, variances, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) that are required from time to time in connection with the Project to be issued by any Governmental Authority and Amtrak.

Governmental Approvals Plan means the Governmental Approvals Plan submitted by the Developer with its Indicative Proposal.

Governmental Authority means the government of the United States of America, the State of Rhode Island, the cities, towns, and counties within the State of Rhode Island and any other authorities, boards, agency or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission, quasi-public corporation, public or statutory instrumentality or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State of Rhode Island, or the cities, towns, and counties within the State of Rhode Island. As the context requires, "**Governmental Authority**" does not include the State.

Indemnified Parties means the State, RIDOT, RIDOA, RIPTA and the Rhode Island Commerce Corporation, any of them individually and any of their officers, agents, Associates or employees.

Indicative Proposal is defined in the Recitals.

Intellectual Property means, other than in relation to the Retained Work Product, any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by any Developer-Entity for the purposes of carrying out the Project or otherwise for the purposes of this Agreement.

Negotiating Period is defined in Section 2.1(a) of this Agreement.

Negotiating Principles is defined in Section 2.1(a) of this Agreement.

Open Book Basis means allowing the State to review all underlying assumptions and data associated with the Developer's Financial Model, pricing or compensation or adjustments, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, interest rates, inflation and deflation rates, and other items reasonably required by the State to satisfy itself as to the reasonableness and accuracy of the amount.

PDA Work means all of the work required under this Agreement, excluding the Site Work (*Performance Milestone and Submittals Schedule*).

Performance Milestone means each of the deliverables and milestones identified as a "Performance Milestone" in Appendix 2 (*Performance Milestones and Submittals Schedule*).

Performance Milestone 1 means the milestone and deliverable identified as " Performance Milestone 1" in Appendix 2 (*Performance Milestones and Submittals Schedule*).

Performance Milestone 2 means the milestone and deliverable identified as " Performance Milestone 2" in Appendix 2 (*Performance Milestones and Submittals Schedule*).

Performance Milestone 3 means the milestone and deliverable identified as " Performance Milestone 3" in Appendix 2 (*Performance Milestones and Submittals Schedule*).

Performance Milestone 4 means the milestone and deliverable identified as " Performance Milestone 4" in Appendix 2 (*Performance Milestones and Submittals Schedule*).

Performance Milestones and Submittals Schedule means Appendix 2 (*Performance Milestones and Submittals Schedule*).

PITC is defined in the Recitals.

Private Development is defined in the Recitals.

Private Development PDA is defined in the Recitals.

Project Agreement means the Project Agreement defined in the Recitals to be entered into between the Developer and the State governing the Developer's rights and obligations to design, construct, finance, operate and maintain the Project.

Program Agreements is defined in Section 3.1(b)(ii) of this Agreement.

Project is defined in the Recitals.

Project Requirements means the performance criteria and technical requirements set out in Appendix 6 (*Project Requirements*) to this Agreement.

Project Site means the project site identified in the Project Requirements for the Developer to design and construct the Project.

Proposal Security means the proposal bond to be delivered by the Developer with its Committed Proposal in the form of Form H (*Proposal Security*).

Retained Work Product means the following:

- (a) the Developer's Financial Model;
- (b) the Developer's financial plan; and
- (c) any of the Developer's term sheets, commitment letters, tax memorandums and opinions, costs data and financial analysis.

RFP is defined in the Recitals.

Site Work is defined in Section 4.2(a) of this Agreement.

Site Work Performance Milestone means the milestone and deliverable identified as "Site Work Performance Milestone" in Appendix 2 (*Performance Milestones and Submittals Schedule*).

State Default is defined in 6.1(b) of this Agreement.

Submittals means those required submissions to be delivered by the Developer to the State under this Agreement.

Termination for Convenience is defined in Section 6.2(a) of this Agreement.

Termination Payment is defined in Section 6.3(a) of this Agreement.

Unanticipated Event means the occurrence of any of the following which directly causes an adverse impact on Developer's ability to perform the Work, comply with the Performance Milestones and Submittals Schedule or the Project Requirements:

- (a) any breach of this Agreement or the RFP by the State;
- (b) any Force Majeure Event or any adverse weather conditions not reasonably anticipated;
- (c) any strike, labor dispute or labor protest;
- (d) any failure or material unwillingness to approve the Project by Amtrak, the Capital Center Commission, the City of Providence or the Historical Preservation and Heritage Commission in line with the Project Objectives and Indicative Proposal;
- (e) any other occurrence that causes a delay to the performance of the Work or the Negotiating Period and that the State and Developer agree to be a Unanticipated Event, each of which:
 - (i) was unknown to Developer and was otherwise unavoidable and incapable of being predicted;
 - (ii) could not be reasonably mitigated by the Developer using Good Industry Practices to mitigate the effects of such Unanticipated Event; and
 - (iii) is reasonably out of any Developer-Related Entity's control and not caused by a Developer-Related Entity or Developer-Related Entity agent or contractor.

Work is defined in Section 2.5(a) (*Standards for Cooperation and Coordination*).

Work Product means, excluding the Retained Work Product, all reports, studies, plans, drawings, analysis, financial plans, correspondence, specifications, legal documents (including subcontracts, legal opinions, any Internal Revenue Service ruling, and other documents related to financing structures) and any other submittal or documentation prepared for or in connection with the Project by the Developer's architects, engineers, tax and legal advisors, and consultants ("**Developer Project Consultants**") or any Developer-Related Entity, whether in paper or electronic form.

Section 2. Interpretations

- (f) In this Agreement, where appropriate and unless otherwise specified:
 - (i) the singular includes the plural and vice versa;

- (ii) references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;
 - (iii) the words “including,” “includes” and “include” will be deemed to be followed by the words “without limitation”;
 - (iv) references to sections, appendices or schedules are to the document in which they are contained;
 - (v) words such as “herein,” “hereof” and “hereunder” will refer to the entire document in which they are contained and not to any particular provision or section;
 - (vi) words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with these recognized meanings;
 - (vii) references to Persons include their respective permitted successors and assigns and, in the case of governmental Persons, Persons succeeding to their respective functions and capacities; and
 - (viii) words of either gender used in this Agreement include each other gender where appropriate.
- (g) Unless expressly provided in this Agreement, lists contained in this Agreement defining the Project or the Work will not be deemed all-inclusive. Furthermore, notwithstanding the rule of law to the effect that specific provisions contained in a contract will govern over general provisions, the scope of the Work will be as described in this Agreement, and specific provisions in this Agreement that describe tasks included in the Work will not constitute a limit on the scope of the Work.
- (h) The Developer acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Indicative Proposal to review the terms and conditions of this Agreement and to bring to the State's attention any conflicts or ambiguities contained in this Agreement. The Developer further acknowledges and agrees that it has independently reviewed this Agreement with legal counsel, and that it and each of its Major Participants has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, they will not be interpreted or construed against the Party that prepared them, and instead other rules of interpretation and construction will be utilized.
- (i) The exhibits attached to this Agreement are incorporated into and are made a part of this Agreement and will be considered to be a part of this Agreement. The Parties acknowledge that the provisions of the exhibits must be complied with as if the terms of the exhibits were incorporated into the body of this Agreement.

Appendix 2 Performance Milestones and Submittals Schedule

| # | Description | Deadline for submission or completion | Submittal type | Working Group |
|------------------------------------|---|--|----------------|---|
| The Scope Development Phase | | | | |
| 1. | CDMs: The Parties to coordinate and schedule as many CDMs as may be required for each of the topics described in Section 3.1(b)(i)(A) and the Developer to submit its agenda at least 3 days prior to each CDM. | [1 week following the Agreement Date] | Both Parties | [C, L, F & T, as applicable] ⁴ |
| 2. | Finalize Appendix 2: The Parties to meet and finalize this Performance Milestone and Submittals Schedule for the Negotiating Period. | [1 week following the Agreement Date] | Both Parties | |
| 3. | Deliver Updated Key Project Staff: The Developer will deliver any modifications to its Key Project Staff for approval by the State. | [2 weeks following the Agreement Date] | Developer | |
| 4. | Update and Deliver the GA Plan: The Developer must provide the State with its updated GA Plan. | [2 weeks following the Agreement Date] | Developer | |
| 5. | Update and Deliver the CE Plan: The Developer must provide the State with its updated CE Plan. | [2 weeks following the Agreement Date] | Developer | |
| 6. | Pre-Application Meeting and Approval of CE Plan and GA Plan: The Developer to meet with the State staff to review project plans in order to streamline internal Project Site Plan Review process and the Capital Center Commission approval process as well as to agree the CE Plan and GA Plan. | [2 weeks following the Agreement Date] | Both Parties | Performance Milestone 1 |
| 7. | Draft Project Agreement: the State issues the first draft of the Project Agreement and the State and the Developer will agree a schedule of CDMs for negotiation of the | [4 weeks following the Agreement | State | |

⁴ C = Commercial, L = Legal, F = Financial and T = Technical

Appendix 2 Performance Milestones and Submittals Schedule

| # | Description | Deadline for submission or completion | Submittal type | Working Group |
|------------------|---|--|---|---------------|
| | Project Agreement | [Date] | | |
| 8. | Draft Private Development PDA: the State issues the first draft of the Private Development PDA and the State and the Developer will agree a negotiation schedule for the Private Development PDA. | [4 weeks following the Agreement Date] | State | |
| 9. | Submit ISoP # 1: The Developer must submit ISoP # 1 which will include a more advanced and updated version of the Developer's Indicative Proposal's design and indicative pricing for design, construction, financing, operations and maintenance and will comply with the ISoP #1 Submittal requirements included in the Committed Proposal Submittals Requirements or, if the Committed Proposal Submittals Requirements have not yet been finalized, the ISOP #1 Submittal requirements included in Appendix 3 (<i>Draft Committed Proposal Submittals Requirements (Technical)</i>). | [8 weeks following the Agreement Date] | Developer Performance Milestone 2 | |
| 10 | Project Requirements & Committed Proposal Submittals Requirements: The Parties to finalize the Project Requirements and Committed Proposal Submittals Requirements through several CDMs and revisions. | [10 weeks following the Agreement Date] | Both Parties | |
| Site Work | | | | |
| 11 | Site Work: The Developer: (a) completes all Site Work, including all Project Site due diligence, including review and approval of: (i) Preliminary Title Report and Underlying Documents; (ii) soils condition, both environmental and geotechnical; and (iii) other additional studies deemed necessary to satisfy the Developer as to the condition of the Project Site, the allocation of risk, environmental review and Project Site Plan Review; and (b) delivers the full package of due diligence materials and other information obtained as part of that Site Work in accordance with Section 4.2(a)(iv). | [2 weeks prior to the Committed Proposal Due Date] | Developer Site Work Performance Milestone | |

Appendix 2 Performance Milestones and Submittals Schedule

| # | Description | Deadline for submission or completion | Submittal type | Working Group |
|---------------------------------|---|--|---|---------------|
| Committed Proposal Phase | | | | |
| 12 | ISOP # 2: The Developer must submit ISoP #2 which will include a more advanced and updated version of ISoP # 1 and will comply with the ISoP #2 Submittal requirements included in the Committed Proposal Submittals Requirements. | [10 weeks following the notice to proceed to the Committed Proposal Phase] | Developer Performance Milestone 3 | |
| 13 | Program Agreement Completion: The State to issue the final draft of all Program Agreements, including the Project Agreement, the PLA and the Private Development PDA. | [4 weeks prior to the Committed Proposal Due Date.] | State | |
| 14 | Governmental Approvals: The Developer to complete all Governmental Approval work required under the GA Plan | [4 weeks prior to the Committed Proposal Due Date.] | Developer | |
| 15 | Public Outreach and Community / Stakeholder Engagement: to be completed in accordance with the CE Plan. | [4 weeks prior to the Committed Proposal Due Date.] | Developer | |
| 16 | Committed Proposal Due Date / Submission of Committed Proposal: The Developer must submit the Committed Proposal to the State for the State's review and approval. | [16 weeks following the notice to proceed to the Committed Proposal Phase] | Developer Performance Milestone 4 | |

Appendix 2 Performance Milestones and Submittals Schedule

| # | Description | Deadline for submission or completion | Submittal type | Working Group |
|-------------------------------|--|---|----------------|---------------|
| Commercial Close Phase | | | | |
| 17 | State's Determination Regarding the Committed Proposal: The State will announce whether it has determined if the Committed Proposal is in the State's best interest and whether the Developer has been awarded the Project Agreement. | [4 weeks following the Committed Proposal Due Date] | State | |
| 18 | CPs to Commercial Close: The Developer to satisfy all conditions precedent to commercial close provided under the Project Agreement. | [2 weeks following the State's award] | Developer | |
| 19 | Commercial Close: The Parties to execute the Project Agreement and the other required Program Agreements | [2 weeks following the State's award] | Both Parties | |
| 20 | Financial Close: The Parties to execute the Financing Agreements. | [4-8 weeks following Commercial Close] | Both Parties | |

Appendix 3 Draft Committed Proposal Submittals Requirements (Technical)

The submission should provide sufficient information to reasonably demonstrate that the Proposer can meet the responsibilities and obligations as set out in the Agreement. The preference is that the “big ideas” are demonstrated early in the submissions (i.e. details follow later) The process supports adjustment based on a Proposer’s developing design, and any deviations that address the following are encouraged.

- improved revenue opportunities,
- aesthetics
- functionality,
- futureproofing,
- lower capital cost,
- lower operating costs,
- efficiency and lower O&M cost.

Technical Submission contents shall be submitted in three parts

- Part 1: Design Brief
- Part 2: Drawings
- Part 3: Support Material

Design Brief Submission Requirements (Part 1)

The Design Brief contents are included in the table below, and are to be addressed to the levels indicated in each submission. The final Proposer generated Design Brief will form part of the Committed Proposal that will be included in the Project Agreement.

Submittal Key

- “Concept” (C) means a description of the ideas and approach that will be adopted
- “Outline” (O) means the outline of the final narrative that is ultimately intended to be submitted.
- “Draft” (D) means draft of the actual text that is intended to be ultimately submitted.
- “Final” (F) means actual text that is intended to be ultimately submitted.

Level of Completion Key

- “Prop1” means Technical Proposal in response to the RFP (see note below)
- “ISoP1” means first Interim Submission of Proposal during the PDA phase.
- “ISoP2” means second Interim Submission of Proposal during the PDA phase
- “Prop2” means Technical Proposal in the PDA phase

Note that the reference to “Prop1”, the Technical Proposal in response to the RFP, is intended only as a brief summary of the more detailed requirements in the ITP, Exhibit G – 2.

| Area | Requirement | Prop1 | ISoP1 | ISoP2 | Prop2 |
|-------------------------|--|-------|-------|-------|-------|
| Project Management Plan | The Project Management Plan required in Technical Requirements Section 1.2 including: <ul style="list-style-type: none"> • the Health and Safety Plan; and • the design approach including coordination with utilities, Amtrak and other stakeholders, incorporation of community inputs, facilitation of design reviews by RIDOT and other stakeholders and obtaining approvals from permitting and regulatory authorities; and • the construction approach including integration and coordination with design activities, mitigation of construction impacts to the public and managing construction closeout and coordination to the operations phase; and • a construction phasing plan with an integrated design and construction schedule; and • the QA/QC plans. | O | D | F | F |

| | | | | | |
|-----------------------------|--|---|---|---|---|
| Architecture | Describe the architectural vision and how it will manifest through the design in a format that can be included in the Project Agreement. Demonstrate how the facility, landscape and urban design addresses the site location with a simple but elegant solution that complements the historically significant Rhode Island State House and surrounding Capital Center; including integration with transit, parking, and commercial revenue opportunities. Provide a concise vision statement that can be used to communicate to a large audience; and incorporated into the final Project Agreement. Include information of the proposed facade treatment and roof (building envelope) | O | D | F | F |
| Revenue Generation | Provide a narrative of any proposed retail, commercial, public parking or third-party revenue facilities that will be integrated into the built form | C | O | D | F |
| Guides and Codes | List all guides and codes being adopted. Narrative on how CEPTD (Crime Prevention Through Engineering Design) principles and ADA (Americans with Disabilities Act) requirements are being applied. Indicate the expected approvals required from the Governmental Approvals and / or third parties, required to complete the works. | O | D | F | F |
| Site Access and Circulation | Provide vehicle circulation and road access arrangements. Include approach to site circulation addressing bus circulation, people movement, emergency and maintenance vehicles, loading docks, waste disposal, site safety and security. | D | D | F | F |
| Road Improvements | Validate that the proposed Road Improvements will be appropriate for the proposed development | O | D | D | F |
| Parking | Describe how parking will be addressed, including future expansion, and replacement of the State House Lot | D | D | D | F |
| Boiler House | Describe how the development will integrate and address the current and future operations of the existing Boiler House, including any replacement, or temporary works strategy. | O | D | D | F |
| Utilities | Describe proposed arrangements with utilities, including gas, water, electricity, phone, other communications, sanitary and storm water, including protection and maintenance or relocation of existing facilities to maintain services and load assessments for new services for the Project. | C | O | D | F |
| Civil Works | Provide narrative describing the approach to the civil works on site, including phasing of drainage, sanitary, lifting stations (if required), utility connection points, site restoration | C | O | D | F |
| Geotechnical | Geotechnical investigation plan, data report and interpretative report with foundation recommendations. | O | D | D | F |

| | | | | | |
|---------------------------------|--|---|---|---|---|
| Contaminated Materials (Media) | Contaminated Media Management Plan (CMMP) and related investigations. | C | O | D | F |
| Room Data Sheets – PITC | Provide Room data sheets for the proposed design. | D | D | F | F |
| Signage & Wayfinding – PITC | Provide narrative and schematic diagrams describing the proposed interpretation, strategy, scope and approach, including integration with bus operation signage and real-time information on video displays. | C | O | D | F |
| Structure – PITC | Describe the structural systems proposed, including sub structure, superstructure, and roof. Provide information on the proposed foundation solutions, including how potential ground settlements and waterproofing of below grade structures, will be addressed in the design. Provide a narrative on the proposed construction methodology, including construction sequencing. | O | D | D | F |
| MEP - PITC | Describe the systems proposed for HVAC, heating and cooling plant, water distribution and plumbing, lighting, controls, shell and core fit out areas. Provide major plant list with expected warranties and lifetimes. Include zoning information addressing different occupancy profiles for different user groups. Describe proposed lighting for the public realm, roof, façade, interiors and exterior. | C | D | D | F |
| Fire Protection / Life Safety | Provide narrative describing interpretation and approach to Fire Protection and Life Safety. | C | O | D | F |
| Operations & Maintenance – PITC | The Maintenance Management Plan required in Technical Requirements Section 3.2 outlining the approach to meet the required performance over the life of the Project Agreement including: <ul style="list-style-type: none"> • anticipated interactions with the State; and • approaches to meeting the Service Requirements; and • approaches to custodial maintenance, preventive maintenance, and corrective maintenance; and • QA/QC plans; and • approach to Performance Management monitoring. Include inspection and cleaning frequency for major buildings components, and confirm life expectancies of all major building components including building materials and engineering systems. Provide details of how major mechanical, electrical and plumbing systems are safely installed, maintained and replaced. Provide proposed warranties, | C | D | D | F |

| | | | | | |
|---------------------------|--|---|---|---|---|
| Private Development | Describe the approach to integrating the Private Development into the Project, addressing the proposed site or sites, architectural approach, site access and circulation. | C | C | O | D |
| Public Outreach Materials | Provide a generalized version of the above Project Management Plan and Project Approach with appropriate graphics focusing on architecture and land use that may be used by the State in discussions with Key Stakeholders, Regulatory Authorities and with the general public in public outreach programs. It is intended that these materials will be used for public discussion. | D | D | F | F |

[NTD – The Proposer may propose, subject to acceptance by the State, modifications to this table with their Technical Proposal in response to the RFP to better reflect their design concept or at any stage prior to Prop2]

Minimum contents for Volume 2: Drawings

The submittals for the Design Presentations are indicated in the table below; with levels of completion of the drawings as indicated in the key below. The final Proposer generated Design Brief will form part of the Committed Proposal that will be included in the Project Agreement.

Submittal Key

- “Prop1” means Technical Proposal in response to the RFP (see note below)
- “ISoP1” means first Interim Submission of Proposal during the PDA phase.
- “ISoP2” means second Interim Submission of Proposal during the PDA phase
- “Prop2” means Technical Proposal in the PDA phase

Level of Completion Key

- 0 – Optional; not required this submission
- 30% - Preliminary level of completion
- 60% - Intermediate level of completion
- 90% - Pre-Final level of completion
- 100% - Final Design
- RFC – Release for Construction / Approval

[NTD – The Proposer may propose, subject to acceptance by the State, modifications to this table with their Technical Proposal in response to the RFP to better reflect their design concept or at any stage prior to Prop2]

| Discipline | Area | Scale | Comment | Prop 1 | ISoP 1 | ISoP 2 | Prop 2 |
|--------------|------------|-----------|--|--------|--------|--------|--------|
| Architecture | 3D Model | DWF / DWG | Provide a digital 3D model. | O | O | 90% | 100% |
| | Site plans | 1" =40' | Building position, access, entrances, external surface features, external hardscaping scheme, setbacks, emergency services access, services and goods access | 60% | 90% | 90% | 100% |

| Discipline | Area | Scale | Comment | Prop 1 | ISoP 1 | ISoP 2 | Prop 2 |
|-----------------------|------------------------------|-----------|--|--------|--------|--------|--------|
| | General Arrangement Plans | 1/16" =1' | By Level | 60% | 90% | 90% | 100% |
| | Elevations | 1/16" =1' | All exteriors, including topographic context. | 60% | 90% | 90% | 100% |
| | Building Sections | 1/16" =1' | Through accommodation | 30% | 60% | 90% | 100% |
| | External Renderings | N/A | All exterior elevations | 60% | 90% | 90% | 100% |
| | Room Area Schedule | N/A | | 60% | 90% | 90% | 100% |
| | FF&E Schedule | N/A | | O | 60% | 90% | 100% |
| Structure | Foundations | 1/8" =1' | | O | 30% | 30% | 60% |
| | Super-structure /Floor plans | 1/8" =1' | All levels. | O | 30% | 30% | 60% |
| | Sections | 1/8" =1' | Sections through major and minor axis showing buildup of structure. | O | 30% | 30% | 60% |
| Civil/ Infrastructure | Utilities | 1" =40' | Utility Plans for identifying existing storm water, sanitary sewer, power, communications, hydrants and water and their proposed deposition; protect in place or relocation. | 30% | 60% | 90% | 100% |
| | Underground | 1" =40' | Utility Connections for Storm water, Sanitation, Power, | O | 60% | 90% | 100% |

| Discipline | Area | Scale | Comment | Prop 1 | ISoP 1 | ISoP 2 | Prop 2 |
|---------------|---|-----------|---|--------|--------|--------|--------|
| | Services | | Communications, hydrants and water. | | | | |
| | Site grading plan | 1" =40' | Including curbs, manholes, surface finishes, exterior lighting, retaining structures, and surface features. | O | 30% | 60% | 60% |
| | Cut and Fill | 1" =40' | Volumetric analysis of excavations and final grading | O | 30% | 30% | 60% |
| Electrical | Single Line Diagram | NA | Illustrate medium voltage, low voltage, uninterruptable and emergency power distribution systems. | O | 30% | 60% | 90% |
| Mechanical | Cooling/ Heating/Air/Water Schematics | NA | Include initial sizing | O | 30% | 60% | 90% |
| | Equipment Schedules | NA | All Major Equipment indicating sizing. | O | 30% | 30% | 60% |
| | Zone Treatment drawings & Heating type drawings | 1/16" =1' | All levels | O | 30% | 30% | 60% |
| Communication | Backbone Schematics | 1/16" =1' | Illustrate network topology, equipment and wiring include RIPTA dedicated voice and data communications. Provide typical schematics for Fire Alarm, Public Address, Access Control, and CCTV systems, and indicate interfaces between the systems. | O | 30% | 60% | 90% |

| Discipline | Area | Scale | Comment | Prop 1 | ISoP 1 | ISoP 2 | Prop 2 |
|-------------|--------------|----------|---|--------|--------|--------|--------|
| Early Works | Any affected | As above | As specified in the PDA or Early Work Agreement | 30% | 100% | RFC | RFC |

Support Materials - Part 3

Part 3: Should contain any additional specifications; analysis reports, renderings, and any other material that the Proposer wishes to include. All additional information included must be specific to the design of this Facility.

Appendix 4 Governmental Approvals Plan

[To be updated with the Developer's GA Plan following execution of this Agreement]

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Appendix 5 Community Engagement Plan

[To be updated with the Developer's CE Plan following execution of this Agreement]

Draft Version 4

Appendix 6 Project Requirements

[To be provided during the Scope Development Phase]

Draft Version 4

Appendix 7 Developer's Indicative Proposal

[To be attached]

Draft Version 4

Appendix 8 PDA Personnel & Key Project Staff

The State's Representatives

The Director: Peter Alviti

The Program Manager: Julie Oakley

The Developer's Key Project Staff

| Title | Name |
|---------------------------------------|------|
| Project Executive | |
| Project Manager | |
| Deputy Project Manager | |
| Design/Construction Interface Manager | |
| Design Manager | |
| Construction Manager | |
| O&M Manager | |

Appendix 9

Terms and Conditions

[ITP T&C to be updated and attached]

Draft Version 4

Rhode Island Department of Transportation
Draft Request for Proposal
Public Private Partnership for the
Providence Intermodal Transportation Center & Associated Private Development

Draft RFP No. 7554495

Part I: Instructions to Proposer

Draft Version 4

January 9, 2017

INSTRUCTIONS TO PROPOSERS

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EXHIBITS AND FORMS

ITP EXHIBITS

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EXHIBIT C Pre-Development Agreement
EXHIBIT D Technical Guidelines
EXHIBIT E RFP Schedule
EXHIBIT F General Proposal Submittal Requirements
EXHIBIT G-1 Administrative Proposal Requirements
EXHIBIT G-2 Technical Proposal Requirements
EXHIBIT G-3 Financial Proposal Requirements
EXHIBIT H Project Site

ITP FORMS

Form A Proposal Letter
Form B Agreement on Terms of Discussion
Form C Major Participants and Key Project Staff Commitment and Statement of Availability

1. INTRODUCTION

1.1 The Opportunity

The State of Rhode Island (the "**State**"), through the Rhode Island Department of Administration / Division of Purchases ("**RIDOA**") and the Rhode Island Department of Transportation ("**RIDOT**") in coordination with the Rhode Island Commerce Corporation ("**Rhode Island Commerce Corporation**") and the Rhode Island Public Transit Authority ("**RIPTA**"), is seeking a Proposal from the Proposer to enter into a Pre-Development Agreement to exclusively negotiate:

- (a) a performance-based contract (the "**Project Agreement**") with the State to design, construct, finance, operate and maintain an intermodal transportation center (the "**PITC**") and its associated infrastructure improvements and any other related public improvements approved by the State under the PDA, which may include other public works projects including but not limited to the relocation and retrofitting of the State Boiler House, and parking (collectively with the PITC, the "**Project**"); and
- (b) a separate pre-development agreement for an associated commercial real-estate development that will support the State's Economic Development Goals and satisfy the Project Objectives (the "**Private Development**").

The Project is a high priority for the State and is viewed as critical to stimulating the downtown Providence economy and improving connectivity of the State's primary transportation corridors.

1.2 RIDOT, RIPTA, and RIDOA

(a) RIDOT

RIDOT designs, constructs, and maintains the State of Rhode Island's surface transportation system. RIDOT serves as the steward of a statewide multimodal transportation network, consisting of 3,300 lane miles of roadway, 1,162 bridges, five rail stations, and more than 60 miles of bike and pedestrian paths.

(b) RIPTA

RIPTA is a quasi-public, independent authority, established in 1966 to operate public transit services throughout the State of Rhode Island. RIPTA operates 2757 trips on weekdays, 1160 on Saturday and 1066 on Sunday on 54 statewide fixed bus routes. While RIPTA will operationally be the Developer's primary interface, RIDOT will have primary responsibility for leading the Project and will work in close collaboration with RIPTA as well as the other Key Stakeholders.

(c) RIDOA

RIDOA manages the State's financial, human and other resources and provides supportive services to all State agencies and departments. RIDOA is responsible for developing and administering the State's budget, determining and maintaining standard specifications for purchases, contracts, bids and awards for State purchases, maintaining and managing procurements of State facilities, administering the statewide planning program and managing overall personnel administration of State departments and agencies, including the negotiation of State employee union contracts.

1.3 Key Stakeholders

The following is a list of important stakeholders for the Project (the "**Key Stakeholders**"):

- (a) Office of the Governor of Rhode Island;
- (b) RIDOT;
- (c) RIDOA;
- (d) RIPTA;
- (e) Rhode Island Commerce Corporation;
- (f) The City of Providence;
- (g) The Capital Center Commission;
- (h) The Providence Foundation;
- (i) The Rhode Island Historical Preservation and Heritage Commission and the State Historic Preservation Officer;
- (j) Amtrak;
- (k) The Providence Preservation Society; and
- (l) Private Intercity Bus Carriers.

All contact and communication with Stakeholders with respect to the Project must be directed through the State Representative, and those designated by the State Representative in accordance with Section 4.3 (*Communications with Key Stakeholders*) of the Terms and Conditions for rules regulating contact with Key Stakeholders.

1.4 Project Overview

(a) Providence Intermodal Transportation Center (PITC)

- (i) The Developer will be required to design, construct, finance, operate and maintain the PITC, which will include:
 - (A) a new, LEED Certifiable, 19¹ berth bus terminal with segregated, curbed, fully accessible passenger loading areas and a fully integrated retail corridor;
 - (B) the design and construction of the Road Improvements, to the extent applicable;
 - (C) a passageway or other connection to Providence Station;
 - (D) leasing and management of the available retail concession spaces within the PITC; and
 - (E) if necessary, relocation and reconstruction of the State Boiler House and mitigating any impacts or making improvements to the State House's existing parking lots.
- (ii) The Developer's operations and maintenance obligations are more fully described in the Technical Guidelines, and will primarily include:

¹ **Note to Proposer:** 6 berths for through routes can be external and 1 berth will be for future expansion.

- (A) planned and unplanned maintenance (both minor maintenance and major maintenance);
 - (B) day to day security for the PITC and the Project Site;
 - (C) cleaning services;
 - (D) concessionaire services with respect to retail operations;
 - (E) building HVAC, lighting and electrical services;
 - (F) site lighting, landscaping, snow removal;
 - (G) maintenance of core technological and communications equipment;
 - (H) any other customary and usual facilities management services; and
 - (I) any life-cycle major maintenance work necessary to hand the PITC back to the State in a condition described in the Project Agreement.
- (iii) RIPTA will retain responsibility for operating the buses and ticketing, but the Developer will be responsible for interfacing with RIPTA's employees to ensure that the PITC enables RIPTA and the private intercity carriers to maintain the performance levels established in the Project Agreement.
 - (iv) The State anticipates that it will be responsible for operations and maintenance of the Road Improvements and the State Boiler House.
 - (v) Further details concerning the required elements of the PITC are included in the Technical Guidelines and in the PDA.

(b) **Private Development**

- (i) The Developer will also be required, as part of a phased approach to the Project, to enter into a pre-development agreement with the State (the "**Private Development PDA**") to design, construct, finance, operate and maintain the Private Development on any of the Private Development Parcels or any other parcel approved by the State. The Developer will be required, under the Private Development PDA, to propose a Private Development that supports the State's Economic Development Goals and that the State approves and achieves the relevant milestones under the Pre-Development Agreement during the Pre-Development Phase.
- (ii) The Private Development can include each or a combination of the following:
 - (A) an office building;
 - (B) residential or student housing;
 - (C) a hotel;
 - (D) retail development; and

- (E) associated parking facilities.

1.5 Project Objectives

The State intends to enter into the Project Agreement, which will be negotiated under the PDA with the Developer in order to achieve the Project's objectives, and expects the Developer to bring the necessary resources and expertise to meet these objectives (the "**Project Objectives**"), which include:

(a) PITC Objectives

The PITC must:

- (i) create a smart and enduring bus facility that from a design perspective complements the historically significant Rhode Island State House and surrounding Capital Center;
- (ii) deliver a bright, safe and "world class" traveler experience that allows users to enjoy an intuitively-designed transportation center that is seamlessly integrated with retail offerings and direct access to Amtrak and MBTA rail services at Providence Station;
- (iii) efficiently integrate RIPTA's public bus system, private intercity coach buses, taxi, car sharing and limousine services and other forms of transportation, while simultaneously fostering transit-oriented development;
- (iv) allow for connectivity to the surrounding business and residential community;
- (v) be flexible or expandable, and capable of meeting projected increases in ridership and changes in technology over the next 30 years;
- (vi) increase availability of access for bicycles, scooters and other forms of "environmentally friendly" forms of transportation; and
- (vii) integrate the urban environment with Providence's natural features and encourage, enhance and catalyze complementary and appropriate commercial development.

(b) The Private Development Objectives

The Private Development must:

- (i) support and enhance Providence's and the State's Economic Development Goals by creating a regionally acclaimed development that is aesthetically linked to the PITC;
- (ii) enhance the local economy by creating, both directly and indirectly, short-term and long-term jobs for Rhode Island residents;
- (iii) stimulate economic activity and synergy in the Capital Center;
- (iv) be an architecturally compelling building or buildings that will complement the State House and surrounding community and integrate with the PITC;

- (v) provide sufficient parking to meet the demands of the Private Development and to the extent any State House parking is displaced, replacement of the State House parking in accordance with the Technical Guidelines; and
- (vi) minimize, over time, the overall Public Contribution Amount.

1.6 Site Location

(a) PITC Project Site

The PITC must be located on either or both of Gaspee North and Gaspee South parcels identified in Exhibit H (*Project Site*) (the "**PITC Site**"). The PITC Site is subject to the applicable land use regulations referred to in Section 4.1(a) (*Land Use Approvals*). The PITC Site has been selected based upon final studies analyzing, among other things, (i) land use permitting, (ii) the best location for improved service and direct transfers among all RIPTA and private local carrier bus routes, and (iii) methods for minimizing RIPTA's operating cost impacts while maximizing impacts to reliability.

(b) Private Development

State-owned Parcels – the State will provide the following development rights (which may expire under the Private Development PDA if not timely exercised) to the Developer for Private Development in accordance with the PDA and Project Agreement:

- (i) above and below the PITC, subject to obtaining the applicable land use approvals described in Section 4.1(a) (*Land Use Approvals*);
- (ii) adjacent to the PITC on either Gaspee North or Gaspee South parcels identified in Exhibit H (*Project Site*);
- (iii) on the 1 Park Row West Parcel also identified in Exhibit H (*Project Site*); or
- (iv) any other State owned parcel identified by the Developer and approved by the State,

or a combination of these development rights.

In exchange for these rights the State and the Developer will negotiate appropriate compensation for the State under the PDA.

1.7 Request for Proposals

The Request for Proposals for the Project consists of:

- (a) this "**Instruction to Proposers**" including all Exhibits and Forms attached to this document; and
- (b) any other documents that the State may issue by Addenda to this RFP, in each case, as these documents may be amended or supplemented

(collectively, this "**RFP**").

1.8 Available Documents

In addition to the documents the State has provided with the RFP, the "Available Documents" are to provide the Proposer with certain information that is in the State's possession that is important for the Proposer to review in connection with the RFP Process, but that the Proposer cannot rely on as part of its fixed price proposal to be delivered under the PDA. The Available Documents will be made available to the Proposer through a secure method. Without limiting the generality of this Section the Available Documents include:

- (a) Cad files (.dwg format);
 - (i) Proposed relocation of Gaspee St;
 - (ii) Available topographic data from city GIS;
- (b) Utility drawings from utility owners;
 - (i) Gas
 - (ii) Phone
 - (iii) Electric
- (c) Drawings (1983) of the Amtrak Station;
- (d) Drawings (1983) – Francis St over Amtrak;
- (e) Drawings (1983) – Gaspee and Francis;
- (f) Boiler House
 - (i) Drawings (2015) of proposed Energy Management Improvement Project;
 - (ii) Facility Condition Assessment (2016);
 - (iii) May 2017 status report of the Corrective Action Plan (CAP);
 - (iv) Well data (2008) from the CAP;
- (g) Traffic counts and signal warrants in area;
- (h) Capitol Hill Parking Study (2017); and
- (i) RIPTA Passenger Survey (2016).

1.9 Definitions

Defined terms, abbreviations, rule of interpretation and acronyms are in Exhibit A (*Definitions, Abbreviations and Interpretation*).

1.10 Terms and Conditions

The Terms and Conditions in Exhibit B (*Procurement Process Terms and Conditions*) apply to the RFP Process.

Draft Version 4

2. THE RFP PROCESS

2.1 Method of Procurement

The State intends to enter into a Pre-Development Agreement with the Proposer, provided that it submits a Proposal that the State determines to be acceptable and in the best interest of the State in accordance with this RFP.

2.2 The State's Role

The State acknowledges the time and resources that the Proposer will require to participate in this RFP Process. As such, the State is committed to providing timely responses to the Proposer's questions and being attentive to the needs and concerns of the Proposer during the RFP Process. The State has assembled an experienced and comprehensive group of personnel dedicated to this Project's procurement.

It is intended that this core group, including the State's Project Advisors will:

- (a) review and respond to RFIs;
- (b) as required, be present during each CDM to ensure consistency and continuity; and
- (c) review the Proposal in accordance with this ITP.

2.3 The State's Project Advisors

The State has retained a team of Project Advisors under exclusivity arrangements to assist the State in the delivery of the RFP Process and the delivery of the Project. The State's Project Advisors are not eligible to assist or participate on the Proposer Team. Moreover, the State's Project Advisors are not available to provide any services or information to the Proposer on the Project without the State's prior written approval.

The current Project Advisors are:

- (a) Adler Pollock & Sheehan P.C. (Rhode Island Legal Counsel);
- (b) Ashurst LLP (P3 Legal Advisor);
- (c) Ernst & Young Infrastructure Advisors, LLC (Financial Advisor); and
- (d) Mott MacDonald USA, LLC (Technical Advisor).

2.4 The State Representative

The State has initially designated Mr. Thomas Bovis as the authorized representative for the procurement of the Project (the "**State Representative**"). Mr. Bovis, as the State Representative for this procurement, is the Proposer's single point of contact and source of information for this procurement, unless otherwise directed by Mr. Bovis. The State may at any time replace the State Representative, and the State will notify the Proposer of the identity of and contact details for any replacement State Representative.

Mr. Bovis' contact information is as follows:

Name: Thomas Bovis
Title: Interdepartmental Project Manager
Address: Rhode Island Department of Administration
Division of Purchases
One Capitol Hill, Second Floor
Providence, RI 02908-5855
Phone: 401-574-8119
Email: Thomas.Bovis@purchasing.ri.gov

2.5 The Proposer Representative

- (a) The Proposer must designate prior to the first CDM at least one, but no more than three individuals to be authorized representatives for communication with the State Representative during the RFP Process (the "**Proposer Representative**"). Unless the Proposer notifies the State in writing to the contrary, the State will deem the authorized representative identified by the Proposer in the transmittal letter included with its SOQ submission to be its Proposer Representative.
- (b) If at any time the Proposer wishes to change its Proposer Representative, the Proposer must notify the State in writing of the change and of the name, address and other contact information of the new designated individual. The Proposer is responsible for ensuring that the contact information for its Proposer Representative remains current during the RFP Process. If the Proposer fails to provide the State with its Proposer Representative's updated contact information, the Proposer may not receive important communications from the State. The State will not be responsible for any missed communications whether transmitted to the correct or incorrect Proposer Representative.

2.6 Summary of the Procurement Process

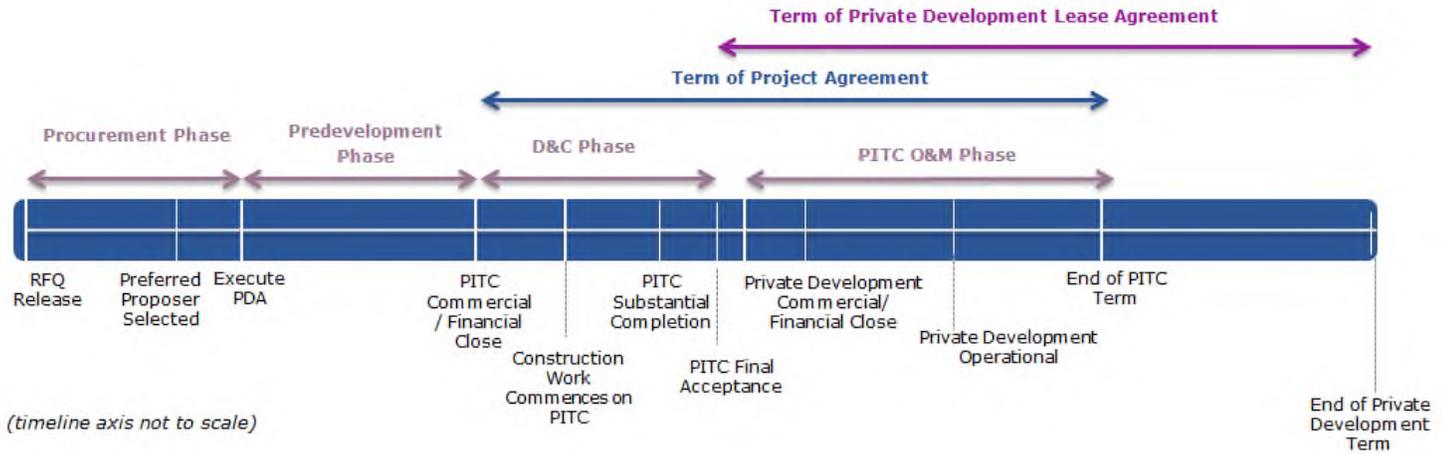
The following is a general summary of the key requirements and steps in the RFP Process that are described in subsequent sections of this ITP in more detail:

- (a) **Eligibility:** Only the entity that the State notified was qualified in October 2017 based on its SOQ submitted in response to the RFQ #7554495, issued on June 23, 2017 will be eligible to submit its Proposal in response to this RFP. Any other entities that submit Proposals to the State in response to this RFP will not be considered by the State.
- (b) **CDMs:** The State will conduct in accordance with Section 2.11 (*Collaborative Dialogue Meetings*) multiple, confidential one-on-one meetings to discuss the clarifications regarding this RFP.
- (c) **Addenda to this RFP:** After consideration of the Proposer's input from the CDMs, the State may issue one or more Addenda to this RFP.
- (d) **Evaluation:** The State's RFP evaluation team will evaluate the Proposal received in response to the final RFP based on the evaluation criteria described in Section 6 (*Evaluation of Proposal*).
- (e) **Selection / PDA / Project Agreement Negotiations:** If the State determines that the Proposal is acceptable, the State will publicly disclose its determination and shortly

thereafter execute the Pre-Development Agreement with the Preferred Proposer and will commence negotiations with the Preferred Proposer in order to finalize and agree the Project Agreement to be executed between the Preferred Proposer and the State. This process is discussed in further detail in Section 3 (*Commercial Framework*).

2.7 Procurement / Project Schedule

The Procurement Schedule for the RFP Process is set out in Exhibit E (*RFP Schedule*). Below is a summary chart of the expected full procurement and project schedule:



2.8 Release of this RFP and Addenda

The State will issue this RFP to the Proposer in electronic format on the RIVIP Website in accordance with the Terms and Conditions.

2.9 Requests for Clarification and State Responses

(a) Submittal of Questions by the Proposer

Unless otherwise authorized by the State in writing, the Proposer may only submit questions, requests for information, clarifications, corrections and comments regarding this RFP (each an "RFI") to the State Representative directly.

All RFIs must be submitted in accordance with:

- (i) the Terms and Conditions; and
- (ii) applicable deadlines.

All RFIs must be submitted to the State Representative no later than 7 days prior to the Proposal Due Date.

(b) **Responses by the State**

No communications (verbal or written) by the State will amend this RFP unless they are issued as an Addendum on the RIVIP Website or in a revised version of the RFP posted on the RIVIP Website.

(c) **Issuance of Addenda to this RFP**

The State may issue revisions to this RFP through the issuance of Addenda for any amendments, changes, or modifications that the State deems to be necessary.

2.10 **The RIVIP Website and Digital Communication**

(a) The RIVIP Website will be the sole source for all Addenda to this RFP. The State may notify the Proposer of any updates to the RIVIP Website, but the Proposer is responsible for regularly checking the RIVIP Website for updates and ensuring that it has received and reviewed all documents on the RIVIP Website pursuant Section 4.2 (*Rules of Contact*) of the Terms and Conditions. For all other communications the State Representative will communicate directly with the Proposer Representative either verbally or through written (including digital) communication.

(b) The State reserves the right to revise the RFP documents at any time before the Proposal Due Date in accordance with the Terms and Conditions. Such revisions, if any, will be announced by Addenda to the RFP documents. If any Addendum significantly impacts the RFP, at the State's discretion, the State may set a new Proposal Due Date via an Addendum.

(c) The Terms and Conditions provide that the Project is subject to Rhode Island General Laws Chapter 37-13 and approximately 30 days prior to the Proposal Due Date, the State will issue an Addendum containing wage rates that will apply to all labor to be performed on the PITC and other public work aspects of the Project.

2.11 **Collaborative Dialogue Meetings**

(a) The State intends to conduct a series of mandatory interactive collaborative dialogue meetings with the Proposer and its Proposer Team on dates and times in the RFP Schedule and on any other dates the State designates in writing to the Proposer. CDMs will enable the State to engage in dialogue with the Proposer with the intention of identifying solutions for the delivery of the Project that best meet the Project Objectives. The Proposer may request additional CDMs and the State may grant or deny any requests for additional CDMs.

(b) The objective of each CDM will be to:

(i) assist the State in understanding the underlying issues and rationale behind matters the Proposer has raised with respect to the development of its Proposal and its RFIs;

(ii) enable the State to:

(A) review, on a confidential basis, the Proposer's preliminary designs and approaches to delivering the Project;

- (B) provide feedback on these designs and approaches; and
 - (C) clarify any misinterpretations or ambiguities in this RFP, including those relating to the Project's scope, Project Objectives, the Work or design expectations prior to the Proposer's submission of its Proposal;
 - (iii) expand and clarify the Proposer's understanding of the State's technical, financial and legal requirements for the Project; and
 - (iv) clarify any unanswered questions about what is expected from the Proposer throughout the RFP Process, including clarification regarding the PDA and the Contract Documents that are pertinent to the development of the Proposer's Proposal.
- (c) To encourage full and transparent candor during CDMs, all information, concepts, designs and drawings presented by the Proposer during a CDM will generally be treated as drafts and confidential by the State subject to and in accordance with the State's Access to Public Records Act.
- (d) Any statement that the State makes, or that its Associates make, at a CDM will not and cannot be deemed or considered to be an indication of the State's preference, acceptance or a rejection of anything the Proposer says, does or any information the Proposer presents.
- (e) Attendance by lobbyists, journalists and any other third parties that are not members of the Proposer Team are prohibited from attending or participating in any CDM. Governmental or other third-party observers, unless authorized by the State, are also prohibited from attending any CDM.
- (f) Times and dates of CDMs are subject to change in the State's sole discretion. The Proposer's failure to attend a scheduled CDM is at the Proposer's own risk and, where required by this RFP or the State, may result in the Proposer's disqualification.
- (g) No response or other statement by the State or its Associates, or a written record or summary of any CDM, will provide or may be construed as:
- (i) an approval, authorization of any item discussed or not discussed;
 - (ii) a waiver or modification to this ITP or any other part of this RFP; or
 - (iii) an indication or suggestion on how the Proposer should comply with this RFP,
- and may not be relied on by the Proposer unless it is incorporated in an Addenda.
- (h) In addition to responding to the Proposer's questions, the State may unilaterally request information be presented or provided to it or indicate where the State has questions or comments on information presented to it. The State may provide additional requirements and other information relating to specific CDMs prior to any CDM.

3. COMMERCIAL FRAMEWORK

3.1 Pre-Development Agreement

- (a) The Pre-Development Phase will commence on the execution of a the Pre-Development Agreement and is expected to last no more than six months. The Pre-Development Agreement set out in Exhibit C (*Pre-Development Agreement*) establishes the State's and the Preferred Proposer's rights and obligations during the Pre-Development Phase. These include requiring:
- (i) the parties to engage in State coordinated public outreach and stakeholder engagement;
 - (ii) the Developer to conduct additional due diligence, analysis and studies, as required for the Developer to reduce its contingency in its final Financial Proposal and deliver the Project;
 - (iii) the Developer, with the State's assistance, to begin acquiring the necessary governmental approvals to advance the Project to construction;
 - (iv) progression by the Developer of its design (with the State's approval) to at least a stage where the Developer can submit a fixed Financial Proposal and the State is able to utilize the design for the Project regardless of whether the Preferred Proposer is the ultimate contractual counterparty to the Project Agreement;
 - (v) the Developer's submittal of a final fixed price, schedule of values, monthly payment schedule and technical proposal for the PITC (the "**Committed Proposal**");
 - (vi) the parties negotiation and finalization of the Project Agreement;
 - (vii) the Developer's finalization of its financing plan for the PITC; and
 - (viii) the development of the Developer's conceptual plan for the initial Private Development phase.
- (b) Negotiations and modifications may be permitted to adjust the Pre-Development Agreement to the Preferred Proposer's Proposal, as well as any other modifications deemed appropriate by the State.
- (c) Once the Pre-Development Agreement is executed the Proposer will become the Developer and the PDA will supersede the ITP. The Pre-Development Phase will conclude upon PA Commercial Close.

3.2 Project Agreement, Technical Guidelines, Lease Agreement and Negotiating Principles

(a) Project Agreement

Following the selection of the Preferred Proposer and the execution of the Pre-Development Agreement, the State will commence negotiations with the Preferred Proposer in order to finalize and agree the final form of Project Agreement to be executed between the Preferred Proposer and the State. All negotiations of the Project Agreement

will be carried out in Good Faith and will be subject to the principles described in the Pre-Development Agreement. The Project Agreement will include requirements, terms and conditions consistent with P3 best industry practice.

(b) **Technical Guidelines**

The Technical Guidelines will provide an initial overview and high-level parameters for the technical and performance criteria which are to be negotiated and agreed as part of the Project Agreement.

(c) **Lease Agreement**

Where the Private Development is on State-owned land, the State intends to enter into a market standard long-term ground lease with the Developer which will serve as the primary governing document for the Private Development portion of the Project.

3.3 **Project Labor Agreement**

RIDOA may require a project labor agreement with the Rhode Island Building and Construction Trades Council and its affiliated local unions that will govern certain terms and conditions of employment for workers of the Developer and any Subcontractors performing Construction Work and services on this Project. The terms and conditions of a project labor agreement will supersede certain terms and conditions of any collective bargaining agreements or other agreements covering such workers. If a project labor agreement is implemented for this Project, then (i) a copy of the project labor agreement will be included in either this RFP as an Addendum or the PDA, and (ii) the Developer will be required to enter into and comply, and all Subcontractors performing services on this Project will be required to comply, with the terms and conditions of the project labor agreement.

4. PERMITTING, LAND USE CONSIDERATIONS AND APPLICABLE LAWS

4.1 Land Use Approvals and Permits

(a) Land Use Approvals

- (i) The proposed PITC Site and Private Development Parcels are located in the Capital Center. Accordingly, the Developer's implementation of the Project will be subject to site development and design review by the Capital Center Commission. The Capital Center Commission has adopted Design and Development Regulations that will govern the design of the Project. These guidelines can be found at

<http://www.providenceri.gov/wp-content/uploads/2017/06/Planning-CCC-adoptednew-regs-complete203.pdf>.

- (ii) The Developer may also need to comply with or obtain relief from the City of Providence's zoning requirements.
- (iii) Gaspee Street is a municipal street, owned and operated by the City of Providence. The Developer, with support from the State, will be responsible for obtaining any and all necessary agreements, permits, easements or other actions necessary to implement the relocation of Gaspee Street resulting from the Project.
- (iv) The Developer will have to comply with a variety of other State permits typical of projects of this type and scope, including approval by the Rhode Island Division of State Fire Marshal, the Rhode Island Department of Environmental Management (storm water management) and, potentially, the Rhode Island Coastal Resource Management Council.
- (v) The PITC Site and Private Development Parcels are also located within the historic view corridors for and lands adjacent to the Rhode Island State House, which is listed on the National Register of Historic Places. Adverse impacts on the State House or any other scientific, historical or archaeological data related to the Project are regulated by the Rhode Island Historical Preservation and Heritage Commission.
- (vi) The Developer, with support from the State, will be responsible for obtaining any necessary permits, approvals or variances for the Project and will need to be properly licensed to carry out these responsibilities.

(b) Federal Approvals

The PITC Site is adjacent to the Northeast Corridor of the National Railroad Passenger Corporation (dba "Amtrak") passenger rail service. The Developer, with support from the State, will be responsible for obtaining any and all necessary permits and agreements required for the implementation of the Project, including but not limited to agreements with Amtrak and compliance with the National Environmental Policy Act ("NEPA") should NEPA become applicable.

(c) **Public Utilities**

- (i) The Project will require public utility connection permits. Electric and gas are provided by National Grid, public sewer is provided by the Narragansett Bay Commission and public water is provided by Providence Water.
- (ii) Other municipal permits will likely include review and approval from the City of Providence Forrester, Department of Public Works and Building Inspector, Department of Inspections and Standards.

(d) **Utilities**

The proposed Project Site encompasses property across which Utility Companies or political subdivisions may have easements, rights-of-way and other non-fee property interests. The entities holding relevant utility easements include National Grid, the Narragansett Bay Commission and Providence Water.

5. SUBMITTAL REQUIREMENTS

5.1 General Submittal Requirements

- (a) The Proposal must include an Administrative Proposal, a Technical Proposal and a Financial Proposal, each of which must meet the content, format, organization and submittal requirements described in the Submittal Exhibits.
- (b) The Proposer must submit each Component Proposal on the Proposal Due Date.

5.2 Requirements to Submit a Compliant Proposal

- (a) If the Proposal does not fully comply with the requirements, instructions and rules contained in this ITP, including the Exhibits and Forms, the State may consider the Proposal non-compliant and may disqualify the Proposer and its Proposal from further consideration.
- (b) Any revisions to, or the replacement of, the Proposal already submitted to the State is not permitted without the State's prior written approval or request.
- (c) No substantive changes can be made to any Form attached to this ITP without the State's prior written consent, and any such substantive changes made without the State's approval will have no force and effect and the terms provided in the Forms attached to this ITP will apply.

5.3 Proposal Content, Format and Organization

(a) Proposal Content

The Proposal must fully comply with this RFP and the Technical Guidelines and must include every component described in the Submittal Exhibits.

(b) Proposal Format and Organization

- (i) The Proposal should contain concise written material and drawings, enabling the State to clearly understand and evaluate the Proposer's capabilities and the characteristics and benefits of its Proposal. Legibility, clarity, and completeness of each portion of the Proposal are essential.
- (ii) Any content in the Proposal that the Proposer wishes to be treated as confidential must be conspicuously marked as "confidential and proprietary information" and must be submitted under a separate cover in accordance with the applicable Submittal Exhibits.

(c) Conflict or Inconsistency in Copies of Proposals

If there is any conflict or inconsistency between the content of the original hard copy of the Proposal (or portion of the Proposal) and a copy (whether electronic or hard copy) of the Proposal, the original hard copy will prevail over the copy, and the State will evaluate the Proposal (or portion of the Proposal) based on the original hard copy content.

5.4 **Proposal Delivery – Due Dates and Location**

- (a) The Proposer's Proposal must be delivered to the following location no later than 11:30 A.M. local time on the Proposal Due Date in accordance with the Submittal Exhibits:

State of Rhode Island Department of Administration
Division of Purchases 2nd Floor
One Capitol Hill
Providence, RI 02908-5855

- (b) The Proposer may not withdraw its Proposal on or after the Proposal Due Date.

5.5 **Proposal Bond**

Under the PDA, the Proposer will be required to deliver, in connection with its Committed Proposal, a proposal bond in the form attached to the PDA.

5.6 **Proposal Validity Period**

The Proposal will be valid for a period of 180 days commencing on the Proposal Due Date, as may be extended pursuant to the PDA.

6. EVALUATION OF PROPOSAL

6.1 The Proposal Evaluation Process

The State will evaluate the Proposal using a multi-step process that:

- (a) first, evaluates whether each part of the Proposal is "compliant" or "non-compliant" based on each part of the Proposal satisfying the applicable requirements set out in the Submittal Exhibits;
- (b) second, evaluates the Proposer's response to each Part of Exhibit G-2 (*Technical Proposal Requirements*) and G-3 (*Financial Proposal Requirements*) as provided in Section 6.2 (*Evaluation Criteria*); and
- (c) third, determines whether the Proposal is acceptable and in the best interest of the State. The Proposal must receive more than 70 points in order to be deemed acceptable to the State.

6.2 Evaluation Criteria

The Proposal will be evaluated against the following evaluation criteria:

| | | |
|--|--|-----------|
| Design Solution | The State will evaluate the Proposer's understanding, approach, capabilities and commitments to the delivery of a design solution for the PITC that meets or exceeds the Project Objectives. | 25 points |
| Construction Solution | The State will evaluate the Proposer's ability to deliver a construction solution that meets or exceeds the Project Objectives; thoroughly and appropriately identifies and understands the construction challenges for the Project and the means and methods proposed for construction; timely delivers the Project in accordance with the proposed Project Schedule; and minimizes impacts to the Key Stakeholders and ongoing transit operations and vehicular traffic. | 25 Points |
| Financing Solution | The State will evaluate whether the Proposer's financing solution appears to be feasible and consistent with the State's best interest. | 15 points |
| Operations and Maintenance Solution | The State will evaluate the Proposer's approach to delivering the Project Objectives through operations and maintenance, long term life-cycle replacement and overall whole-life costing. | 15 points |
| Management Approach | The State will evaluate the Proposer's overall organization, design and construction management approach, integration of design, operations, maintenance and construction, risk management, approach to integrity management, safety management and public outreach and Key Stakeholder engagement and coordination. | 10 points |
| Private Development | The State will evaluate the Developer's approach to integrating the Private Development into subsequent phases of the Project in order to reduce the overall Public Contribution Amount. | 10 points |

7. PREFERRED PROPOSER SELECTION

7.1 No Obligation to Award

The State may cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to Pre-Development Close Date and is under no obligation to award the Project to the Proposer.

7.2 Preferred Proposer Selection and Award

- (a) Unless the State rejects the Proposal or cancels this procurement, if the Proposer (i) submits a compliant and acceptable Proposal and (ii) has submitted a Proposal determined to be in the best interest of the State, the State intends to designate the Proposer as the Preferred Proposer.
- (b) Once the State designates the Preferred Proposer, the State will notify the Proposer that it has been conditionally selected to receive a tentative letter of award. The selection will be subject to the Proposer satisfying any conditions included in the tentative letter of award.
- (c) Selection of the Proposer as the Preferred Proposer will only afford the Preferred Proposer the right to exclusively negotiate and enter into the PDA and will not guarantee the Preferred Proposer the right to deliver the Project. Only the State's execution of the Project Agreement will entitle the Preferred Proposer the right to deliver the Project for the State.

7.3 Post-Selection Phase

The Post-Selection Phase will include:

- (a) negotiations between the State and the Preferred Proposer to the extent necessary to achieve Pre-Development Close;
- (b) finalization of the Pre-Development Agreement;
- (c) the Preferred Proposer's delivery of additional documents required to achieve Pre-Development Close in accordance with Section 7.5 (*Delivery of Pre-Development Agreement Documents by the Preferred Proposer*); and
- (d) any other items the State deems necessary or appropriate prior to executing the PDA.

7.4 Finalization of the Pre-Development Agreement

Following negotiations, the State will proceed to finalize the Pre-Development Agreement with the Preferred Proposer. The Preferred Proposer must commit to enter into the Pre-Development based substantially on the form attached as Exhibit C (*Pre-Development Agreement*) to this ITP.

7.5 Delivery of Pre-Development Agreement Documents by the Preferred Proposer

(a) Documents to be Delivered

After the State selects the Preferred Proposer and, if applicable, successful conclusion of negotiations with the Preferred Proposer, the State will provide execution sets of the Pre-

Development Agreement to the Preferred Proposer. Within 10 days of receipt of these documents, the Preferred Proposer must deliver to the State the following:

- (i) the executed Pre-Development Agreement together with evidence (if not previously provided) as to the authority, power, and capacity of the signatories to bind the Preferred Proposer to the Pre-Development Agreement;
- (ii) insurance certificates in prescribed forms; and
- (iii) any other documents or requirements that the State may reasonably request to finalize and execute the Pre-Development Agreement.

(b) Failure to Deliver Documents

If the State determines that any of the items listed in Section 7.5(a) (*Documents to be Delivered*) fails to comply with applicable requirements, the State will notify the Preferred Proposer in writing, and the Preferred Proposer must carry out any corrective actions in the time specified in the State's notification.

7.6 Execution, Delivery and Award of the Pre-Development Agreement

The State will execute the Pre-Development Agreement only after the State receives all the documents required to be provided prior to execution of the Pre-Development Agreement in accordance with Section 7.5 (*Delivery of Pre-Development Agreement Documents by the Preferred Proposer*), in form and substance satisfactory to the State.

7.7 General Right of Revocation

For any reason the State may formally revoke the status of the Preferred Proposer at any time.

Exhibit A – Definitions, Abbreviations, Rules of Interpretation and Order of Precedence

1. DEFINITIONS

| | |
|--|---|
| "Addenda" | A written amendment or clarification to this RFP. |
| "Additional Work" | Any Work proposed by the Proposer other than the PITC, the Road Improvements and the replacement parking; such as a permanent replacement of the State Boiler House. |
| "Administrative Organizational Change" | Any augmentation or modification to the Proposer's Major Participants or Key Project Staff. |
| "Administrative Proposal" | The portions of the Proposal, including all documents, forms and other submissions, that are responsive to the applicable requirements of Exhibit F (<i>General Proposal Submittal Requirements</i>) and Exhibit G-1 (<i>Administrative Proposal Requirements</i>). |
| "Administrative Proposal Checklist" | The list of required components of the Administrative Proposal, submitted with the Administrative Proposal in the form of [Part 1 (<i>Administrative Proposal Checklist</i>) of Exhibit G-1 (<i>Administrative Proposal Requirements</i>)]. |
| "Affiliate" | <p>(a) Any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Proposer or any Person on the Proposer Team; or</p> <p>(b) Any Person that has 10% or more of its equity interest held directly or indirectly, beneficially or of record, by the following:</p> <ul style="list-style-type: none">• the Proposer;• any Person on the Proposer Team; or• any Affiliate under Part (a) of this definition. <p>For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.</p> |
| "Agreement on Terms of Discussion" | The agreement between the State and the Proposer and its Major Participants regarding rights in information and Work Product, in the form attached to this ITP as Form B (<i>Agreement on Terms of Discussion</i>). |
| "Applicable Law" | Any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of these by any governmental |

entity which is applicable to the Project, Work or any relevant Person, whether taking effect before or after the date of this RFP.

"Associates"

Any officer, employee, agent, consultant, contractor, licensee, or advisor of the State, including but not limited to the Project Advisors.

"Available Documents"

The documents described in Section 1.8 (*Available Documents*).

"Business Day"

Any day that is not a Saturday, Sunday or other day on which:

(a) the State is officially closed for business;

(b) banks located in Providence, Rhode Island are required or authorized by law or executive order to close.

"Capital Center"

The 48 acres of valuable urban property that constitutes the Capital Center Special Development District, created after several federal and State agencies and Amtrak realigned and lowered the Northeast Corridor tracks to its current location.

"Capital Center Commission"

The commission responsible for adopting, implementing and administering development plans for the Capital Center, in accordance with State law and Chapter 24 of the City Code of Ordinances.

"CDM" or "Collaborative Dialogue Meeting"

Interactive collaborative dialogue meetings between the Proposer and the State, enabling the State to engage in dialogue with the Proposer to identify solutions for the delivery of the Project that best meet the Project Objectives.

"Certificate of No Change"

Defined in Exhibit G-1 (*Administrative Proposal Requirements*).

"Claim"

Any proceeding, cause of action, action, claim, demand or suit (including by way of contribution or indemnity).

"Committed Proposal"

Is defined in Section 3.1(a)(iv) (*Pre-Development Agreement*).

"Component Proposal"

Each of the Administrative Proposal, Technical Proposal and the Financial Proposal.

"Confidential Information"

Any highly sensitive information provided by the State to the Proposer Team member (or any information a Proposer Team member derives from that information) that if lost or made public, could seriously damage or compromise the State, its property, facilities, systems, operations, or public safety and security, including information relating to vulnerabilities and threats or security systems. Confidential Information does not include information that:

(a) is already rightfully possessed by a Proposer Team member and is not known by the Proposer Team member to be subject to another

confidentiality agreement (or similar agreement) with the State;

(b) becomes available to the public other than as a result of a disclosure by a Proposer Team member;

(c) becomes available to a Proposer Team member from a source other than the State or its Associates, if the Proposer Team member does not know the source to be bound by a confidentiality agreement (or similar agreement) with the State;

(d) was independently developed by a Proposer Team member without reference to any Confidential Information; or

(e) was not marked as "Confidential Information" by the State or any Proposer Team member.

"Construction Work"

All work related to the construction of the Project.

"Contract Documents"

The Pre-Development Agreement, the Technical Guidelines and the Project Agreement.

"Developer"

The entity that will enter into the Pre-Development Agreement and the Project Agreement with the State.

"Design and Development Regulations"

The regulations adopted by the Capital Center Commission that will govern the design of the Project, which can be found at <http://www.providenceri.gov/wp-content/uploads/2017/06/Planning-CCC-adoptednew-regs-complete203.pdf>.

"Design Work"

All work related to the design, redesign, engineering or architecture for the Project.

"Disclosed Information"

The following information which is either directly or indirectly disclosed to or otherwise obtained by or on behalf of the Proposer:

(a) the RFQ and the RFP;

(b) any oral advice or information provided by or on behalf of the State or its Associates in connection with the RFP Process;

(c) the Available Documents;

(d) all material disclosed in presentations, briefings or during and CDMs, by or on behalf of the State or its Associates in connection with the RFP Process;

(e) all material relating to the Project on the State's website and the RIVIP Website;

(f) all discussions between the State and its Associates and any member of the Proposer Team;

(g) each SOQ and Proposal, to the extent that it might contain

information described in clauses (a) – (f) of this definition; and

(h) any other information that any member of the Proposer Team knows or should know is confidential to the State or its Associates.

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|--------------------------------|---|
| "Dollars" or "\$" | The lawful money of the United States of America. |
| "Environmental Approvals" | Defined in Section 1.19(a) (<i>Environmental Approvals</i>) of Exhibit D (<i>Technical Guidelines</i>). |
| "Financial Close" | The satisfaction or waiver of all conditions precedent to the initial disbursement to the Developer or utilization by the Developer of financing proceeds or the effectiveness of lenders' commitments, as applicable. |
| "Financial Model" | Is defined in Section 5 (<i>Preliminary Financial Model (Tab 3)</i>) of Exhibit G-3 (<i>Financial Proposal Requirements</i>) |
| "Financial Plan" | Is defined in Section 4 (<i>Financial Plan (Tab 2)</i>) of Exhibit G-3 (<i>Financial Proposal Requirements</i>) |
| "Financial Proposal" | The portions of the Proposal, including all documents, forms and other submissions, that are responsive to the applicable requirements of Exhibit F (<i>General Proposal Submittal Requirements</i>) and Exhibit G-3 (<i>Financial Proposal Requirements</i>). |
| "Financial Proposal Checklist" | The list of required components of the Financial Proposal, submitted as part of the Financial Proposal in the form of [Part 1 (<i>Financial Proposal Checklist</i>) of Exhibit G-3 (<i>Financial Proposal Requirements</i>)]. |
| "Good Faith" | Observance of reasonable commercial standards of fair dealing in a given trade or business, in accordance with R.I. Gen. Laws § 37-2-3. |
| "Guarantor" | A parent company or affiliate company of the Proposer, Sponsor, Lead Contractor or O&M Contractor whose financial statements were or are to be used to demonstrate financial capability of Proposer, Sponsor, Lead Contractor or O&M Contractor. |
| "Indemnified Parties" | The State, RIDOT, RIDOA, RIPTA and the Rhode Island Commerce Corporation, any of them individually and any of their officers, agents, Associates or employees. |
| "Information" | 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 any and all copies, duplicates or extracts of the foregoing. |
| "ITP" or "Instructions to" | Part I of this RFP, this "Instructions to Proposers", including all |

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| Proposers" | Exhibits and Forms attached to this document. |
| "Key Project Staff" | The Persons identified by the Proposer in its SOQ as: <ul style="list-style-type: none"> (a) Project Executive; (b) Project Manager; (c) Deputy Project Manager; (d) Design/Construction Interface Manager; (e) Design Manager; (f) Construction Manager; and (g) Operations & Maintenance Manager. |
| "Key Stakeholders" | The entities listed in Section 1.3 (<i>Key Stakeholders</i>). |
| "Lead Contractor" | The entity or entities (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the performance of Construction Work. |
| "Lead Contractor Member" | Where the Lead Contractor is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Contractor. |
| "Lead Designer" | The entity primarily responsible for completing the Project design and ensuring conformance with the Technical Guidelines. |
| "Lead Designer Member" | Where the Lead Designer is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Designer. |
| "LEED" or "Leadership in Energy Design" | The internationally recognized program developed by the U.S. Green Building Council that provides building owners and operators with a framework for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions and third-party verification of green buildings based on the satisfaction of certain prerequisites and earned points required to achieve different levels of certification. |
| "Liability" | Any debt, obligation, cost (including legal costs), expense, Loss, damage, compensation, charge or liability of any kind (whether arising in negligence or otherwise), including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable. |
| "Loss" | Any cost, expense, loss, damage or Liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty. |

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| "Major Participant" | Each of the following: <ul style="list-style-type: none"> (a) the Developer (b) each Sponsor (if a Sponsor is an investment fund, the fund's general partner(s)); (c) the Lead Designer; (d) each Lead Designer Member (if any); (e) the Lead Contractor; (f) each Lead Contractor Member (if any); (g) each O&M Contractor; (h) each O&M Member (if any); and (i) each Guarantor (if any). |
| "MBTA" | The Massachusetts Bay Transportation Authority. |
| "NEPA" | Defined in Section 4.1(b) (<i>Federal Approvals</i>). |
| "Non-Disclosure and Confidentiality Agreement" or "NDA" | The non-disclosure and confidentiality agreement executed by the Proposer and the State. |
| "O&M Contractor" | The entity that will be responsible for performing the operations and maintenance work required for the PITC. |
| "O&M Member" | Where the O&M Contractor is an incorporated or unincorporated joint venture, each member or joint venturer in the O&M Contractor. |
| "PA Commercial Close" | The execution of the Project Agreement by the Preferred Proposer and the State. |
| "PA Commercial Close Date" | The date of PA Commercial Close. |
| "Person" | Any individual or a corporation, sole proprietorship, limited liability company, joint venture, partnership or other legal entity. |
| "PITC" | Defined in Section 1.1 (<i>The Opportunity</i>). |
| "PITC Site" | Defined in Section 1.6(a) (<i>PITC Project Site</i>). |
| "Pre-Development Agreement" or "PDA" | The pre-development agreement to be entered into between the State and the Preferred Proposer in substantially the form attached as Exhibit C (<i>Pre-Development Agreement</i>). |
| "Pre-Development Close" | The date that the Pre-Development Agreement is executed by the |

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| | State and the Preferred Proposer. |
| "Pre-Development Close Date" | The date of Pre-Development Close. |
| "Pre-Development Phase" | The period of the RFP Process that will (i) commence on Pre-Development Close and (ii) terminate upon the earlier of (1) PA Commercial Close and (2) the termination or expiration of the PDA. |
| "Preferred Proposer" | The Proposer, if selected by the State as the preferred proposer. |
| "Preliminary Project Baseline Schedule" | The Proposer's baseline schedule for the Project as described in Exhibit G-2 (<i>Technical Proposal Requirements</i>). |
| "Private Development" | Defined in Section 1.1 (<i>The Opportunity</i>). |
| "Private Development Parcels" | Those parcels available the Developer chooses, and the State agrees to use for the Private Development. |
| "Private Development PDA" | Defined in Section 1.4(b)(i) (<i>Private Development</i>) |
| "Project" | Defined in Section 1.1 (<i>The Opportunity</i>). |
| "Project Advisors" | The firms identified in Section 2.3 (<i>The State's Project Advisors</i>). |
| "Project Agreement" | The principle contract governing the contractual obligations between the State and the Developer with respect to the Project described in Section 1.1 (<i>The Opportunity</i>). |
| "Project Labor Agreement" or "PLA" | Defined in Section 3.3 (<i>Project Labor Agreement</i>). |
| "Project Objectives" | The objectives described in Section 1.5 (<i>Project Objectives</i>). |
| "Project Schedule" | The baseline schedule developed for the Project and updated in accordance with the Pre-Development Agreement. |
| "Project Site" | The site identified in Exhibit H (<i>Project Site</i>) and utilized by the Developer to deliver the Project. |
| "Proposal" | The Proposer's proposal, in its entirety, including the Administrative Proposal, Technical Proposal and Financial Proposal submitted in response to this RFP. |
| "Proposal Due Date" | The date listed in the RFP Schedule for submittal of the Proposal. |
| "Proposal Letter" | The letter, substantially in the form of Form A (<i>Proposal Letter</i>), completed, signed and delivered by the Proposer to the State pursuant to Section [2.1] of Exhibit G-1 (<i>Administrative Proposal Requirements</i>). |
| "Proposer" | The shortlisted respondent that participates in the RFP Process. |

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| "Proposer Representative" | The individual to designated by the Proposer be its authorized representative for communication with the State Representative during the RFP Process. |
| "Proposer Team" | The Proposer, including its employees, agents, consultants, officers, directors, Subcontractors and members, and the Major Participants, Key Project Staff, and, as applicable, their employees, agents, consultants, officers, directors, Subcontractors (at any level) or members. |
| "Providence Station" | The existing train station servicing Amtrak and MBTA in the Capital Center identified in Exhibit H (<i>Project Site</i>). |
| "Public Contribution Amount" | The aggregate amount of public funding provided to the Developer for the Project under the Project Agreement. |
| "Public Records Act" | The Rhode Island Access to Public Records Act, R.I. Gen. Law §§ 38-2-1 et seq. |
| "Reasonable Efforts" | All steps in the power of the relevant party that are capable of producing the desired result that a prudent, determined and reasonable Person desiring to achieve that result would take. Except as otherwise expressly provided in this RFP, Reasonable Efforts does not mean that the relevant party is required to expend funds except for those necessary to meet the reasonable incidental or ancillary costs of the steps to be taken by the relevant party. |
| "RFI" | Defined in Section 2.9(a) (<i>Submittal of Questions by the Proposer</i>) |
| "RFP" or "Request for Proposals" | Defined in Section 1.7 (<i>Request for Proposals</i>). |
| "RFP Process" | The process to select the Preferred Proposer, consisting of the steps described in this ITP, which will commence with the issuance of this RFP and terminate upon the earlier of (i) the PA Commercial Close Date and (ii) the date that the State notifies the Proposer that the procurement for the Project is terminated. |
| "RFP Schedule" | The detailed schedule of the entire RFP Process, attached as Exhibit E (<i>RFP Schedule</i>) to this ITP. |
| "RFQ" or "Request for Qualifications" | The State's Request for Qualifications #7554495 issued on June 23, 2017 for a Public Private Partnership for the Providence Intermodal Transportation Center & Associated Private Development. |
| "Rhode Island Commerce Corporation" | The Rhode Island Commerce Corporation, a governmental agency and public instrumentality of the State of Rhode Island. |
| "RIDOA" | The Rhode Island Department of Administration, including its Division of Purchases. |

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| "RIDOT" | The Rhode Island Department of Transportation. |
| "RIVIP Website" | www.purchasing.ri.gov , the sole website for accessing all documents pertaining to the RFP and RFP Process. |
| "Road Improvements" | Certain improvements that the Developer will be required to complete in order to make the Project Site viable for the PITC and RIPTA's bus operations. |
| "Selection Committee" | The committee comprised of State employees responsible for reviewing and evaluating the Proposal in accordance with this ITP. |
| "SOQ" | The statement of qualifications submitted by the Proposer in response to the RFQ. |
| "Sponsor" | With respect to the Proposer: <ul style="list-style-type: none"> (a) if the Proposer is a consortium, partnership or any other form of joint venture, each member of the consortium partnership or joint venture; (b) if the Proposer is a limited liability company, each member or owner of the limited liability company; and (c) if the Proposer is a corporation, any Person holding (directly or indirectly) a 15% or greater interest in the Proposer. |
| "State" | Defined in Section 1.1 (<i>The Opportunity</i>). |
| "State Economic Development Goals" | The goals and objectives established by the State for the economic prosperity and growth of the State, including those goals identified by the Rhode Island Commerce Corporation and the Governor of Rhode Island. |
| "State House" | The Rhode Island State House, located in the City of Providence, at 82 Smith Street. |
| "Subcontractor" | Any Person with whom the Developer enters into any subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project, and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers. |
| "Submittal Exhibits" | The Exhibits to this ITP that describe Proposal submittal requirements: <ul style="list-style-type: none"> (a) Exhibit F (<i>General Proposal Submittal Requirements</i>); (b) Exhibit G-1 (<i>Administrative Proposal Requirements</i>); (c) Exhibit G-2 (<i>Technical Proposal Requirements</i>); and |

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| | (d) Exhibit G-3 (<i>Financial Proposal Requirements</i>). |
| "Technical Guidelines" | The technical guidelines attached as Exhibit D (<i>Technical Guidelines</i>) to this ITP that will serve as the basis for the technical requirements and performance criteria to be included as an exhibit to the executed Project Agreement. |
| "Technical Proposal" | The portions of the Proposal, including all documents, forms and other submissions, that are responsive to the applicable requirements of Exhibit F (<i>General Proposal Submittal Requirements</i>) and Exhibit G-2 (<i>Technical Proposal Requirements</i>). |
| "Technical Proposal Checklist" | The list of required components of the Technical Proposal, submitted as part of the Technical Proposal in the form of [Part 1 (<i>Technical Proposal Checklist</i>) of Exhibit G-2 (<i>Technical Proposal Requirements</i>)]. |
| "Terms and Conditions" | Exhibit B (<i>Procurement Process Terms and Conditions</i>) to this ITP. |
| "Unauthorized Contact" | Defined in Section 4.2(d) (<i>Rules of Contact</i>) of the Terms and Conditions. |
| "Utility Company" | Each owner of utilities whose assets may be impacted by the Project. |
| "Work" | The Design Work, the Construction Work, the Operations and Maintenance Work and all other work, services and obligations required to be furnished, performed and provided by the Developer under the Project Agreement. |
| "Work Product" | The Proposer's submitted information, intellectual property and any other work product related to its Proposal, including designs, drawings and plans. |

2. **INTERPRETATIONS**

Unless the context indicates a contrary intention, in this RFP:

- (a) a word importing the singular includes the plural and vice versa;
- (b) the word "including" or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (e) a reference to anything (including a right, obligation or concept) includes each part of it;
- (f) an obligation of two or more persons binds them jointly and severally;
- (g) the meaning of "or" will be that of the inclusive "or," meaning one, some or all of a number of possibilities; and
- (h) a reference to a section or article in the main body of the ITP refers to a section or article in the main body of the ITP and not in the exhibits.

3. **ORDER OF PRECEDENCE**

For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents in any part of this RFP, the following apply:

- (i) in respect of matters of interpretation related to the RFP Process and all procurement matters, this ITP will prevail over the documents in any other part of this RFP;
- (j) in respect of matters of interpretation related to the Project or Contract Documents, the Pre-Development Agreement will prevail over the ITP prior to PA Commercial Close and following PA Commercial Close, the Project Agreement will prevail over the documents in any other part of this RFP;
- (k) for the purpose of resolving conflicts or inconsistencies among the Contract Documents, the Pre-Development Agreement will govern prior to PA Commercial Close, and once PA Commercial Close is achieved, the Project Agreement will govern;
- (l) the terms of this RFP take precedence over, and supersede, the terms of the RFQ; and
- (m) to the extent this RFP conflicts with Applicable Law, Applicable Law will govern.

Exhibit B – Procurement Process Terms and Conditions

1. Application to Procurement

- (a) The Terms and Conditions in this Exhibit B apply generally to the RFP Process.
- (b) The State reserves the right to, at any time, impose additional or amended terms and conditions in this RFP or otherwise throughout the RFP Process.

2. Compliance with the Terms of this RFP

The Proposer agrees that by submitting its Proposal, it is bound to comply with its Proposal, all terms of this ITP, these Terms and Conditions and all other parts of this RFP. Failure by the Proposer or any Person on its Proposer Team to comply with the requirements, restrictions, prohibitions and other terms in this RFP may result in the Proposer's disqualification from the RFP Process. The Proposer acknowledges that this RFP Process is solely for the State's benefit.

3. RIVIP Website and Lead Contractor Registration Process

The Proposer must register online through the RIVIP Website and notify the State Representative of its Proposer Representative within 5 days of issuance of this RFP.

4. Communications Protocol

4.1 Terms of Discussion with the State

To confirm the Proposer's understanding of the State's rights with respect to information and Work Product received in connection with this RFP, the Proposal and the Rhode Island Access to Public Records Act, the Proposer and each of its Major Participants must execute the Agreement on Terms of Discussion (in the form attached to this ITP as Form B (*Agreement on Terms of Discussion*)) not later than 10 Business Days after the issuance of this RFP.

4.2 Rules of Contact

- (a) Unless otherwise approved in writing by the State, the State Representative is the State's single contact person and source of information for the procurement of the Project.
- (b) All notices, submissions, approvals and other communications described in this RFP must be in writing and timely delivered, except in the cases of notices, submissions, approvals or other communications expressly permitted or required to be given verbally, by telephone or electronically, including CDMs and except in the case of RFIs submitted electronically to the State Representative.
- (c) The Proposer must comply with the rules of contact set forth in this Section 4.2 during the entire RFP Process. The rules of contact apply to all forms of contact, including face-to-face meetings and teleconferences between the State and the Proposer (that may include any of the Proposer's and the State's employees, consultants and advisors), email and formal written communication.
- (d) The following rules of contact apply to any contact between the State and the Proposer and any violation of these rules or other rules of contact in this ITP, including Sections 4.3

(*Communication with Key Stakeholders*) of these Terms and Conditions, will be deemed an "**Unauthorized Contact**":

- (i) except as otherwise provided in this ITP for CDMs, the Proposer will correspond with the State regarding this RFP and the Proposal only through its Proposer Representative and will direct all communications to the State Representative; and
 - (ii) other than communications or contacts that are (A) expressly permitted by this RFP or (B) approved in writing in advance by the State Representative, any communication or contact regarding this RFP by the Proposer, a member of its Proposer Team, its Proposer Representative or any governmental or elected official engaged by, or acting on behalf of, the Proposer or on behalf of any other agent or sub-agent of the Proposer with any of the State's officials or employees (other than the State Representative) or any of the State's Associates involved with this procurement, is strictly prohibited.
- (e) This Section 4.2 does not preclude or restrict:
- (i) the Proposer communicating with the State regarding matters unrelated to this RFP; or
 - (ii) the Proposer participating in State public meetings or CDMs.
- (f) Any Unauthorized Contact may be considered an attempt by the Proposer to impermissibly impact the RFP Process. Accordingly, the Proposer may be disqualified from the RFP Process if the State determines that any Unauthorized Contact by the Proposer or any Person on the Proposer's Proposer Team is improper or was an attempt to impact the RFP Process.
- (g) The State will not be responsible for any other information or exchange that occurs outside the official process specified in this RFP.

4.3 **Communications with Key Stakeholders**

Throughout the RFP Process:

- (a) the Proposer is prohibited (without the State's consent) from contacting or communicating directly with any Key Stakeholder regarding this RFP or any aspect of the Project;
- (b) this prohibition does not apply to contact or communications initiated by federal or State regulatory and permitting agencies, and state, city or local agencies;
- (c) The Proposer may submit requests or questions to the State Representative regarding issues related to, or requiring information from, any Key Stakeholder in accordance with the protocols in this Section 4:
 - (i) when submitting a question relating to a Key Stakeholder-related issue, the Proposer should indicate reasons why the Proposer believes the content of the question should remain confidential; and
 - (ii) if the State determines that the question will remain confidential, the State will use Reasonable Efforts to obtain a response from the relevant Key Stakeholder on the

Proposer's behalf and the response will be shared only with the Proposer. If the State determines that a question does not need to be kept confidential, the State will allow the Proposer to withdraw the question within a reasonable period of time following the State's notification of its determination. Should the Proposer fail to timely withdraw its question, the State may then disclose the question publicly; and

- (d) depending on the nature and volume of questions received regarding Key Stakeholder-related issues, the State may decide to schedule one or more meetings between any Key Stakeholder and the Proposer. The Proposer will have an opportunity to meet with a Key Stakeholder if the State decides to hold meetings. If the State decides to hold a meeting, it will notify the Proposer of the Key Stakeholder's attendees, topics to be covered, date, time and other pertinent information regarding the meeting.

5. Improper Conduct

5.1 Non-Collusion / Integrity

If the Proposer or any Person or member on its Proposer Team, or any related representatives, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan to the State or its agents, Associates or representatives at any time during the RFP Process:

- (a) the State will immediately disqualify the Proposer; and
- (b) the State may sue the Proposer for damages.

5.2 Organizational Conflicts of Interest

- (a) If the Proposer or any Person on its Proposer Team has a possible conflict of interest or may give the appearance of a possible conflict of interest, the Proposer must notify the State in writing as soon as it becomes aware of the possible conflict. The State reserves the right to disqualify the Proposer if any interest disclosed from any Proposer Team member could create a conflict of interest or give the appearance of a conflict of interest. The State's determination regarding any questions of conflict of interest will be final.
- (b) The following entities and individuals are prohibited from submitting a Proposal and from participating in any capacity as a member of the Proposer Team in respect of the Project:
 - (i) any of the State's Project Advisors;
 - (ii) any entity that is a parent, Affiliate or a subsidiary of the State's Project Advisors;
 - (iii) any entity that will be involved in reviews by the State's Selection Committee; and
 - (iv) any individual who is or was the State's employee or consultant and was involved in the development of this RFP or any other documents relating to the procurement of the Project, the evaluation criteria or the technical criteria for the Project.

6. Proposer Diligence

6.1 Examination of this RFP and the Project Site

- (a) The Proposer will be responsible for:
 - (i) examining, with appropriate care and diligence, this RFP and any other documents or information provided to the Proposer in connection with this RFP, including all information posted on the RIVIP Website in accordance with Section 9.1 (*Confidentiality and Security Protocols*) of these Terms and Conditions;
 - (ii) submitting RFIs with respect to any perceived discrepancy, deficiency, ambiguity, error or omission contained in this RFP and with respect to any provision that the Proposer fails to understand; and
 - (iii) informing itself with respect to any and all circumstances which may in any way affect the nature of its Proposal or the performance of its obligations if the Proposer is selected as the Preferred Proposer and enters into the Pre-Development Agreement or the Project Agreement (or both) with the State.
- (b) Except as otherwise expressly set forth in the Contract Documents, the Proposer's failure to examine and inform itself will be at its sole risk and expense, and the State will provide no relief for any error or omission. Submitting its Proposal will be considered prima facie evidence that the Proposer has made the examinations described in this Section 6.1 and is aware of the conditions to be encountered in performing the Work and the requirements of the Contract Documents. All the Proposer's physical investigations of the Project Site will be coordinated by the State in accordance with Section 6.2 (*Access to the Project Site*) of these Terms and Conditions.

6.2 Access to the Project Site

- (a) During the RFP Process, the State will coordinate one or more site visits with the Proposer to the Project Site on the dates set forth in the RFP Schedule. The State will provide in advance the rules and protocols for the conduct of these site visits and the Proposer is expected to comply.
- (b) All the Proposer's questions regarding this RFP, the RFP Process or the Project Site must be submitted to the State Representative in accordance with the provisions of Section 4 (*Communications Protocol*) of these Terms and Conditions. Any information conveyed verbally by the State's escort or other personnel to the Proposer during the site visit will not be binding on the State.

7. Sales Taxes and Costs; Taxes Generally

The State does not advise, and does not intend to advise, on any tax-related matters. The information in this RFP relates generally to the Project and does not represent any tax, legal or other advice, either express or implied. The Proposer is encouraged to seek its own professional tax advice for all tax-related issues related to the Project. The State of Rhode Island is exempt from federal excise taxes and state and municipal sales and use taxes. The Proposer must not include such taxes in its Financial Proposal.

8. Proposer Eligibility to Bid on or be Awarded Public Contracts

- (a) As part of this RFP, the State will honor any determination by an agency of the State of Rhode Island that a contractor or potential contractor is not eligible to bid on or be awarded public contracts because the contractor or potential contractor has been determined to have engaged in illegal or dishonest conduct or violated the prevailing rate of wage legislation. This policy applies to all members of and Persons on the Proposer's Proposer Team.
- (b) The State will allow, in the State's discretion, a contractor or a potential contractor who has been deemed ineligible by an agency of the State of Rhode Island to submit a bid on a State contract and then establish that it actually is eligible to be awarded the contract because the state agency determination:
 - (i) does not apply to the contractor or potential contractor;
 - (ii) was made without affording the contractor or potential contractor the notice and hearing to which the contractor was entitled by the requirements of due process of law;
 - (iii) was clearly erroneous; or
 - (iv) was not based on a finding of conduct demonstrating a lack of integrity or a violation of the prevailing rate of wage legislation.

9. Confidentiality and Security Protocols; Information Disclosure

9.1 Confidentiality and Security Protocols

- (a) Confidential communications will not be posted to the RIVIP Website. The State will communicate all confidential correspondence directly to the Proposer Representative.
- (b) All Non-Disclosure and Confidentiality Agreements will continue in perpetuity, including during the term of the Project Agreement, and will apply to all Confidential Information. The Pre-Development Agreement includes (and the Project Agreement will include) an affirmative obligation on the Preferred Proposer and the Developer (as applicable) to ensure its employees, officers, agents and Subcontractors and their employees, officers and agents are not in breach of the Non-Disclosure and Confidentiality Agreements.
- (c) The Proposer, in the preparation of its Proposal, and subsequently the Developer performing work under the Contract Documents, should be aware that background checks will be required of all individuals who will be accessing certain Confidential Information or on site at the Project. Background checks are performed through the Rhode Island Department of Attorney General Bureau of Criminal Identification.

9.2 Disclosure of Information in Proposal Documents; Freedom of Information Requests

All RFP documentation submitted to the State becomes the property of the State and is subject to the disclosure requirements of the Rhode Island Access to Public Records Act, including information in the Proposal, whether pursuant to a request under any Applicable Law of the State of Rhode Island or otherwise, is subject to the Agreement on Terms of Discussion and the Rhode Island Access to Public Records Act.

The Proposer acknowledges and agrees that:

- (a) the Rhode Island Access to Public Records Act applies to the documents and Work Product that the Proposer provides in its Proposal or otherwise submits to the State pursuant to this RFP;
- (b) the Rhode Island Access to Public Records Act allows members of the public rights of access to the State's documents and its Associates' documents;
- (c) all or part of the documents and Work Product that the Proposer provides may be disclosed to third parties to the extent that the provisions of the Rhode Island Access to Public Records Act require it; and
- (d) any document or Work Product that the Proposer wishes to be treated as confidential must be marked "commercial and confidential." This special notation must not be used unless the document is genuinely confidential. Marking documents as "commercial and confidential" will not necessarily prevent disclosure of the documents in accordance with the Rhode Island Access to Public Records Act; and
- (e) agree that unless expressly permitted under the Rhode Island Access to Public Records Act, neither the Proposer nor any member of its Proposer Team will be able to commence or make any Claim against the State or its Associates for the State's release of any documents (including any documents submitted by the Proposer or any member of its Proposer Team to the State pursuant to the RFQ or the RFP (as the case may be)) or otherwise.

9.3 Proposer's Disclosure and Disposal of this RFP

- (a) Disclosure by the Proposer or any Person on its Proposer Team of any information or documents relating to this RFP that constitutes Confidential Information must be in accordance with, and is subject to, the requirements set forth in the Non-Disclosure and Confidentiality Agreement.
- (b) The Proposer may receive information that is not Confidential Information and, upon editing and revising this information, may convert it to Confidential Information. It is incumbent upon the Proposer to mark the edited and revised materials as "Confidential Information".
- (c) All recipients of this RFP are required to ensure the secure and appropriate disposal of any Confidential Information in this RFP and the related documents, and to prevent disclosure of the Confidential Information in accordance with the procedures specified in the Non-Disclosure and Confidentiality Agreement.

Documents may also be returned for disposal purposes to:

Rhode Island Department of Administration
Division of Purchases
One Capitol Hill, Second Floor
Providence, RI 02908-5855

- (d) Upon the earlier of (i) the State's written request, (ii) completion of the RFP Process and (iii) the date the State notifies the Proposer that the procurement for the Project is

terminated, the Proposer and other recipients of the Confidential Information must promptly return to the State, destroy or (to the extent stored in an electronic format) delete any Confidential Information received by them at their expense, in each case, according to the procedures set forth in Section 9.3(e) of these Terms and Conditions.

- (e) The Proposer and other recipients of the Confidential Information will be entitled to retain any Confidential Information to the extent necessary to demonstrate their compliance with any legal, professional or contractual obligation or document retention policy. Any Confidential Information that the Proposer retains will continue to be subject to the Non-Disclosure and Confidentiality Agreement.

10. Language and Currency

- (a) The Proposal and all the Proposer's communications (oral or written) must be entirely in the English language and use United States customary units of measurement. If any communications or original documents required for the Proposal are in any other language, the Proposer must provide an English translation, certified to be a true and accurate by a notary public. The provisions of the translated version will prevail over the original document in the event of any conflict with the original document.
- (b) Any information quantified in currency must be provided in Dollars.

11. The State's Rights in Work Product

- (a) All Work Product, including the Proposal (but excluding the Proposer's Financial Model), that the Proposer submits in response to this RFP will become the State's property upon delivery to or transmission to the State. Accordingly, the State will not be required to return the Proposal or any Work Product, including documents, materials, articles and information that the Proposer has submitted as part of or in support of the RFP Process or its Proposal.
- (b) In consideration for the Proposer being invited to submit its Proposal for the State's review and evaluation, the State will have, without any further action required by any Person, an unrestricted fully paid-up, royalty-free, non-exclusive, irrevocable, perpetual license (with the right to sub-license) to use all Work Product submitted by the Proposer in the performance of any of the State's functions, including incorporating any Work Product or concepts based on that Work Product into the Contract Documents or any subsequent procurement by the State. The State's use of any Work Product will be at its risk and discretion and will in no way be deemed to confer Liability on an unsuccessful Proposer.

12. Proposer's Costs Not Reimbursable

- (a) The Proposer will bear all its costs related to:
 - (i) preparing and submitting its Proposal, including costs of copying, postage or delivery;
 - (ii) preparing for and attending any interview, meeting, CDM or workshop conducted pursuant to this ITP; and
 - (iii) otherwise participating in the RFP Process.

- (b) None of the Proposer's costs are reimbursable by the State, regardless of the conduct or outcome of the RFP Process.
- (c) To the extent that liability for costs cannot be excluded, the State's maximum aggregate liability is \$1.

13. Labor Relations and Wages and Benefits Requirements

The Proposer is advised that the Developer will be required to comply, and will be required to cause its contractors, Subcontractors, permittees and others on the Project Site to comply, with any requirements set forth in the Pre-Development Agreement, the Project Labor Agreement (if applicable) and the Project Agreement regarding labor relations, wages and benefits.

14. Minority, Women-Owned and Disadvantaged Business Enterprises

It is the State's policy to encourage the participation of MBEs and WBEs in all facets of its business activities, consistent with Applicable Law. Through the Minority Business Enterprise Compliance Office, the State conducts its own certification process and will not accept the certification of any other jurisdiction (though companies not certified in Rhode Island must be certified in their home state before they can be certified in Rhode Island). The State will use Reasonable Efforts, however, to assist companies the Proposer designates in complying with Rhode Island's requirements and process for MBE or WBE certification.

15. Reserved Rights

15.1 State Directions

In order to participate in this RFP Process and submit its Proposal, the Proposer must comply with any of the State's directions or requirements given under this ITP or issued under any Addenda.

15.2 State Discretions

The State may without incurring any cost, obligations or Liabilities, do any of the following at any time and for any reason during the RFP Process:

(a) **Request Additional Information**

- (i) investigate the information in the Proposal;
- (ii) require additional evidence of qualifications to perform the obligations of the Developer under the Contract Documents;
- (iii) require the Proposer to confirm information it provided generally or provide additional information or clarification concerning its Proposal or any RFI or submission;
- (iv) permit corrections to data or Work Product submitted with any response to this RFP until the time that the State declares in writing that a particular stage or phase of its review has been completed and closed;

- (v) request and permit submittal of addenda and supplements to data previously provided in the Proposal pursuant to a request for clarification issued by the State until the time as the State declares that a particular stage or phase of its review has been completed and closed;
- (b) **Modify the Project and the RFP**
- (i) modify the RFP Process or documentation described in this ITP;
 - (ii) cancel, modify or withdraw this RFP, in whole or in part;
 - (iii) develop the Project in any manner that the State deems necessary, including implementing changes to the scope of the Project and any requirements and provisions for Work during the RFP Process (with appropriate notice to the Proposer);
 - (iv) develop some or all of the Project itself or through another State or local government entity or entities;
 - (v) modify the RFP Schedule and any dates set forth or projected in this RFP;
 - (vi) issue Addenda, supplements and modifications to this RFP, the RFP Process and issue one or more revised versions of the RFP;
- (c) **Terminate the RFP**
- terminate this procurement and the RFP and commence a new procurement for part or all of the Project, for any reason;
- (d) **Analyze and Reject Proposal**
- (i) appoint evaluation committees to review the Proposal, make recommendations and seek the assistance of outside legal, financial and technical experts and consultants in Proposal evaluation;
 - (ii) reject the Proposal if it is received after the Proposal Due Date or otherwise is not submitted in compliance with this RFP or the State's requirements;
 - (iii) exclude the Proposal from further consideration if it contains a material misrepresentation, is not responsive to the requirements of this ITP or is not deemed "Acceptable";
- (e) **Negotiations**
- (i) suspend, discontinue or terminate negotiations on the Contract Documents at any time;
 - (ii) elect not to commence negotiations on the Contract Documents with the Proposer;
 - (iii) discuss the RFP or the Project with any Person the State deems appropriate;

(f) **Award**

- (i) terminate evaluations of the Proposal received at any time;
- (ii) waive deficiencies, informalities or other irregularities in the Proposal or other submissions;
- (iii) accept and review the Proposal or seek clarifications, modifications or omissions to the Proposal;
- (iv) seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposal;

(g) **Disqualifications**

disqualify the Proposer:

- (i) in the event that a conflict of interest arises that cannot be resolved to the State's satisfaction;
- (ii) for any communications that the State deems improper, including any Unauthorized Contact; or
- (iii) for violating any of the requirements, rules or provisions in this ITP; and

(h) **General Right**

exercise any other discretion or right reserved, described or afforded to the State under this RFP and Applicable Law.

15.3 **State Disclaimers**

- (a) This RFP does not commit the State to enter into any Contract Document. The State assumes no obligations, responsibilities or Liabilities, fiscal or otherwise, to reimburse (or make payments in respect of) any costs the Proposer incurred or alleges to have incurred in considering a response to and responding to this RFP. The Proposer will solely bear all of these costs.
- (b) In no event will the State be bound by or liable for any obligations with respect to the Project unless and until the State authorizes and execute the applicable Contract Documents, in form and substance satisfactory to it. The State will only be bound or liable to the extent provided in the Pre-Development Agreement, the Project Agreement and the other Contract Documents, if at all.
- (c) In addition, the Indemnified Parties may not be charged personally with any Liability by the Proposer or another or held liable to the Proposer or another under any term or provision of this RFP, under any statements made in this RFP or because of the Proposer's submittal or attempted submittal of its Proposal or other response. By submitting its Proposal in response to this RFP, the Proposer expressly waives any right it may have to bring a Claim against the Indemnified Parties for any reason.

15.4 State Consent

- (a) In the case of any decision, action, determination or approval to be made or discretion to be exercised by the State in this ITP, the State may make any decision, action, determination or approval or exercise any discretion for any reason and in its sole and absolute discretion, and in doing so the State may elect to consider only its own interests and will not be required to consider the effect of any of these determinations and decisions on the Proposer or any third party.
- (b) Whenever the State's consent is required under this ITP, that consent may be given subject to conditions that the State may determine without any obligation to provide reasons.

15.5 Indemnity to the Indemnified Parties

The Proposer and each of its Sponsors jointly and severally indemnify the Indemnified Parties and agree to keep each of them indemnified against any Claim by the Proposer or any Person on its Proposer Team or any Person claiming through the Proposer or any Person on its Proposer Team in any way relating to the RFP, the Project or otherwise in connection with the RFP Process.

16. No Legal Relationship

The Proposer acknowledges and agrees that:

- (a) the RFP does not constitute an offer to enter into the final Pre-Development Agreement or final Project Agreement;
- (b) other than the Contract Documents that arise between the Developer and the State as a consequence of the Developer executing the applicable Contract Documents, no contract in respect of the Work exists or will arise between any of:
 - (i) the State and any Preferred Proposer (or any member of its Proposer Team); or
 - (ii) the State and the shortlisted respondent (or any member of its Proposer Team),unless and until the Contract Documents are duly executed, as applicable; and
- (c) no legal relationship exists between the Proposer and the State.

17. Energy Conservation

The Proposer agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

18. Information from the State

18.1 No Warranty

The State and its Associates do not warrant, guarantee, make any representation (express or implied), assume any duty of care or accept any Liability with respect to the completeness,

relevance, accuracy, currency, adequacy or correctness of any Disclosed Information, and nor do any of its Associates.

18.2 **Inconsistency**

The State may elect to issue this ITP, the RFP and any Disclosed Information to the Proposer in hard copy and electronically. To the extent that there is any inconsistency between a hard copy and an electronic version, the hard copy will prevail unless the State Representative directs otherwise.

18.3 **No Reliance**

Except as otherwise expressly provided in this RFP, the Proposer cannot rely on any Information the State provides in connection with the RFP Process and must make and rely on the Proposer's own inquiries and due diligence in relation to the Project.

18.4 **No Details**

The State is not required, and does not intend, to release any details regarding the evaluation process for the RFP other than as contained in this ITP.

18.5 **No Liability**

In no circumstances will any Indemnified Party be liable to the Proposer or any person on the Proposer's Proposer Team whether in contract, tort (including negligence, misrepresentation or breach of warranty), under statute or otherwise for any losses or Liability of the Proposer or any Person on its Proposer Team incurs or suffers because of or arising from:

- (a) any incompleteness or inadequacy of, any inaccuracy or error in, or any omission from; or
- (b) use of or reliance on, by the Proposer or any Person on its Proposer Team,

of any Disclosed Information or this RFP.

19. **Addenda**

- (a) Any revisions or modifications to this RFP and the RFP Process will be implemented through issuance of Addenda to this RFP to the RIVIP Website.
- (b) No statement or representation that the State makes or that its Associates make (whether at an industry or Project briefing, forum, workshop, CDM, question and answer session or otherwise) modifies or supplements this RFP, unless the statement or representation is confirmed by an Addendum or new version of the RFP.
- (c) This RFP may only be amended or supplemented by Addenda issued under this ITP.
- (d) Any Addenda issued will be deemed to form part of this RFP.

20. Status of RFP, Proposal and Proposer's Team

20.1 Material Changes

- (a) The Proposer must notify the State promptly in writing of any:
 - (i) material change to any:
 - (A) information contained in its SOQ or Proposal;
 - (B) additional information submitted to the State pursuant to the RFQ, the RFP or any part of the RFP Process; and
 - (C) information submitted to the State in any interview, CDM, or workshop conducted pursuant to the RFQ, the RFP or any part of the RFP Process that when it was submitted to the State was submitted in a final and not interim or draft form;
 - (ii) event which may affect or have an impact on the financial position or capacity of any of the Sponsors or Guarantors, or of the Developer to enter into any of the Contract Documents; or
 - (iii) circumstances that may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the Proposer's SOQ, Proposal or any other submission submitted to the State as part of the RFP Process.
- (b) Upon receipt of any written notification pursuant to Section 20.1(a) of these Terms and Conditions, the State will assess the change and may terminate the Proposer's further participation in the RFP Process or invite the Proposer to amend its Proposal or any other submission accordingly.

20.2 Changes in Proposer's Organizational Structure

- (a) Subject to the following, the Proposer will be precluded from changing any Major Participant or Key Project Staff for the duration of the RFP Process. However, the Proposer may:
 - (i) excluding the Proposer's Major Participants and Key Project Staff, modify any other Person on its Proposer Team, without the State's approval; or
 - (ii) submit a request for an Administrative Organizational Change to the State.
- (b) When seeking the State's approval, the Proposer must submit information on proposed new Proposer Team members at the same level of detail required by the RFQ. Unauthorized Administrative Organizational Changes by the Proposer may result in the Proposer's disqualification.

20.3 No Amendment

- (a) The Proposer may not amend its Proposal after it has been submitted unless the State invites or requests the Proposer to do so in accordance with this ITP.

- (b) Without limiting the State's rights to invite or request the Proposer to amend its Proposal, the State may, in its discretion and at any time during the RFP Process:
 - (i) require the Proposer to withdraw any portion of its Proposal which specifies or results in a departure from the requirements set out in this RFP; and
 - (ii) allow the Proposer to correct patent typographical or arithmetic errors in its Proposal.

21. MISCELLANEOUS

21.1 Waiver and Estoppel

- (a) The State's failure or delay to exercise or enforce, or the State's partial exercise or enforcement of any, rights, powers or remedies under any Applicable Laws or this RFP does not preclude, or operate as a waiver or estoppel of, the State's exercise or enforcement or further exercise or enforcement of, that or any of the State's rights, powers or remedies under any Applicable Laws or this RFP.
- (b) If the State gives a waiver under this ITP, it will only be effective and binding on the State if it gives or confirms the waiver in writing.
- (c) No waiver of a breach of any term of this ITP operates as a waiver of:
 - (i) any other breach of that term; or
 - (ii) a breach of any other term of this ITP.

21.2 No Fettering

Nothing contained or implied in this RFP will be construed or interpreted as unlawfully restricting or otherwise affecting the State's discretion to exercise any of the State's executive or statutory powers or functions under any Applicable Law.

21.3 Severability

If any part of this ITP is inconsistent with any Applicable Law, it will be severed from this ITP to the extent of the inconsistency, without invalidating or otherwise affecting the enforceability of the remaining portions of this ITP.

21.4 Governing Law

This ITP will be governed by and construed in accordance with the laws of the State of Rhode Island.

EXHIBIT C – Form of Pre-Development Agreement

[Attached]

Draft Version 4

EXHIBIT D – Technical Guidelines²

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² The Technical Guidelines provide an initial overview and high-level parameters for the technical and performance criteria which are to be negotiated and agreed as part of, and subject to the final terms of, the Project Agreement.

1. GENERAL REQUIREMENTS

1.1 Description of Project

The Project is composed of the design, construction, financing, operation, and maintenance of an intermodal transportation center in downtown Providence (the "PITC") and any other related public improvements approved by the State under the Project Agreement, which may include other public works projects including but not limited to the relocation of the State Boiler House, and parking (collectively with the PITC, the "Project").

1.2 Project Management Plan

- (a) Developer shall plan, schedule, and execute all aspects of the Work and shall be responsible for coordinating its activities with all parties that are directly impacted by the Work. Developer shall document and report all Work in accordance with the requirements set forth herein.
- (b) Developer shall develop a Project Management Plan that describes the organization, authority, reporting relationships, and procedures to be implemented to manage and control the Work and shall submit the same to RIDOT for its review and approval pursuant to the PDA and the Project Agreement.
- (c) The Project Management Plan shall clearly state how Developer expects to direct completion of the Work, and shall acknowledge that such completion shall require close coordination with and in certain instances a need to obtain the approval of third parties, including, without limitation, RIDOT, RIPTA, City of Providence, Amtrak, Capital Center Commission, other stakeholders, and the State Building Inspector.
- (d) The Project Management Plan shall include a Health and Safety Plan and QA/QC Plan prepared in accordance with RIDOT and Industry Standards.

1.3 Applicable Codes and Standards

All Work shall be per the requirements of the latest editions of all applicable codes, regulations and standards including but not limited to the following:

- Rhode Island State Building Code (SBC-1)
- Rhode Island Plumbing Code (SBC-3)
- Rhode Island Mechanical Code (SBC-4)
- Rhode Island Electrical Code (SBC-5)
- Rhode Island Energy Code (SBC-8)
- Rhode Island Department of Transportation; Standard Specifications for Road and Bridge Construction

1.4 Quality Assurance/Quality Control Plan (QA/QC Plan)

- (a) As a means of ensuring that the performance of the Work fulfills the requirements of the Contract Documents and that the materials, equipment, and all elements of the Work

shall perform satisfactorily for the purposes intended, Developer shall provide RIDOT with a detailed QA/QC Plan within 30 days of NTP, and shall at all times comply with the requirements thereof.

- (b) The QA/QC Plan objective is to provide a formal structure that enables Developer to manage the Work and RIDOT to monitor the performance of the Work consistent with RIDOT quality principles.
- (c) The QA/QC Plan shall describe the quality control and quality assurance organization. It shall include an organizational chart showing lines of authority and reporting responsibilities. The persons and organizations performing Quality Assurance and Quality Control functions shall have sufficient authority and organizational freedom to identify quality problems and to initiate, recommend, provide and verify the implementation of solutions. Persons performing QA/QC functions shall be at an organizational level that ensures that they are not influenced by the potential impact of implementation of the QA/QC Plan on the Project Schedule, performance or cost. The QA/QC Plan is a living document and the Developer may revise any portion of its QA/QC Plan as may be necessary, but such revisions must be submitted and approved by RIDOT.
- (d) The QA/QC Plan shall be developed to ensure that design and construction of the Project shall be performed in accordance with all requirements of the Contract Documents. In addition to the requirements above, the QA/QC Plan shall describe and include the following:
 - Specific QA/QC procedures for preparing and checking all plans, specifications, calculations, reports and other items to ensure that they are independently checked and back-checked in accordance with generally accepted engineering practices and the approved QA/QC Plan;
 - Measures to ensure that purchased materials, equipment, and services conform to the Contract Documents. These measures shall include provisions for source evaluation and selection, objective evidence of quality furnished by Subcontractors, inspection at the manufacture or vendor source, and examination/testing of products upon delivery;
 - Procedures for identification and control of materials, minimum frequency of analyses (available in RIDOT Master Schedule), equipment and elements of the Work. These procedures shall ensure that identification of the item is maintained by appropriate means, either on the item or on records traceable to the item, as necessary, throughout fabrication, erection, installation and use of the item;
 - Establish and maintain an effective and positive system to ensure that materials, equipment, or elements of the Project that do not conform to requirements are not used or installed. These procedures shall include procedures for identification, documentation, segregation, disposition and notification to RIDOT and, if appropriate, affected Utility Owners, as well as procedures for RIDOT to review nonconforming work;
 - A program recognizing RIDOT's intention to inspect and test the Work for acceptance. Examinations, measurements and tests of materials or elements of the Project will be performed for each operation where appropriate to assure quality;

- A program to ensure performance of all quality control testing to demonstrate that all materials, equipment and elements of the Project shall perform satisfactorily for the purposes intended and meet the standards specified in the Contract Documents. The QA/QC Plan shall require test results to be documented and evaluated to ensure that test requirements have been satisfied; submit documentation to RIDOT; and include samples of all QC forms and reports;
- Procedures to indicate, by the use of markings such as stamps, tags, labels, routing cards or other suitable means, the status of inspections and tests performed upon individual items; and
- A system of periodic internal audits shall be carried out by the Developer to determine the effectiveness and implementation of the QA/QC Plan. Audit results shall be documented, reviewed, acted upon by Developer, and submitted to RIDOT for RIDOT review and documentation. Follow up action, including re-audit of deficient areas, shall be taken where necessary.

1.5 **Sustainability**

The PITC and the Private Development shall be capable of qualifying for a “Certified” or better certification from the U.S. Green Building Council’s (USGBC) Leadership in Energy and Environmental Design (LEED) rating system.

1.6 **Accessibility**

- (a) The Work shall be designed and constructed in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; the Americans with Disabilities Act of 1990, as amended, 42 USC § 12101 et seq.; the Architectural Barriers Act of 1968, as amended, 42 USC § 4151 et seq.; and Federal Transit Law at 49 USC § 5332.
- (b) All construction shall provide for convenient and safe pedestrian demands and conform to ADA requirements. All signs, utility poles, traffic signal equipment, hydrants, and other fixtures shall be located so as not to obstruct pedestrian walkways and to provide the required walkway width. Existing handicapped spaces shall be maintained or relocated.

1.7 **Design Process**

- (a) The Developer shall prepare Design Documents in a format and in accordance with the Contract Documents. The Design shall consist of plans, reports, specifications (including special provisions), calculations, and as required, supporting documentation. The Design shall be developed in a manner consistent with the overall quality and performance required by the standards referenced in the Contract Documents.
- (b) The Design Documents (including designs, plans and specifications) shall be prepared in English Units and submitted to RIDOT in hard copy as well as in electronic format. The Developer shall maintain design and construction Project files, including indexing requirements. Plan sets and sheet types for partial construction work elements, or early start of construction prior to a completed final design, shall be coordinated with the accepted QA/QC Plan and with RIDOT oversight.

- (c) Throughout the duration of the Project, and except for those coordination activities specifically reserved for RIDOT pursuant to this Contract, Developer shall be responsible for coordination with Governmental Approval agencies, utilities and other entities.
- (d) The Work shall be completed in conformance with all current engineering and policy directives, and other correspondence normally available and distributed to design consultants by RIDOT.
- (e) Design Exceptions:
 - i. Design Exceptions are deviations to the Design from applicable RIDOT Standards, Industry Standards, or other standards referenced in this Contract.
 - ii. Developer shall use engineering judgment in applying Design criteria in situations where strict adherence to these criteria is not possible. If deviation from the criteria is required, Developer shall submit a specific written request for approval of the Design Exception to RIDOT. The variance of standards shall be issued as a "special provision."
 - iii. Developer shall obtain the written approval of RIDOT for all Design Exceptions from Design standards and criteria set forth herein. Developer shall document and make available to RIDOT an interim summary record of all Design Exceptions. Developer acknowledges that RIDOT may withhold approval of any and all Design Exceptions in its sole discretion. The Developer shall allow sufficient time in its schedule for review and response by RIDOT, allowing for the possibility that the Design Exception may not be approved.
 - iv. Developer shall prepare all documentation required to request Design Exceptions from Design standards and criteria set forth herein. A single report, combining all Design Exceptions from mandatory standards for the Project, shall be maintained by Developer through the duration of the Project and submitted by the Developer as part of the As-Built Drawings at the completion of the construction phase of the Project.
- (f) Design Notes:
 - i. In addition to documentation required elsewhere in the Contract Documents, Developer shall submit to RIDOT for review all design notes, sketches, worksheets, calculations and computations to document the design conclusions reached during the value engineering of the Design.
 - ii. Design notes and computations shall be recorded on 8 ½" x 11" computation sheets, appropriately titled, numbered, dated, indexed and signed by the designer and checker. Computer output forms and other oversized sheets shall be folded or legibly reduced for submittal to 8 ½" x 11" size. The data shall be bound in a hard-back folder for submittal to RIDOT.

1.8 Design Reviews and Submittals

- (a) Design reviews will be conducted by RIDOT, as applicable, in accordance with the terms of the PDA and the Project Agreement. All Design Reviews shall be accompanied by five (5) complete hard copy sets of Design Documents and one (1) copy in electronic format,

unless otherwise specified. [NTD: confirm the number of copies and format and any electronic submission requirements]

(b) RIDOT Reviews:

- i. Oversight reviews by RIDOT and its representatives will consist mainly of checks to ensure that the Contract requirements and design criteria are being followed and that the QA/QC activities are following Developer's approved QA/QC Plan. The reviews may, at RIDOT's discretion, include review of Design Documents, electronic files, calculations, reports, specifications, geotechnical data, and other relevant design information.
- ii. RIDOT reserves the right to engage Key Stakeholders, including but not limited to representatives of RIDOT, RIPTA, City of Providence, Amtrak, Capital Center Commission, other stakeholders, and the State Building Inspector to ensure Developer integrates the Project to adjacent projects by others.
- iii. Developer acknowledges that, in addition to the Design review procedures set forth herein, RIDOT may inspect the Design throughout the Design process at its sole discretion in accordance with RIDOT Standards.

(c) Over-the-shoulder Reviews:

- i. Over-the-shoulder reviews are examinations by RIDOT of Design Documents during the Design Process.
- ii. The over-the-shoulder reviews will be conducted, as appropriate, in either Developer's office, Developer's designer's office or at RIDOT's offices and in the presence of Developer's personnel with the intent to minimize disruption of on-going design work.
- iii. Formal assembly and submittal of drawings or other documents may not be required. The review may be of progress prints, computer images, draft documents, working calculations, draft specifications or reports, or other design documents. If mutually agreed for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between Developer's designer and RIDOT.

(d) In-progress Design Workshops:

- i. RIDOT may, at its discretion, make periodic visits to the designer's offices to discuss and verify design progress including but not limited to Developer's adherence to the QA/QC Plan.
- ii. Throughout the Design process, Developer may request oversight visits with RIDOT to discuss and verify Design progress and to assist Developer in resolving Design questions and issues. The Developer shall give RIDOT not less than 2 days' notice of its requested oversight visit.

(e) Design Submittals

- i. The purpose of Design Submittals is to ensure that the Design is completed in accordance with the requirements of the Contract Documents.
- ii. Design Submittals shall ensure that existing field conditions have been properly identified and addressed and that Developer has properly coordinated the various Design disciplines and elements of the Project.
- iii. Design Submittals shall consist of detailed construction drawings, including plans, evaluations, sections, details, and specifications, a completed drainage design, together with supporting reports and calculations consistent with the Contract Documents.
- iv. Developer shall provide Design Submittals for RIDOT review as required in the PDA and the Project Agreement.

(f) Final Design

- i. The Final Design shall consist of detailed, complete, and fully checked drawings, reports, and specifications necessary for construction of the applicable portion of the Project.
- ii. Approval of the Final Design Documents will be in the form of a designation of "Approved for Construction."
- iii. All documentation relating to Design Exceptions from design standards shall be provided with the Final Design Submittal.
- iv. Within 2 days after Design Documents receive designation as "Approved for Construction," Developer shall, at a minimum, provide RIDOT with four (4) sets of signed and sealed Design Documents. In addition, Developer shall provide RIDOT with one set of Mylar's of all signed and sealed Plans, along with a copy in electronic format. [NTD: confirm the number of copies and format]

(g) File Transfer Protocol Site

- i. In addition to submittal requirements outlined above, Developer shall also establish and maintain a File Transfer Protocol (FTP) site or similar mechanism to facilitate electronic transfer of submittals, review comment responses, and other project-related documentation.
- ii. At a minimum Developer shall make documents submitted to RIDOT available electronically to RIDOT on the submission date.

(h) Release for Construction/Approval

- i. When Developer has completed the Design for an item or segment and wishes to proceed with construction thereof, the QA Administrator shall certify that (1) the Design meets all applicable requirements; (2) the Design has been checked in accordance with the Developer's approved QA/QC Plan; (3) the item or segment is

ready for construction; and (4) Developer has obtained all required Governmental Approvals.

- ii. Construction of any item, segment or phase covered by the QA Administrator's statement approving construction shall only progress to the extent covered by the Design Documents included in that statement. Prior to construction progressing further, Developer shall complete the next phase of the Design or complete the Final Design. Any subsequent phases of the Work to be released for construction shall be checked and approved by the QA Administrator in the same manner as indicated above for the initial item or segment of Work.

(i) As-Built Drawings

- i. As a condition of Final Acceptance, Developer shall provide RIDOT with As-Built Drawings.
- ii. All As-Built Drawings shall be consistent with RIDOT Standards. Submission shall be made both by hard copy and electronic format in accordance with RIDOT Standards.
- iii. Operation and maintenance manuals and instruction shall be provided for all systems and equipment.

1.9 Construction Material Requirements

- (a) Materials to be used in the Work will be subject to inspection and replacement as described in the Contract Documents. Quality of all materials will conform to RIDOT Standards, Industry Standards or Utility Owner requirements as applicable. Developer shall be responsible for plant inspection (both onsite and offsite), material testing (both onsite and offsite) and inspection as set forth below.
- (b) Manufacturer's test reports may supplement the inspections, sampling, testing and certification provisions. When material that cannot be identified with specific test reports is proposed for use, QA staff may, at their discretion, select random samples from the lot for testing by Developer, or at Developer's expense, by another appropriate testing party, as determined by QA staff. The minimum number of such samples and test specimens will be at the discretion of QA staff.
- (c) When requested by RIDOT, Developer shall allow QA staff to sample all materials to be incorporated into the Work. No material that is subject to such a request shall be used prior to approval by QA staff.
- (d) Manufacturers' warranties, guarantees, instruction sheets, parts lists and other material which are furnished with certain articles or materials incorporated into the Project shall be delivered to QA staff prior to completion of construction.
- (e) RIDOT may inspect the production of material or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until RIDOT is assured that Developer and the producer of the material shall fully cooperate with and assist in such inspection. RIDOT will have free entry at all reasonable times to such parts of the plant as concerns the manufacture or production of materials.
- (f) Plant and other inspections by RIDOT will in no way constitute acceptance of the elements being produced. This responsibility rests with Developer's QC staff. Any deviations from approved shop drawings during fabrication shall require that revised drawings be submitted to Developer's design engineers for their approval. The fabricators shall not have the right to make any changes to the Design without approved shop drawings from Developer's engineer.
- (g) Developer may use materials such as stone, gravel, sand or other materials found in excavations within the area of construction if such material meets RIDOT Standards. In order to re-use these existing materials, QC staff shall verify independent gradation and other laboratory testing reports that prove the material is in compliance with project specifications. Sufficient samples shall be taken to ensure uniformity and continued compliance with previously submitted testing reports as material gradation and quality can vary significantly within a given natural deposit.
- (h) RIDOT reserves the right to audit and perform QA or independent testing of all materials. If requested by RIDOT, Developer shall collect and transport samples under the direction of RIDOT for laboratory verification. Material that is excavated and does not meet RIDOT Standards shall be removed as excess material from the Site, and shall be disposed of offsite by Developer at no additional cost.

1.10 Inspection and Testing

- (a) Developer shall perform whatever inspection, sampling and testing Developer deems appropriate in order to comply with its obligations under the Contract Documents and in accordance with its QA/QC Plan. At all points in performance of the Work at which specific inspections or approvals by RIDOT is required by the Contract Documents, Developer shall not proceed beyond that point until RIDOT has completed such inspection or approval or waived its right to inspect or approve, which waiver will be in writing. Any testing and inspection conducted by RIDOT supplements, but in no way replaces, testing and inspection required of Developer.
- (b) As part of RIDOT's oversight role, all materials and each part or detail of the Work will also be subject to inspection and testing by RIDOT. When any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives will have the right to inspect such work. Such inspection does not make such Person a party to this Contract, nor will it change the rights of the Parties.
- (c) At all times before Final Acceptance, Developer shall remove or uncover such portions of the finished Work as directed by RIDOT. After examination by RIDOT, Developer shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Developer's sole expense. In the event that (1) Developer provides adequate notice requesting RIDOT to inspect the Work where required in the PDA or the Project Agreement; (2) RIDOT fails to so inspect; (3) RIDOT subsequently directs that Developer remove or uncover such portions of the Work; and (4) the Work is found to have been completed in accordance with the Contract Documents, then Developer shall be reimbursed the cost of removal or uncovering the Work and be given equitable schedule relief. Any Work done or materials used without adequate notice to and opportunity for prior inspection by RIDOT where required by the PDA or the Project Agreement may be ordered uncovered, removed or restored at Developer's expense, even if the Work proves acceptable to RIDOT after uncovering.

1.11 **Nonconforming Work**

- (a) Nonconforming Work is Work that RIDOT determines does not conform to the requirements of the Contract Documents. Nonconforming Work shall be removed and replaced so as to be in conformity with the requirements of the Contract Documents, at Developer's sole expense, and Developer shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that RIDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work.
- (b) If Developer fails to correct, or to begin correction of, any Nonconforming Work within 10 days of receipt of notice from RIDOT requesting correction, then RIDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due to Developer and/or obtain reimbursement from Developer for such cost.
- (c) Developer shall be solely responsible for the costs of remedial actions to correct Nonconforming Work. Developer shall not be entitled to any adjustment to the Price or time extensions due to Nonconforming Work or the remedial actions required.

1.12 Supervision and Construction Procedures:

- (a) RIDOT is the owner of the constructed Project and, therefore, has an interest and a duty to perform due diligence on behalf of the public to audit the processes and selected elements of the Work. The auditing is necessary and shall be accommodated by all members of Developer's organization and its agents. While RIDOT will be auditing and reviewing aspects of the work, including QA testing, Developer maintains the sole responsibility for quality, safety, compliance with all applicable Laws, and other components, both direct and indirect, of the Work.
- (b) Developer shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, procedures and site safety, and for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.
- (c) Developer shall be solely responsible for implementing, maintaining and supervising the Health and Safety Plan. Developer shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to (1) all employees of Developer and its Subcontractors performing the Work and other persons who are on Site or would reasonably be expected to be affected by the Work; (2) the Work and materials and equipment to be incorporated therein; and (3) all other property on, adjacent to, or near the Site.
- (d) Developer shall provide appropriate security for the Site and shall be responsible for damage or loss to all property at the Site owned by Developer, RIDOT or any other Person that results from Work or is directly related to Developer's actions.
- (e) Developer shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom Developer may be legally or contractually responsible are undertaken in a manner that shall minimize the effect on surrounding property and the public to the maximum extent practicable.
- (f) In the event of Developer's discovery of any cultural, historic, archaeological or paleontological resources that have not been identified in the Contract Documents, Developer shall immediately notify RIDOT thereof. Such notification is to be followed immediately by written notification. Developer shall immediately stop work in and secure the affected area pending further instructions. In such event, RIDOT will view the location within 24 hours of receipt of such notification and will advise Developer at that time whether Work should be resumed or whether further investigation is required.
- (g) RIDOT will promptly conduct such further investigation as RIDOT deems appropriate. RIDOT will use reasonable efforts to determine within 5 Business Days after receipt of such notification whether the resource or condition falls within the scope of the preceding paragraph, and will immediately notify Developer of its determination once it is made. RIDOT will also advise Developer of any action to be taken regarding the situation. If a paleontological or historic resource is present, the notice will advise Developer of RIDOT's intended course of action with respect thereto, and whether the location should be fenced off or otherwise restricted, or whether Work may resume.
- (h) RIDOT will have the right to require Developer to recommence Work in the location at any time, even though an investigation may still be ongoing. Developer shall promptly recommence Work in the area upon receipt of notification from RIDOT to do so. On

recommencing Work, Developer shall follow all applicable procedures contained in the Contract Documents and all other legal requirements with respect to such Work, consistent with RIDOT's determination or preliminary determination regarding the nature of the material or condition.

- (i) Notwithstanding the foregoing, Developer shall not be obligated to stop Work upon (1) discovery of any resources or conditions that the Contract Documents indicate are present in the location in question, or (2) where Developer can take actions pertaining to the resources or conditions permitted under the terms of a Governmental Approval. Developer shall provide prompt notice to RIDOT of any such discovery.

1.13 Commencement of Construction

- (a) Developer shall not commence construction of any portion of the Project prior to occurrence of all the following events, except with the prior written approval of RIDOT:
 - i. Developer shall have prepared and delivered to RIDOT (1) the Health and Safety Plan; (2) in cases where planned construction involves or may involve contact with CM, the CM Management Plan; (3) the cost loaded Project Schedule; and (4) the QA/QC Plan;
 - ii. all requirements of the QA/QC Plan that are a condition to such construction shall have been met;
 - iii. all Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction shall have been performed;
 - iv. all required insurance and bonds shall remain in full force and effect; and
 - v. Developer shall have completed all required investigations to establish and confirm the existence and location of Utilities in such portion of the Project.
- (b) Any start of construction shall be at the sole and complete risk of Developer, and any changes, reconstruction, removals and Schedule delays required for compliance with the final approved Design Documents shall be at Developer's sole cost and expense. If the approved Design Documents for the Project require changes to the Work previously performed, Developer shall make such changes to the Work at its sole cost and expense, and with no contract time extension.

1.14 Construction Criteria

- (a) Demarcation of Amtrak Property Lines

Developer shall recover existing bounds, and install new permanent granite bounds as required, at each corner point of Amtrak-owned property within the Site. Developer shall install and maintain, during the construction of the Project until permanent site restoration is installed, wooden stakes painted orange and marked "Amtrak PL" along all Amtrak property lines within the project area. Stakes shall be placed at each corner point and at 200-foot intervals on tangents and 50-foot intervals on curves.

(b) Temporary Erosion and Siltation Control

- i. Developer shall provide temporary erosion and sedimentation control in accordance with RIDOT Standards.
- ii. Developer shall provide temporary erosion and sedimentation control in the form of staked hay bales with siltation fence (or other acceptable approved means) in accordance with the requirements of National Pollutant Discharge Elimination System ("NPDES") Program General Permit for Stormwater Discharges from Construction Sites. Staked hay bales with siltation fence shall be installed up-gradient of drainage structures. The row of staked hay bales with siltation fence shall be inspected and maintained through the duration of construction.
- iii. The maintenance and inspection of these facilities shall be performed by a qualified individual designated by Developer. Inspections shall be performed, at a minimum, weekly and following any storm event of rainfall of 0.5 inches or more, or any snowfall, within twenty-four (24) hours. An inspection and maintenance report shall be completed by the designated individual immediately following each such inspection.
- iv. Hay bales and silt fence shall be removed when no longer required by Developer and property disposed of or recycled off-site.

(c) Housekeeping and Maintenance of the Site

- i. Developer acknowledges that it is important to protect the public and adjacent property from dust, debris, fumes and noise.
- ii. Developer shall be responsible for controlling rodents in construction areas and minimizing the generation of dust, noise, and pollution by construction activities. Developer shall keep the Site clean and free from rubbish and debris, and shall abate dust by cleaning, sweeping and sprinkling water or other means as necessary.
- iii. The use of water resulting in mud on streets and paved areas shall not be permitted as a substitute for sweeping and other methods. Developer shall take care to prevent spillage on haul routes. Any such spillage shall be removed immediately and the affected area shall be cleaned.
- iv. Developer shall not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity as shall violate applicable Environmental Laws or Governmental Approvals.
- v. As construction is completed on a daily basis, paved surfaces adjoining the Project shall be broomed clean and other surfaces of the Site raked clean. In addition, Developer shall adhere to the dust control, erosion control, noise abatement and other site procedures required by the Contract Documents.
- vi. If Developer defaults or neglects to maintain the Project free from accumulation of waste and rubbish as set forth above or otherwise fails to comply with use of site and clean-up procedures, and fails within a twenty-four (24) hour period after receipt of oral notice from RIDOT, subsequently confirmed in writing, to commence

and continue correction of such default or neglect with diligence and promptness, RIDOT may after such twenty-four (24) hour period, immediately, without prejudice to other remedies that RIDOT may have, correct such deficiencies. In such a case, RIDOT will deduct from payments then or thereafter due Developer, the cost of correcting such deficiencies. If payments then or thereafter due Developer are not sufficient to cover such amounts, Developer shall pay the difference upon demand.

vii. Developer shall keep construction material away from drainage structures.

(d) Protection and Restoration of Property and Landscape

- i. Public and private property shall be preserved at all times. Land monuments and property markers shall not be moved, disturbed or damaged until Developer's registered land surveyor has witnessed or referenced their location.
- ii. Developer shall be responsible for damage or injury to public or private property resulting from any act, omission, neglect or misconduct in the method of executing the Work, defective work or materials, or nonperformance of the Contract.
- iii. Developer shall restore any damaged or injured property to a condition similar or equal to that existing before the damage or injury occurred. The repairing, restoring, rebuilding or making good such damage or injury shall be at no additional cost.

(e) Geotechnical Monitoring

- i. Geotechnical instrumentation shall be designed to monitor existing structures within a 1:1 slope of the base of a proposed excavation or within two hundred (200) feet of driven piles (if used) during construction, in accordance with RIDOT's Specifications for Pre- and Post-Construction Condition Survey of Existing Structures (Exhibit C).
- ii. Developer shall determine acceptable movements and vibrations that adjacent structures can safely accommodate, in accordance with accepted practice.
- iii. Developer shall design instrumentation for adjacent structures appropriate for potential construction impacts. Threshold and limiting values for instrumentation readings shall be determined to limit construction impacts to acceptable levels, in accordance with accepted practice. The instrumentation limit values shall be selected so that construction can proceed with the ability to modify operations before unacceptable damage occurs should impacts be greater than anticipated.

(f) Maintenance and Protection of Railroad Traffic/Limitations of Operations

- i. Developer shall maintain and protect railroad traffic within the Project in accordance with RIDOT and Amtrak Standards.
- ii. Construction operations shall be conducted in a manner and sequence that assures the least interference with ongoing railroad traffic. RIDOT may require a section of work to be finished before starting work on any additional sections whenever essential.

- iii. 5 days' notice shall be given before any night work is commenced. Night work shall only be allowed if adequate lighting is provided for performing satisfactory inspection and construction operations, and only if approved by RIDOT. Developer shall be responsible for coordinating all night time activities with the approval of the City.
 - iv. Amtrak will advise (in an upcoming Addendum) track outage limitations but has preliminarily advised limited 4-hour outages due to the congested train and freight traffic.
- (g) **Flagger/Traffic Officer Services**

Developer shall provide flagger and/or traffic officer services during construction to facilitate the movement of vehicles in and around the construction area. Traffic officer services shall be arranged at least 48 hours in advance. Flaggers shall be used to manage safe construction in proximity to Amtrak's right of way and to control traffic circulation on the Site. The costs for flaggers and/or police services shall be included in the Price.

1.15 **Geotechnical**

- (a) Developer shall perform all necessary geotechnical investigations, testing, research, and other measures appropriate to confirm the conditions of the Site to be used by Developer to complete the Work. Developer shall be responsible for all grading and related work such as remedial excavation for contaminated or unsuitable material, landslide removal and/or stabilization, embankment foundation settlement monitoring, earthwork balancing, maintenance of existing drainage patterns and hydrology, etc., required for construction of the Project.
- (b) Developer shall obtain all Governmental Approvals necessary for geotechnical investigations, including Dig Safe, and all approvals required for grading, drilling permits, and groundwater protection from contamination. No grading operations for the Project or on any portion of the Project shall commence until the Project geotechnical report(s) for the area of grading has been approved by the QA Administrator.

1.16 **Schedule**

- (a) The Project shall be undertaken and completed in accordance with the Project Schedule as set forth in the PDA or the Project Agreement and approved by RIDOT, as revised and updated by Developer on a monthly basis.
- (b) The Project Schedule shall be used by Developer and RIDOT for planning and monitoring the progress of the Work and as the basis for determining the amount of certain Milestone Payments to be made to Developer in accordance with the Payment Milestone Plan referenced in the PDA or the Project Agreement.
- (c) The Project Schedule shall also include interim completion milestones and a proposed date for Substantial Completion, each of which shall be a "Completion Milestone," and a date for Final Acceptance of the Project.
- (d) The Project Schedule shall be developed using the latest Primavera software (or approved equivalent), with scheduled activities in durations of not less than 5 days nor

more than 30 days. Activities should also generally have cost allocations of not less than \$10,000 nor more than \$100,000, unless otherwise approved by RIDOT. Two (2) copies of the software used by Developer shall be provided to RIDOT.

1.17 **Utility Crossings – Protection, and Relocation**

- (a) Developer shall obtain and review available record plans, conduct ground surveys, and excavate test pits as required to determine the existence and location of all existing overhead and underground Utilities within the limits of the Project that may be impacted by the Work. Developer shall minimize unnecessary relocation of Utilities.
- (b) Developer shall provide maintenance and protection of existing Utility crossings by means of relocation, encasement, structural relief slabs, or reconstruction. Utility relocations shall be in accordance with the requirements of the respective Utility Owner, RIDOT Standards, and all Local Agencies and Approvals.
- (c) Structural relief slabs shall only be provided where the respective Utility Owner considers other available means of protection inappropriate.
- (d) Utility protection by means of encasement will utilize reinforced concrete or steel casing sleeves conforming to the requirements of RIDOT Standards. Size, location and layout of Utility sleeves shall meet the requirements of the respective Utility Owner.

1.18 **Utilities**

- (a) General Statement:
 - i. The completion of the Work will affect both existing and proposed Utilities and require connections to Utilities to serve equipment installed as part of the Project. Developer shall complete the Utility Work so as to ensure that Utilities are properly identified and that all necessary relocations occur so as to enable Developer to achieve completion of the Project in accordance with the requirements of this Contract. Utility Work shall include arranging for Utility service connections; the identification of Utilities requiring relocation or replacement; notifications to, and negotiation of design and construction contracts with, Utility Owners; and coordination and completion of design and construction efforts for the Utility Work.
 - ii. Developer may permit others to complete portions of the Utility Work, as may be agreed to by the appropriate Utility. Utility Work shall be deemed to be part of the Work.
- (b) Developer Responsibilities:
 - i. Developer shall be primarily responsible for the completion of all Utility Work. Costs for the Utility Work shall be considered part of the Price.
 - ii. Developer shall give written notice to all public service corporations or officials having charge of publicly or privately-owned Utilities of its intention to commence operations affecting such Utilities in accordance with R.I.G.L. c. 39-1.2, and Developer shall at that time file a copy of such notice with RIDOT.

- iii. Developer shall be responsible for verifying that the Utility Work, as designed and constructed, is compatible with and interfaces properly with the Project. Developer shall also be responsible for confirming that all appropriate Governmental Approvals have been obtained by each Utility Owner that may be performing any Utility Work and for verifying that such Utility Work complies with the requirements of the applicable Governmental Approvals. Developer shall immediately notify RIDOT if Developer has reasonable cause to believe that any Utility Owner has not obtained, or is in violation of, any Governmental Approval.
 - iv. Developer shall carry out the Utility Work, and shall support and secure same, so as to avoid damage to any Utilities. Flow in drains and sewers shall be satisfactorily maintained. Unless otherwise directed by the Utility Owner, Developer shall not relocate or remove any Utility without the Utility Owner's prior written consent. At the completion of the Work, the condition of all Utilities shall be as safe and permanent as before. If any Utilities are damaged by Developer, Developer shall notify the affected Utility Owners, and such damage shall be repaired at Developer's expense.
 - v. Developer bears full responsibility for ascertaining, at its own expense, the existence and exact location and size of any Utility to be relocated, replaced, or otherwise impacted on either a temporary or permanent basis as a result of the Project. If a surface inspection of any area to be affected by the Project shows the existence of, or gives Developer cause to suspect the existence of, any previously unidentified Utility, or Developer for any other reason has cause to suspect that other previously unidentified Utilities may exist, then Developer shall undertake all appropriate investigations as necessary to verify the existence, location and size of such Utilities including, but not limited to, contacting Utility Owners, consulting public records, and conducting field investigations.
 - vi. Developer may commence the Utility Work at any time following the date specified in the NTP. Developer is responsible for causing the Utility Work to be completed in order to permit construction of the Project according to the Project Schedule.
- (c) Cooperation with Utility Owners:
- i. Developer shall be responsible for all coordination with the affected Utility Owners that may be necessary to accomplish the Utility Work (including obtaining information, coordination of scheduling, design review, inspections, approvals and acceptances). Developer shall notify RIDOT at least 2 Business Days in advance of each meeting with a Utility Owner or Utility Owner's representative scheduled by Developer, and shall allow RIDOT the opportunity to participate in each such meeting. Developer shall also provide RIDOT with copies of all correspondence between Developer and any Utility Owner within 7 Days after receipt or sending, as applicable.
 - ii. Developer shall permit Utility Owners to inspect the Utility Work.
 - iii. Developer shall not enter into any contract with any Utility Owner that purports to bind RIDOT in any way, nor shall any such contract be deemed to modify the terms of this Contract.

- iv. Developer shall abide by the following requirements: (1) avoid Relocations to the extent practicable; (2) if a Relocation is not reasonably avoidable, protect the Utility in place to the extent practicable; and (3) otherwise minimize the potential costs and delays to the Project relating to Relocations to the extent practicable.
 - v. Developer is hereby notified of the potential for an existing fiber optic line within Amtrak ROW. Amtrak will relocate if required by the Design at the Developer's expense. [NTD: confirm that fiber exists, specifically at the Exchange St extension, and if Amtrak will relocate it if the Work requires relocation.]
- (d) Scheduling and Cost Risks:
- Developer shall assume all cost risks and risk of delays to the Project Schedule associated with the Utility Work.
- (e) Utility Diaries/As-Builts:
- Developer shall maintain "utility diaries" and a set of As-Built utility maps of a quality acceptable to RIDOT. The standards for preparation of all Design Documents relating to Utilities and final As-Built Drawings shall conform to all applicable RIDOT Standards.
- (f) Utility Services:
- Developer shall arrange for establishment and installation of new utility service connections as required for the Facility. Developer shall be responsible for all Utility charges and costs relating to installation and activation of such services and for all service charges so as to permit the Work to be placed into service. Developer shall be responsible for all costs relating to temporary utility services required for design, construction, and testing of the Work.

1.19 Environmental Approvals

- (a) The Developer, in coordination with RIDOT, shall obtain all environmental approvals necessary for the Project, including without limitation, Authorization to Discharge under the Rhode Island Pollutant Discharge Elimination System ("RIPDES") General Permit for Stormwater Discharge Associated with Construction Activity, R.I.G.L. c. 46-12 (for discharge of storm water), and state, federal and local approvals (as required) for the handling, management, loading/unloading, sampling and analysis for disposal characterization, and proper transportation and disposal of contaminated media ("**Environmental Approvals**").
- (b) It is Developer's responsibility to know, understand, and abide by all state, local and/or federal laws, regulations and common practices to the extent that they may be applicable to Developer's work as set forth in the contract documents. Developer shall be responsible to determine all relevant and applicable laws and regulations that pertain to the Project and obtain all permits and approvals associated with those laws and regulations. In the event of a conflict, the most stringent laws and regulations will govern work.
- (c) The following regulations, documents and/or publications are made part of this contract by reference herein and may not reflect all environmental rules, regulations and laws that may be applicable to the Project:

- i. RIDEM Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases;
 - ii. RIDEM Rules and Regulations for Hazardous Waste Management;
 - iii. RIDEM Rules and Regulations for Composting Facilities and Solid Waste Management Facilities (the Solid Waste Regulations);
 - iv. Oil Pollution Control Regulations (RIDEM and US EPA 40 CFR 112);
 - v. "Hazardous Waste Operations and Emergency Response," Federal Occupational Safety and Health Act (OSHA), 29 CFR 1910.120.
 - vi. "General Regulations for Hazardous Waste Management," EPA, 40 CFR 260.
 - vii. "Regulations for Identifying Hazardous Waste, Hazardous Waste Generators and Hazardous Waste Transporters", EPA, 40 CFR 261, 262 and 263.
 - viii. U.S. Department of Transportation (U.S. DOT) Title 49 Code of Federal Regulations (CFR).
 - ix. Safety and Health Regulations Promulgated by the U.S. Department of Labor OSHA, 29 CFR 1910 – Occupational Safety and Health Standards, and 29 CFR 1920 – Safety and Health Regulations for Construction.
 - x. U.S.EPA Standard Operating Safety Guidelines – Office of Emergency and Remedial Response – Hazardous Response Support Division.
 - xi. U.S. EPA Medical Monitoring Program Guidelines.
- (d) Developer shall supply and utilize all necessary equipment and materials to properly manage, handle and dispose of contaminated media in accordance with the applicable state, federal and local laws, rules and regulations. Developer shall also prepare a Site Specific Health and Safety Plan (HASP) for the project and supply personnel with proper personal protective equipment.
 - (e) Except where Environmental Approvals are required solely because of RIDOT-Directed Changes, the cost of obtaining all Environmental Approvals to be obtained by Developer shall be borne by Developer as part of the Price.
 - (f) Developer shall be responsible for any and all costs, including any liability, penalties, expenses, damages or delays resulting from any failure to obtain or maintain any Environmental Approval.

1.20 **Coordination between Developer, RIDOT and Regulatory Agencies**

- (a) RIDOT (as Project owner) and Amtrak (as property owner when on Amtrak property) will be designated as the applicants for all Environmental Approvals. All applications for Environmental Approvals to be obtained by Developer shall be prepared by Developer. Through its authorized representative, RIDOT will review the applications, sign as the applicant and submit the application to the Regulatory Agency with jurisdiction.

- (b) Developer is encouraged to establish a working relationship with RIDOT and the Regulatory Agencies. Developer is not authorized to negotiate with Regulatory Agencies on behalf of RIDOT.
- (c) Developer shall provide fully executed copies of all Environmental Approvals to RIDOT prior to commencement of any work authorized under such Approvals.

1.21 Duty of Compliance

- (a) Developer is responsible at all times for complying with (1) all applicable Environmental Laws; (2) all conditions and schedules in any Environmental Approvals, whether obtained by RIDOT or Developer; and (3) all obligations of this Contract with respect to environmental matters.
- (b) Developer shall be responsible for any and all costs, liability, penalties, expenses, damages, including economic, property, natural resource and personal injury, or delays resulting from any non-compliance with Environmental Approvals.

1.22 Contaminated Media (CM)

- (a) CM Investigation and Planning:
 - i. Contaminated media (CM) is considered contaminated soil, groundwater, sediment, wastes, and other material encountered during the Project that are regulated by the Rhode Island Department of Environmental Management (RIDEM) or other state, local or federal agency.
 - ii. The Developer is hereby notified that contaminated soil has been identified in the project area. This impacted soil is subject to the reporting requirements set forth in the RIDEM Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the Remediation Regulations). In addition to notification, additional investigation and/or remediation in accordance with the Remediation Regulations may be required. The term “Environmental Approvals” includes but is not limited to all notifications, permits, approvals, plans, and authorizations to construct the Project as described in the RFP and to properly control, assess, remediate, and dispose of CM that may be encountered during the Project.
 - iii. Limited sampling and analysis have identified Soils in the Project Area that may be subject to reporting under the RIDEM Remediation Regulations. The Remediation Regulations sets forth the requirements for investigation of the Site and development of remediation and soil management plans. CM management is subject to regulation under the RIDEM Remediation Regulations at a minimum. All CM encountered during the Project shall be managed in accordance with applicable Environmental Laws, Environmental Approvals, the Contract Documents, RIDEM Standards and the CM Management Plan and other plans prepared under this Section.
 - iv. If Developer desires, Developer may conduct, with the prior approval of RIDOT, additional investigations, surveys, testing and analyses as necessary to develop and implement suitable plans to determine any presence of CM and timely performance of all environmental avoidance, mitigation, and protection measures.

Site Investigation Workplans involving CM and locations subject to the Remediation Regulations are required to be submitted to, and approved by, the RIDEM before implementation. In some instance, public notice is also required. Workplans shall be submitted to RIDOT for review and approval before submission to the RIDEM or other state, local or federal agency. Investigations and workplans shall be consistent with all applicable Environmental Laws. Qualified and licensed professionals shall prepare the Workplan as may be required.

v. In addition to all regulatory RIDEM Regulatory Requirements, workplans shall also contain, at a minimum:

- Developer's plan and schedule for characterization of all areas of the Site and Project activities where CM may reasonably be expected to be encountered;
- Sampling and Analysis Plan describing sampling locations and methods; media to be sampled; laboratory analyses, methods and quantification limits;
- Investigation schedule;
- Site security measures;
- Location and layout of work zones, storage areas, and decontamination areas;
- Management of investigation derived waste (IDW) in accordance with the RIDEM IDW policy; and
- QA/QC Plan procedures.

(b) CM Management Plan:

i. Developer shall prepare a Contaminated Media Management Plan (the "CMMP") that provides RIDOT with a uniform, cost-effective, time-sensitive and environmentally sound methodology for the management of CM. The CMMP shall be sufficient in scope to support Project design and construction requirements and to optimize compliance with applicable Environmental Laws. The CMMP shall be consistent with the RIDEM Remediation Regulations and all applicable Environmental Laws, including, without limitation, those listed in Section 1.19.b. Qualified and licensed professionals shall prepare the CMMP as applicable.

ii. In addition to the requirements of the Remediation Regulations and any other state, federal or local laws and regulations, the CMMP shall also incorporate the following goals and objectives:

- Minimize the generation of CM requiring off-site management. Establish a cost-effective waste management hierarchy for the beneficial reuse, recycling, or treatment of contaminated media requiring off-site management; maximize the reuse of excavated soils within the limit of work if allowed by RIDEM;

- Establish cost-effective environmental compliance with all environmental laws, including those listed in Section 1.19.b., and RIDEM's Remediation Regulations with the goal being receipt of a Letter of Compliance (LOC) from the RIDEM under the Remediation Regulations, and any other closure documentation from other state, local or federal environmental regulations;
 - Provide effective control of additional costs required for CM characterization through construction-driven, time-sensitive, on-site field environmental characterization methodologies suitable to support response actions; and
 - Provide effective control of costs associated with off-site management of contaminated media by maximizing the recycling or beneficial reuse of material.
 - Developer shall have CM analyzed by a qualified test facility as required.
- (c) Discovery and Management of Contaminated Media:
- i. Upon discovery of unexpected contaminated or potentially CM, Developer shall immediately stop work and notify RIDOT so proper assessment and response actions in accordance with state, federal and local law can be completed. Developer shall undertake all actions required by state, local and federal environmental laws and regulations, including, but not necessarily limited to, those listed in Section 1.19.b. above, and in coordination with RIDOT, to achieve the objective of regulatory Site closure. All Response Actions shall be implemented under the direction of qualified and licensed professionals engaged by Developer.
 - ii. During construction of the Project, Developer shall undertake all reasonable steps consistent with the CMMP and applicable environmental laws and regulations, including design modifications and/or revisions to construction techniques, to avoid excavation or dewatering in areas with CM. Developer shall afford RIDOT the opportunity to inspect sites containing CM before any action is taken that would impede RIDOT's ability to ascertain the nature and extent of the CM.
- (d) Qualifications and Protection of Personnel Responsible for Handling CM:
- i. Developer shall have a qualified environmental professional (licensed as applicable) available to the Project at all times who is responsible for the proper management, transportation and disposal of CM. No environmental investigation shall be conducted outside the limit of work without specific written authorization of RIDOT, and RIDEM as applicable.
 - ii. All Developer personnel handling hazardous and harmful materials shall be trained, experienced, certified, and enrolled in a medical surveillance program typically required for workers handling CM including, but not limited to, OSHA HazWoper and OSHA corresponding industry standards as listed in Section 1.19.b. The Developer shall ensure that all certifications, licenses, authorizations, and Environmental Approvals are current and valid through the duration of this Contract.
 - iii. The Developer shall make all workers on-Site aware of the potential CM to which they may be exposed, shall limit exposure to CM and provide all necessary

equipment to protect them from exposure. The Developer shall maintain records of all incidents and notify RIDOT and appropriate state authorities in a timely manner.

(e) CM Spills or Other Releases Caused by Developer:

Any releases or spills of CM including reporting, assessment, containment and remediation expenses that result from (1) release(s) attributable to the negligence, willful misconduct, or breach of contract of the Developer or of any of its officers, agents, employees, subcontractors, and visitors; or (2) release(s) elsewhere by the Developer or any of its officers, employees, agents, or subcontractors regardless of the cause of the release of CM, shall not be included in the Price and shall not be recoverable.

(f) Environmental Approvals Relating to CM Management:

- i. It is the responsibility of the Developer to obtain all Environmental Approvals relating to CM Management, Transportation and Disposal including federal and state surface water and groundwater treatment and discharge permits and permits for recycling or reuse. The Developer shall provide RIDOT with complete documentation, plans, applications and other filings required by state, federal or local Environmental Agencies necessary to support any application for approval (including, but not limited to plans, details and supporting documentation). Developer shall be solely responsible for compliance with such Environmental Approvals and applicable Environmental Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading as described in Section 1.19.b. RIDOT assumes no responsibility for time, costs, or fees associated with regulatory agency review and approval.
- ii. RIDOT or Amtrak [NTD: confirm] will be considered the generator of CM from the Project except as specified in the following sentence. Developer shall be considered the generator of any CM requiring off-Site disposal which results from (i) release(s) attributable to the negligence, willful misconduct, or breach of contract of Developer or any of its officers, employees, agents, subcontractors, or visitors; or (ii) release(s) elsewhere by Developer regardless of the cause of the Release.

(g) Materials Brought to the Site by Developer:

Developer shall be solely responsible for (1) compliance with all Laws applicable to all materials (hazardous and non-hazardous) brought onto the Site by it or any of its agents, officers, employees, visitors, and subcontractors; (2) use, containment, storage, management, transport and disposal of all CM in accordance with this Contract and all applicable Environmental Laws and Environmental Approvals; and (3) payment of all penalties, expenses, costs, damages (including to natural resources, property or persons), and liability arising out of or related to such CM.

2. DESIGN AND CONSTRUCTION GUIDELINES

2.1 Providence Intermodal Transportation Center (PITC)

- (a) The Providence Intermodal Transportation Center (PITC) will be a multi modal transportation center serving as the northern hub of RIPTA's proposed Downtown Transit

Connector, integrated with Intercity bus carriers, the Amtrak/MBTA train station, taxi, car sharing, bicycle, and pedestrian traffic.

- (b) The PITC must have retail offerings complementary to typical Providence commuters' requirements and expectations.
- (c) The PITC must have parking available to support RIPTA staff and other State employees responsible for the PITC's operations.
- (d) The PITC must be capable of qualifying for a "Certified" or better certification from the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) rating system or a certification by the Institute for Sustainable Infrastructure (ISI) Envision rating system.
- (e) The PITC must be located on either or both of the Gaspee North or Gaspee South PITC sites or other sites approved by RIDOT.
- (f) The PITC facility must comply with the requirements of the Rhode Island State Building Code (SBC-1) and other applicable codes, including, but not limited to:
 - Rhode Island State Building Code (SBC-1)
 - Rhode Island Plumbing Code (SBC-3)
 - Rhode Island Mechanical Code (SBC-4)
 - Rhode Island Electrical Code (SBC-5)
 - Rhode Island Energy Code (SBC-8)
 - Rhode Island Department of Transportation; Standard Specifications for Road and Bridge Construction
- (g) Developer must design and construct the PITC to accommodate the RIPTA transit operations and support functions as detailed in Chapter 6, Design Parameters, of the "Providence Intermodal Transportation Center", attached as Attachment A. . For clarity, an example of how the Design Parameters could be implemented on the Gaspee South PITC site is attached as Attachment B.
- (h) Berths for terminating RIPTA routes or intercity coaches must be within the PITC perimeter. Berths for RIPTA busses that do not terminate at the PITC (the "Through Buses") may be outside the PITC perimeter if such berths are adjacent to the PITC perimeter or Amtrak connection.
- (i) The PITC must have a climate controlled pedestrian connection to Providence Station that will provide for a comfortable transition for RIPTA customers to Providence Station.
 - Any modifications necessary to Providence Station will be subject to Amtrak's prior consent and be in accordance with Amtrak's Engineering, Stations & Facilities, Standard Design Practices (SDP) and any other requirements Amtrak deems necessary.

- While the State may provide assistance in coordinating with Amtrak, the Developer is solely responsible for obtaining any necessary and required Amtrak approvals.
- (j) All areas accessible by busses, including at least 1 entrance/exit from the exterior, shall have a minimum 20' vertical clearance from the floor or pavement surface to underside of structure, lights or any other obstructions to permit towing of disabled busses. Additional entrances/exits shall have a minimum 15' vertical clearance. *[NTD: RIPTA to confirm that 15' is adequate at second entrance]*
 - (k) Developer's design must provide a minimum stopping sight distance at least 1.5 times the stopping distance for a 10-mph design speed throughout the PITC with consideration of the horizontal and vertical sight distances and grades. *[NTD: need to confirm from RIPTA what a normal bus speed is through their bus garages or in KP]*
 - (l) A snow melt system shall be provided for all pavements exposed to the elements and on any ramps within the PITC with a grade greater than 2%.
 - (m) The parking spaces assigned for emergency, administrative and maintenance vehicles must be on the same level as the bus berthing area.
 - (n) The layout shall accommodate the temporary parking of a RIPTA maintenance vehicles adjacent to any bus in any berthing area without restricting other bus traffic within PITC.
 - (o) Concrete pavements must be used within any enclosed areas or in all areas subject to bus traffic.
 - (p) Structural slabs supporting bus traffic shall be designed to support a HS-20 loading per RIDOT Bridge Design Manual, latest edition.
 - (q) Any areas accessible by vehicles must be designed for bus loading, unless impassable by bollards, structural wall, guardrail, or a structural height restriction no more than 7'-0" above the finished floor elevation.
 - (r) Reinforcing steel for concrete pavements and structural slabs, beams and columns supporting bus traffic must be epoxy coated.

2.2 Parking Component

- (a) Any current parking areas that are needed for the Work shall be replaced with an equal number of parking spaces in reasonable proximity to the State House or other facilities serviced by the affected parking area.
- (b) Provide pedestrian pathways as necessary between the replacement parking area and State House or other facilities serviced by the affected parking area.

[NTD – Additional requirements to be issued in a future addendum]

2.3 Road Improvements

- (a) Developer shall design and construct the Road improvements, including the relocation of Gaspee St, and the extension of Exchange St.
- (b) The design of Road Improvements shall be:

- per the RIDOT Highway Design Manual, latest edition; Minor Arterial classification; and
 - per RIDOT Bridge Design Manual, latest edition, HS-20 load.
- (c) The Exchange St extension shall be for busses only. Provide appropriate signage.
- (d) Design and construction on Amtrak property, including the portion of Exchange St over the Amtrak tunnel, shall be subject to Amtrak's prior approval, and in accordance with:
- Amtrak Engineering, Stations & Facilities, Standard Design Practices (SDP); and
 - other applicable Amtrak requirements, standards and guidelines.
- (e) The Developer must obtain approval of design from Amtrak prior to commencing construction on Amtrak property.
- (f) Construction of Road Improvements must be performed in accordance with the RIDOT Standard Specifications for Road and Bridge Construction, latest edition.
- (g) Any utilities on the Gaspee North and Gaspee South sites shall be relocated to be clear of the sites as necessary for the Work. Relocated utilities shall be located within the proposed street ROW.

2.4 State Boiler House

- (a) The State Boiler House must remain fully operational at all times unless replacement steam is made available to the State House on a temporary or permanent basis.
- (b) No modifications may be made to the State Boiler House without the State's prior written consent.
- (c) The Developer shall coordinate all Work with the State's "Energy Management Improvement Project" (EMIP). Concept plans dated July 8, 2015 are available with the "Available Documents" and herein referred to as the "EMIP Concept Plans".
- (d) The Developer shall revise the Site Plans and related Civil, Utility and Piping drawings of the EMIP Concept Plans to a level of detail sufficient to accommodate the PITC project including the relocation of Gaspee St and reserve a site on the Gaspee North for a future Boiler House to replace the existing State Boiler House.
- i. The existing State Boiler House may be incorporated into the reserved site for the future Boiler House provided that:
- (A) sufficient area is reserved immediately adjacent to the existing State Boiler House to accommodate all planned components shown on the EMIP Concept Plans; and
 - (B) driveways, parking areas and other site components are reworked to accommodate the relocation of Gaspee St.
- ii. The reserved space may be included within the PITC development or parking component as an unfinished shell space, provided spatial provisions are made to

facilitate the installation of future boiler chillers, cooling towers, electrical switchgear, other components, and utility connections.

- iii. The new utility tunnel shown on the EMIP Concept Plans shall be constructed under Gaspee for the full extent of the Gaspee ROW to align with the future Boiler House, unless the reserved site for the future Boiler House does not require the crossing of Gaspee.
- (e) The existing utility tunnel between the State Boiler House and State House may be incorporated into the Project to contain the existing steam/condensate subject to the following:
- i. The tunnel shall be inspected and rehabilitated as necessary to provide continued dependable service; and
 - ii. any portion of the existing utility tunnel subject to traffic loading shall have its capacity to support traffic confirmed; and
 - iii. unused portions of the existing utility tunnel shall be closed with a permanent bulkhead, demolished and area restored or developed as required for the Project; and
 - iv. provide an access hatch every 200' and within 8' of any bulkhead to prevent a dead end in the tunnel; and
 - v. rework lighting circuits to provide continuous lighting in the tunnel.
- (f) If replacement steam is provided via a temporary steam generation plant, the following requirements shall apply:
- i. Provide multiple units with a total capacity of at least [NTD: TBD] MBH when any one unit is out of service; and
 - ii. piping between the temporary steam generation plant and Capital shall be underground and at constant grade to allow condensate return unless a parallel condensate return system is installed; and
 - iii. the temporary steam generation plant shall be shielded from public view through decorative fencing, landscaping, or other approved measures.
- (g) If the Developer replaces the State Boiler House with new steam generators within PITC or within the Private Development, the following requirements shall apply:
- i. Provide a total capacity of at least that shown on the EMIP Concept Plans; and
 - ii. provide the ability to sub-meter the steam flow to the State House; and
 - iii. provide separate steam and condensate lines to and from the State House; and
 - iv. allow sufficient space for the replacement of the steam generators with boiler/chiller units in the future per the system plans in the EMIP Concept Plans; or

- v. provide boiler/chiller units per the system plans in the EMIP Concept Plans as part of the Work.

2.5 Design and Construction Packages

2.5.1. Early Works Package

- (a) In order to accelerate the Project Schedule, the State may authorize the Developer to perform certain initial early work prior to Financial Close (the "Early Works"). The Early Works is likely, at a minimum, to include the Design and Construction of the:
 - Gaspee St relocation; and
 - any necessary relocation of utilities currently on Gaspee St, Gaspee North site, or Gaspee South site; and
 - temporary or permanent replacement parking for the State House Parking Lot as needed such that the total required spaces are available at any time; and
 - temporary or permanent modifications to, or replacement of, the State Boiler House to provide a continuous supply of steam throughout the construction of the Work.
- (b) The Early Works package may also include the Design and Construction of the:
 - Exchange St extension; and
 - geotechnical, environmental, utility and other site investigations of the Project Site.

2.5.2. PITC Package

- (a) Following execution of the Project Agreement, the Developer must design and construct:
 - the PITC;
 - all Road Improvements not included in the Early Works package; and
 - all State Boiler House work not included in the Early Works package; and
 - parking requirements (collectively, the "PITC Package").
- (b) The PITC package shall also include a preliminary site plan and indicative design for the Private Development to the extent necessary to coordinate the Design and Construction of the Private Development package with the PITC package.

3. OPERATION AND MAINTENANCE GUIDELINES

3.1 General Guidelines

- (a) The Developer must provide operations, maintenance services and asset management services for the PITC and associated facilities on a continuous, daily basis following the PITC's commercial operations date for the remaining term of the Project Agreement.

- (b) The State, through RIPTA, will
- operate the busses;
 - maintain busses and other State vehicles;
 - handle fare collection and ticket sales;
 - video display terminals;
 - furnishings and fixtures in RIPTA administrative areas;
 - coordination with the intercity bus operators using PITS under a separate agreement with the State; and
 - provide staff for the information booth;
- [*NTD – Additional requirements to be issued in a future addendum*]
- (c) The State, through DCAMM, will
- operate the existing Boiler House and any temporary replacement;
- [*NTD: Project Agreement will address long term operation of the Boiler House*]
- (d) The State or City, through RIDOT, will:
- maintain the public streets including Gaspee; and
 - maintain any traffic control devices controlling public vehicles and/or pedestrians crossing public streets.
- (e) Developer will be responsible for all other operations and maintenance responsibilities, including, but not limited to:
- building maintenance including housekeeping, trash collection and disposal, pest control;
 - site maintenance including landscaping and snow and ice control on the sites including sidewalks, but excluding maintenance of the streets between the curb lines are related traffic control devices;
 - utility costs including public accessible wifi but excluding RIPTA's dedicated communications and data costs;
 - security;
 - furnishings and fixtures in passenger common areas, except for fare collection, ticketing machines and video display terminals;
 - management of retail spaces;

- management of advertising contracts per RIPTA “Advertising Standards Policy”, effective Nov 23, 2015; and
- management of the parking facility.

[NTD – Additional requirements to be issued in a future addendum]

3.2 Operations and Maintenance Plan

[NTD – the intent is that the referenced O&M Plan be completed under the terms of the Pre-Development Agreement for insertion in the Project Agreement as an attachment to this section]

Developer shall prepare the Operations and Maintenance Plan that will include at a minimum:

- management and administration including:
 - appointment and authority of maintenance director; and
 - sub-contractor management; and
 - interface protocols and systems that Developer and Developer-Related Entities shall utilize for interaction amongst each other, with the State, third parties, and the public; and
 - issue and resolution process; and
- human resource matters; including a Staffing Management Plan; and
- occupational health and safety/risk management; including an Emergency Response Plan; and
- document management; and
- Quality Management Plan; and
- an Asset Preservation Plan.

3.3 Staffing Management Plan

The Developer shall prepare, implement, manage, and, as required, update a Staffing Management Plan which shall, at a minimum:

- Identify key individuals and set forth reporting lines, responsibilities; and
- include details of:
 - recruitment and orientation; and
 - training and ongoing knowledge and skills development.

3.4 Quality Management Plan

The O&M Quality Management Plan shall, at a minimum:

- Clearly outline the roles, rights, and responsibilities of the State and Developer, as applicable, and consistent with the Operations and Maintenance requirements of the Project Agreement and the Technical Requirements;
- Include procedures to report the status and closeout of all Nonconforming Work and instances of Noncompliance throughout the Term. The Quality Management Plan shall also include procedures for investigations and surveys undertaken by Developer as part of the monitoring process;
- Assign an overall Quality Manager that shall supervise and coordinate all the Quality Management activities and procedures set forth in the O&M QMP.

3.5 **Asset Preservation Plan**

[NTD – the intent is that the Asset Preservation Plan be completed under the terms of the Pre-Development Agreement for insertion in the Project Agreement as an attachment to this section]

3.6 **Performance Requirements**

This section defines the general maintenance requirements and performance measures for the day to day operations during the term of the Project Agreement.

[NTD – the intent is that the Performance Requirements be completed under the terms of the Pre-Development Agreement for insertion in the Project Agreement as an attachment to this section]

3.7 **Asset Preservation Requirements**

This section defines the general maintenance requirements and performance measures for preserving the integrity of the PITC and related facilities during the term of the Project Agreement.

[NTD – the intent is that the Asset Preservation Requirements be completed under the terms of the Pre-Development Agreement for insertion in the Project Agreement as an attachment to this section]

3.8 **End of Term Requirements**

This section defines the condition and remaining service life of the PITC and related facilities at the expiration of term of the Project Agreement.

[NTD – the intent is that the End of Term Requirements be completed under the terms of the Pre-Development Agreement for insertion in the Project Agreement as an attachment to this section]

Attachment A – PITC Design Parameters

1. Berthing requirements

Berthing requirements shall be provided for a minimum of 19 RIPTA buses, as follows:

- Straight curb for at least three (3) northbound through RIPTA buses (160 feet minimum, 200 feet preferred);
- Straight curb for at least three (3) southbound through RIPTA buses (160 feet minimum, 200 feet preferred);
- Eight (8) straight curb or as modified sawtooth berths for 40-foot RIPTA buses terminating at the facility. At least two (2) of the terminating berths should accommodate 60-foot articulated buses;
- Four (4) additional straight curb or as modified sawtooth berths to accommodate either RIPTA busses or 45-foot intercity coaches;
- One (1) for short- term bus layover either in a berth or along the periphery of the facility; and
- All movements in and out of berths and within the facility must be possible without the need for buses to back up.

2. Bus Access, Egress and Circulation

Bus access and egress to PITC shall use Exchange Street and a new crossing of the rail corridor from the south and Gaspee and Smith streets from the north.

Vehicular access unrelated to the PITC shall be kept separate from bus circulation. No private vehicles shall be allowed in the bus area.

3. Other vehicle requirements [NTD: *new to RFP*]

Provide areas for the RIPTA maintenance, administrative and emergency vehicles on the same level as the bus berthing area for:

- one bus for emergency repair or cleaning with a hose bib nearby; and
- two small vehicle maintenance / cleaning trucks;
- six (6) spaces for other official and emergency vehicles

4. Interior Space and Support Functions

Weather-protected passenger waiting areas shall be provided at the berths and within an interior customer service building. Public access to the RIPTA staff areas shall be restricted.

Developer shall coordinate with RIPTA for the installation of ticket vending machines near facility entrances and the customer service window.

Public information displays shall also be located near all berths and in the central passenger waiting area.

Minimum Interior Space Needs for RIPTA and Intercity Bus Operations

- RIPTA passenger waiting area 900 SF
- RIPTA Customer Service booth/closet 600 SF
- RIPTA Maintenance/parts storage closet 100 SF
- Public restrooms (8 stalls) 680 SF
- Police/security booth/office 400 SF
- RIPTA Dispatch/Supervisors' office 400 SF
- RIPTA employee break room 600 SF
- RIPTA employee restrooms 2 @ 200 SF each
- RIPTA IT server room 400 SF
- Intercity ticket office 2 @ 150 SF each
- Waiting room for intercity customers 900 SF
- Additional intercity ticket offices 2 @ 300 SF each
- Meeting room 400 SF

Exhibit E – RFP Schedule

RFP Schedule

The following represents the current schedule and deadlines for submittal for the RFP Process:

| Event | Date |
|---------------------------------------|-------------------|
| Release of RFP | October 10, 2017 |
| First CDM with the Proposer | October 25, 2017 |
| Second CDM with the Proposer | November 2, 2017 |
| Addendum 1 Issued | November 14, 2017 |
| Third CDM with the Proposer | November 15, 2017 |
| Fourth CDM with the Proposer | November 21, 2017 |
| Final RFP Released | [] 2018 |
| Proposal Due Date | [] 2018 |
| Preferred Proposer Selection | [] 2018 |
| Execution of PDA | [] 2018 |
| PA Commercial Close on the PITC | [] 2018 |
| Financial Close on the PITC | [] 2018 |
| Construction Commencement on the PITC | Fall 2018 |

Exhibit F – General Proposal Submittal Requirements

1. General Submittal Requirements

1.1 Administrative, Technical and Financial Proposals

The Proposal must include the Administrative Proposal, the Technical Proposal and the Financial Proposal in compliance with the requirements of this ITP, including this Exhibit F, Article 5 (*Submittal Requirements*), Exhibits G-1 (*Administrative Proposal Requirements*), G-2 (*Technical Proposal Requirements*) and G-3 (*Financial Proposal Requirements*).

1.2 Signatures

Each of the Administrative Proposal, Technical Proposal and Financial Proposal must be signed by the Sponsors. Subject to Section 2.1(a)(i) below, the Proposer may provide either original or electronic signatures in its Proposal.

1.3 Language and Currency

- (a) The Proposal must be written in the English language.
- (b) Any information quantified in currency must be provided in Dollars. If financial statements are converted from a foreign currency into Dollars, the Proposal must explain the conversion method.

2. Content, Format and Organization

2.1 Proposal Contents

(a) Administrative Proposal

The Proposer must, in accordance with Section 5.4 (*Proposal Delivery – Due Dates and Location*), deliver on the Proposal Due Date:

- (i) one unbound, reproducible, double-sided, original hard copy (containing only original signatures) of its Administrative Proposal;
- (ii) 6 bound double-sided copies of its Administrative Proposal; and
- (iii) one CD (in readable only format) marked with the Proposer's name containing a digital copy of the Technical Proposal in PDF (searchable) format, with bookmarks for each section.

All the documents comprising the original copy of the Administrative Proposal must be packaged in one or more sealed containers labeled: "[*Proposer Name*]: Original Administrative Proposal due on [*the Proposal Due Date*] for the Public Private Partnership for the Providence Intermodal Transportation Center & Associated Private Development". Each of the containers that include the required hard copy duplicates of the Administrative Proposal must be sealed and labeled: "[*Proposer Name*]: Copies of Administrative Proposal due on [*the Proposal Due Date*] for the Public Private Partnership for the

Providence Intermodal Transportation Center & Associated Private Development – Contains Confidential Financial Information".

(b) **Technical Proposal**

The Proposer must, in accordance with Section 5.4 (*Proposal Delivery – Due Dates and Location*), deliver on the Proposal Due Date:

- (i) one unbound, double-sided, reproducible, original hard copy of its Technical Proposal;
- (ii) 6 bound double-sided copies of its Technical Proposal; and
- (iii) one CD (in readable only format) marked with the Proposer's name containing a digital copy of the Technical Proposal in PDF (searchable) format, with bookmarks for each section.

All the documents comprising the original copy of the Proposer's Technical Proposal, together with the electronic copies of its Technical Proposal, must be packaged in one or more sealed containers labeled: "[*Proposer Name*]: Original Technical Proposal due on [*the Proposal Due Date*] for the Public Private Partnership for the Providence Intermodal Transportation Center & Associated Private Development". Each of the containers that include the required hard copy duplicates of the Technical Proposal must be sealed and labeled: "[*Proposer Name*]: Copies of Technical Proposal due on [*the Proposal Due Date*] for the Public Private Partnership for the Providence Intermodal Transportation Center & Associated Private Development".

(c) **Financial Proposal**

The Proposer must, in accordance with Section 5.4 (*Proposal Delivery – Due Dates and Location*), deliver on the Proposal Due Date:

- (i) one unbound, double-sided, reproducible, original hard copy of its Financial Proposal;
- (ii) 6 bound double-sided copies of its Financial Proposal; and
- (iii) one CD (in readable only format) marked with the Proposer's name containing a digital copy of the Financial Proposal in PDF (searchable) format, with bookmarks for each section.

All the documents comprising the original copy of the Proposer's Financial Proposal, together with the electronic copies of its Financial Proposal, must be packaged in one or more sealed containers labeled: "[*Proposer Name*]: Original Financial Proposal due on [*the Proposal Due Date*] for the Public Private Partnership for the Providence Intermodal Transportation Center & Associated Private Development". Each of the containers that include the required hard copy duplicates of the Financial Proposal must be sealed and labeled: "[*Proposer Name*]: Copies of Financial Proposal due on [*the Proposal Due Date*] for the Public Private Partnership for the Providence Intermodal Transportation Center & Associated Private Development – Contains Confidential Financial Information".

2.2 Formatting

Subject to Section 2.3 (*Page Limits*), the Proposer must:

- (a) format its Proposal using:
 - (i) black, 12 point, standard-form Arial, Helvetica or Times New Roman font;
 - (ii) "single line" spacing (not "double line" or "1.5 line" spacing) with 6 point paragraph spacing (before and after);
 - (iii) the format of any text retained from any template Form provided by the State; and
 - (iv) sequential page numbering;
- (b) print its Proposal:
 - (i) on 8-1/2" x 11" sized white paper with at least 1" margins for narrative text (i.e., not tables, graphics or charts);
 - (ii) on 11" x 17" sized white paper where required by Exhibit G-2 (Technical Proposal Requirements);
 - (iii) on recycled paper to the extent possible (although failure to do so will not be negatively assessed); and
 - (iv) double-sided.

The Proposer may:

- (c) use other fonts for text on the cover and spine of binders;
- (d) use a different color font for headings, tables and graphics;
- (e) use 9 point font in tables, graphics or charts, provided that the tables, graphics and charts are legible;
- (f) produce pages of pre-existing or third party materials, such as published financial statements or letters of support, in their original format; and
- (g) produce forms, organizational charts, schematics, other drawings or schedules, but not narrative text, on 11" x 17" sized white paper.

2.3 Page Limits

- (a) The Proposer is encouraged to be succinct, to the extent possible, and comply with any page limits and other limits, if applicable, set out in this ITP.
- (b) Page limits and other limits are maximum limits and do not need to be reached for each item indicated, but should not be exceeded.
- (c) For the purposes of any page limit:

- (i) each printed side of a page will be considered one page;
 - (ii) a divider that contains information, other than a title for the section, that should be considered in the review or evaluation as part of the Proposal will be counted as one page; and
 - (iii) any table of contents, index or list of defined terms/abbreviations included in the Proposal will not be counted.
- (d) The State may, in its discretion, reject pages that exceed the page limits or that fail to follow the content or format instructions outlined in this ITP.

3. Modifications, Withdrawals and Late Submittals

3.1 Modifications to the Proposal

- (a) The Proposer may modify its Technical Proposal or Financial Proposal prior to the time due on the Proposal Due Date.
- (b) Any modification must conform in all respects to the requirements for submission of the Proposal. Modifications must be clearly marked as such on the face of the document to prevent confusion with the original Proposal and must specifically state that the modification supersedes the original Proposal and all previous modifications, if any, submitted by the Proposer. If multiple modifications are submitted, they must be sequentially numbered so the State can accurately identify the final Proposal.
- (c) Any modification must contain complete Proposal sections, complete pages or complete Forms as required by Exhibit G-2 (*Technical Proposal Requirements*) and Exhibit G-3 (*Technical Proposal Requirements*), as applicable. Line item changes will not be accepted.

3.2 Withdrawal of Proposals

- (a) The Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by its Proposer Representative. Such written request must be delivered to the State Representative.
- (b) A withdrawal of the Proposal will not prejudice the right of the Proposer to file a new Proposal, as applicable; provided that the new Proposal is received before the time due on the Proposal Due Date.
- (c) The Proposal may not be withdrawn on or after the time due on the Proposal Due Date.

3.3 Late Proposals

The State may consider a late Proposal in its absolute discretion. The Proposal, modifications and withdrawal requests received after the time due on the Proposal Due Date may be rejected without consideration or evaluation, in the State's absolute discretion.

4. **Submission of a Responsive Proposal**

In the State's absolute discretion, the Proposal may be considered non-responsive and may be disqualified from the RFP Process for any of the following reasons:

- (a) the Proposal is submitted in a format other than as specified in this ITP;
- (b) any part of the Proposal is missing from the Proposal package or otherwise does not meet the requirements of this Exhibit F;
- (c) the State determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations or items not required by the RFP or unauthorized additions;
- (d) any required information is not included in the Proposal; or
- (e) any other reason that the Proposal is non-responsive to any other instructions, requirements, terms or conditions of the RFP, as determined by the State in its absolute discretion.

Exhibit G-1 – Administrative Proposal Requirements

1. Required Contents of the Administrative Proposal

The Administrative Proposal must contain the following:

1.1 Certifications of No Change (page limit: n/a)

(a) The Proposer must provide a statement certifying that since the Proposer's SOQ submission, there has been no change in the information contained in the Proposer's SOQ, including with respect to the following items from the Proposer's SOQ:

- (i) RIVIP Bidder Certification Cover Form;
- (ii) Form B (*Certifications*);
- (iii) Form C (*Disclosures*);
- (iv) Form E (*Major Participant Information*)
- (v) Form F (*Technical Experience*)
- (vi) Form G (*Financial Information*)
- (vii) Form J (*Safety Performance Questionnaire*);
- (viii) IRS Form W-9; and
- (ix) Project Labor Agreement Statement.

(b) If there has been any changes in the information contained in the Proposer's SOQ, the Proposer must submit a description of these changes, including an explanation of why the Proposer (or any Major Participant) is not adversely affected.

1.2 Completed Form A (*Proposal Letter*) (page limit: n/a)

Provide a completed Proposal Letter in the form of Form A (Proposal Letter) in accordance with the instructions on the Form.

The Proposal Letter must be signed by the Proposer Representative and by an authorized representative of each Sponsor. Each signatory must be authorized to sign such material and to commit the Proposer or Sponsor (as applicable) to the Project obligations.

1.3 Executive Summary

Provide a written narrative that must:

- (a) summarize any changes in the Proposer Team;
- (b) include a narrative overview of the Proposer's design and concept visualizations and approach to performing the Work;

- (c) describe the Proposer's proposed management, operational and decision-making structures for the Developer, including for interactions between the Developer and the State during the PDA phase and the Project;
- (d) be written in a non-technical style; and
- (e) contain sufficient information for reviewers with technical and non-technical backgrounds to become familiar with the key elements of the Proposal and its ability to satisfy the requirements of the Project and the Project Objectives.

1.4 Completed Form B (*Agreement on Terms of Discussion*) (page limit: n/a)

Provide a completed Form B (*Agreement on Terms of Discussion*) in accordance with the instructions on the Form.

1.5 Completed Form C (*Major Participants and Key Project Staff Commitment and Statement of Availability*) (page limit: n/a)

Provide a completed Form C (*Major Participants and Key Project Staff Commitment and Statement of Availability*) in accordance with the instructions on the Form.

1.6 Guarantor Letter of Support (page limit: n/a)

If financial statements of a Guarantor were provided to demonstrate financial capability of a Sponsor, Lead Contractor or O&M Contractor in the SOQ, a letter from such Guarantor must be provided confirming, to the extent applicable, how that Guarantor will support the Sponsor, Lead Contractor or O&M Contractor.

1.7 Changes in the Proposer's Organizational Structure (page limit: 2 pages for description)

The Administrative Proposal must include a copy of the correspondence (if any) that the State issued approving any Administrative Organizational Change, as required by the Terms and Conditions, Section 20.2 (*Changes in Proposer's Organizational Structure*). The Proposer, in addition to completing Form C (*Major Participants and Key Project Staff Commitment and Statement of Availability*), must also include a brief description (2-pages) of these changes and any other changes to its Proposer Team since the date of the Proposer's SOQ submission.

1.8 Major Participant Corporate Formation and Management Documents (page limit: n/a)

The Administrative Proposal must include copies of the following documents for each Major Participant, certified to be true, correct and complete copies by a duly authorized officer of each Major Participant or Major Participant's general partner, managing member(s), as applicable:

- (a) articles of incorporation and bylaws, for any corporations;
- (b) articles of organization, certificate of formation and operating agreement or limited liability company agreement, for any limited liability companies;
- (c) partnership agreement and certificate of partnership, for any partnerships; and
- (d) joint venture agreement, for any joint ventures.

If any entity is not yet formed or if a modification to the organizational documents is contemplated prior to Pre-Development Close, the Proposer must provide applicable draft documents or detailed term sheets for each of these entities.

1.9 **Developer's Corporate Formation and Management Documents (page limit: n/a)**

If the Proposer plans to create a single purpose entity to be the Developer to enter into the PDA, the Administrative Proposal must include corporate formation and management documents for the single purpose entity, including:

- (a) articles of incorporation and bylaws, for a corporation;
- (b) articles of organization or certificate of formation and operating agreement or limited liability company agreement, for a limited liability company;
- (c) partnership agreement and certificate of partnership for a partnership; and joint venture agreement, for a joint venture; and
- (d) other agreements relating to the corporate governance, management and/or voting rights in respect of the proposed Developer entity.

Exhibit G-2 – Technical Proposal Requirements

1. GENERAL INSTRUCTIONS

The submission should provide sufficient information to reasonably demonstrate that the Proposer can meet the responsibilities and obligations as set out in the Technical Guidelines. Innovations and deviations to the Technical Guidelines will be encouraged to be developed and submitted for approval, particularly to achieve:

- improved revenue opportunities,
- aesthetics,
- functionality,
- futureproofing,
- lower capital cost,
- lower operating costs,
- efficiency, and
- lower maintenance costs.

The Technical Submission contents shall be submitted in four parts

- Part 1: Checklist
- Part 2: Project Approach
- Part 3: Drawings
- Part 4: Support Material

2. Checklist

[NTD: to be added by addendum]

3. PROJECT APPROACH

The "**Project Approach**" contents are included in the table below, and are to be addressed to the levels indicated and will form part of the PDA.

| Area | Requirement |
|-------------------------|--|
| Project Management Plan | <p>The Project Management Plan should include:</p> <ul style="list-style-type: none"> • the design approach including coordination with utilities, Amtrak and other Key Stakeholders, incorporation of community inputs, facilitation of design reviews by RIDOT and other Key Stakeholders; and; • description and schedule for its proposed approach to obtaining the necessary governmental and Amtrak approvals to deliver the Project; and • the construction approach including integration and coordination with design activities, mitigation of construction impacts to the public and coordination to the operations phase; and • a construction phasing plan with an integrated design and construction schedule that includes the schedule for obtaining regulatory approvals. |

| | |
|-----------------------------|--|
| Architectural Approach | <ul style="list-style-type: none"> • Provide a conceptual design of the Project that at a minimum achieves the Project Objectives and satisfies the requirements in Section 4 (<i>Drawings</i>) below. • Describe the architectural vision and demonstrate how the PITC, landscape and urban design addresses the Project Objectives and Technical Guidelines on the site, including integration with transit, parking, and commercial revenue opportunities. • Provide a concise vision statement that can be used to communicate to a large audience and incorporated as part of the overall community engagement plan for the Project. • Include information of the materials and finishes proposed within the building envelope including floor and wall finishes, proposed facade treatments, roof materials and skylights. |
| Revenue Generation | Provide a narrative of how any proposed retail facilities will be integrated into the PITC. |
| Site Access and Circulation | Provide a narrative and visual description of the vehicle circulation and road access arrangements for RIPTA's operation. Include approach to site circulation addressing bus circulation, people movement, emergency and maintenance vehicles, loading docks, waste disposal, site safety and security. |
| Road Improvements | Provide a narrative and visual description of the proposed Road Improvements as deemed appropriate for the PITC. Describe the structural concept for the Exchange St Extension over the Amtrak tunnel. |
| Parking | Describe how parking generally will be addressed, including any future expansion, and/or replacement of the State House parking lot |
| Boiler House | Describe how the development will integrate and address the current and future operations of the State Boiler House, including any replacement, or temporary works strategy. |
| Utilities | Describe proposed arrangements with utilities, including gas, water, electricity, phone, other communications, sanitary and storm water, including protection and maintenance or relocation of existing facilities to maintain services and load assessments for new services for the Project. |
| Civil Works | Provide narrative describing the approach to the civil works on site, including phasing of drainage, sanitary, lifting stations (if required), utility connection points and site restoration |
| Structure – PITC | <ul style="list-style-type: none"> • Describe the structural systems proposed, including sub structure, superstructure, and roof and the proposed construction methodology. • Provide information on the proposed foundation solutions, including specific information on how potential ground movements, will be addressed in the design. • Describe waterproofing of subsurface areas. |

| | |
|--|--|
| Operation and Maintenance Plan | Provide an Operation and Maintenance Management Approach outlining the Proposer's high-level approach to achieving the Project Objectives and meeting the requirements under the Technical Guidelines for operations and maintenance, including its anticipated interactions with the State; approaches to meeting the Service Requirements; approaches to custodial maintenance, preventive maintenance, and corrective maintenance; and approach to Performance Management monitoring. |
| Private Development | Describe the approach to integrating the Private Development into subsequent phases of the Project in order to reduce the overall Public Contribution Amount |
| Public Outreach Materials | Provide a high-level version of the above Project Management Plan and Architectural Approach with appropriate graphics focusing on architecture and land use that may be used by the State in discussions with Key Stakeholders, regulatory authorities and with the general public in public outreach programs. It is intended that these materials will be used for public discussion. |
| CE Plan or Community Engagement Plan | The Community Engagement Plan must include: <ul style="list-style-type: none"> • plan for conducting outreach to various community groups and Key Stakeholders for educating and soliciting input from the public with respect to the Project; • for informing the City Council, the Capital Center Commission, the Historic Preservation and Conservation Commission and other Governmental Agencies about the Project; • budget for publicizing the Project (i.e. mailers, brochures, and forums for educating the public); and • the Developer's strategy for utilizing various forms of traditional and non-traditional media to promote the Project, and for keeping the appropriate Governmental Authorities apprised of the Project's development status. |
| GE Plan or Governmental Approvals Plan | The Governmental Approvals Plan should include: <ul style="list-style-type: none"> • plan for obtaining all Governmental Approvals necessary to perform the Work, broken out by phases ; and • process to submit any documentation or anticipated communications with a Governmental Authority for the State's prior approval |

4. DRAWINGS

The drawings shall include at an appropriate scale:

4.1 General Arrangements

- A cover sheet indicating the Proposer, the RFP, date submitted as well as a list of drawings included;
- A single drawing depicting all principal project elements required in the Technical Guidelines

- A drawing or drawings depicting the proposed construction phasing plan including work areas and vehicular and pedestrian traffic maintenance concepts in each phase.

4.2 Site, Road Improvements and Parking

- An overall site plan showing property lines, utilities, contours, roads, walkways, parking areas and the footprint of all structures using the data available from the "Available Documents" and proposed new contours, roads, walkways, parking and building footprints.
- Site circulation including on-site parking / on street parking spaces and backup/turnaround areas; vehicle entry and exit; pedestrian and bicycle ways; commercial vehicle loading and storage areas and project access to the public street system.
- Road Improvements, including Gaspee St relocation, Exchange St extension and any other roadway changes required for the PITC development, excluding any off-site road improvements suggested in the RIPTA planning studies or may be required by the City of Providence or other Regulatory Authorities
- Structural concept for the Exchange St Extension over the Amtrak tunnel
- Conceptual Open Space Plan delineating hardscapes from lawn or landscaped areas

4.3 PITC

- Project data sheet including indicative site and building square footage.
- Architectural floor plan for each level showing rooms, traffic areas, passenger areas, vertical circulation, vehicular and pedestrian ingress and egress access points, internal vehicular circulation, berthing and parking areas and the connection to the Amtrak Station.
- Axonometric drawings of site and PITC indicating massing and height, and conceptual architectural elements
- PITC cross sections depicting walls, major spaces, floor elevations, volumes, the connection to Amtrak Station and any skylights, roof top equipment or screening.
- Axonometric drawings of site, the PITC and include any Private Development locations.

4.4 State Boiler House

- The proposed location for the permanent replacement for the State Boiler House and the potential location for any temporary facility that may be needed

5. **ADDITIONAL WORK**

If the Proposal includes any Additional Work, provide an Amendment to the Project Approach in Section 2 detailing and changes to the any sections of the Project Approach should the State agree to include the Additional Work in the PDA.

6. **EARLY WORK**

If the construction phasing plan includes any Early Work, provide an Amendment to the Drawings in Section 4 to include a preliminary level of design of any proposed Early Work.

Exhibit G-3 – Financial Proposal Requirements

This Exhibit G-3 describes the submission format for Financial Proposals and outlines the required information that will comprise a Financial Proposal.

Proposer must submit the information required by this Exhibit G-3 in the organization and format specified herein. Each component of the Financial Proposal must be clearly tabbed, titled and identified within the Financial Proposal.

1. Format of Financial Proposal; Interpretation Matters

All financial information provided in the Financial Proposal must be in United States Dollar currency only and all amounts must be clearly identified as real or nominal dollars.

2. Contents of Financial Proposal

- (a) Tab 1 - Financial Proposal General Information - The Financial Proposal must contain the information listed below in accordance with Section 3 of this Exhibit G-3.
 - (i) Financial Proposal Checklist
 - (ii) Financial Statements
 - (iii) Material Changes in Financial Conditions
- (b) Tab 2 - Financial Plan - The Financial Proposal must contain the information about Proposer's financial plan listed below in accordance with Section 4 of this Exhibit G-3.
 - (i) Financial Plan Overview
 - (ii) Development and Construction Costs
 - (iii) Operations and Maintenance Costs
- (c) Tab 3 - Financial Model, Assumptions and Instructions Book, and Sensitivity Analysis – The Financial Proposal must contain Proposer's Financial Model and the other related information listed below in accordance with Section 5 of this Exhibit G-3.
 - (i) General and Structural Requirements
 - (ii) Financial Model Elements
 - (iii) Assumptions and Instructions Book
 - (iv) Sensitivity Analysis
 - (v) Other Information
- (d) Tab 4 - Private Development - The Financial Proposal must contain the information about Private Development in accordance with Section 6 of this Exhibit G-3.
- (e) Tab 5 - Delivery Options Analysis - The Financial Proposal should contain the information requested regarding an options analysis in accordance with Section 7 of this Exhibit G-3

3. Financial Proposal General Information (Tab 1)

3.1 Financial Proposal Checklist

An “adapted” copy of the above Contents of the Financial Proposal must be included in the Financial Proposal, indicating Proposer’s use of such checklist to ensure all contents of the Financial Proposal are provided. Proposer shall not amend the order or change the contents of the checklist.

3.2 Financial Statements

The Financial Proposal must include electronic financial statements to the extent available for the Developer, each Sponsor, each Guarantor, Lead Contractor and O&M Contractor for all periods subsequent to those statements previously submitted to the State in the SOQ. This must include any annual audited or unaudited interim quarterly statements.

These subsequent statements must be audited by a certified public accountant in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”), International Financial Reporting Standards (“IFRS”) or accompanied by a letter in the form specified in paragraph (f) below.

Financial statements shall be provided in U.S. Dollars where practicable, but financial statements in other currencies will be allowed if the conversion rates for each exhibit are clearly stated and can be confirmed.

If audited financial statements are not available, the Proposal must include unaudited financial statements for such entity, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must include the following:

- (a) opinion letter (auditor’s report) (for audited financial statements only);
- (b) balance sheet;
- (c) income statement;
- (d) statement of changes in cash flow;
- (e) notes to the financial statements (for audited financial statements only); and
- (f) if financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from the certified public accountant of the applicable entity, addressing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS, and the financial impact thereof. A restatement of the financial information in U.S. GAAP or IFRS is not required.

3.3 Material Changes in Financial Conditions:

Provide information regarding material changes in the financial condition of the Developer, each Sponsor, Guarantor, Lead Contractor and O&M Contractor since the submission of the SOQ and as projected for the next fiscal quarter. If no material change has occurred and none is pending, include a statement to that effect.

Information regarding any material change that has occurred, or is projected, must include, at a minimum:

- (a) a description of each material change, actual and projected, and any related changes or disruptions in executive management;
- (b) actual and projected impacts on the affected entity's organizational and financial capacity and its ability to remain engaged in this procurement and submit a responsive proposal; and
- (c) a detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead; including the likelihood that the circumstances of the change or impacts thereof will continue during the Project term.

Estimates of the impact on revenues, expenses and the change in equity must be provided separately for each material change. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. Where a material change will have a negative financial impact, the affected entity must describe measures that would be undertaken to insulate the Project from any recent material changes, and those currently in progress or reasonably anticipated in the future.

If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity must describe measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth below is a list of examples of material changes in financial condition.

- (a) An event of default or bankruptcy involving the affected entity, its parent company or Guarantor, or any of its controlled subsidiary or other affiliates.
- (b) A change in the tangible net worth of 10% or more of shareholder equity.
- (c) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or its parent company or Guarantor.
- (d) A change in credit rating for the affected entity or its parent company or Guarantor.
- (e) Inability to meet material conditions of loan or debt covenants by the affected entity or its parent company or Guarantor that has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties.
- (f) In the current and three most recent completed fiscal years, the affected entity or its parent company or Guarantor either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity.

4. **Financial Plan (Tab 2)**

The Financial Proposal must include the Proposer's description about its approach to financing the Project (referred to as the "Financial Plan"), including the information described in this Section.

4.1 **Financial Plan Overview**

A narrative overview of Proposer's financial plan, outlining Proposer's currently anticipated plan of finance for the Project (the "Financial Plan"), including:

- (a) Overview of Approach – general approach to financing the Project;
- (b) Payment Mechanism – a description of Proposer's anticipated payment mechanism, including any milestone and availability payments assumed and any other contributions expected from the State, including the use of State GO bonds;
- (c) External Project Debt – a description of Proposer's anticipated sources of external project debt, including type, amount, interest rate, key terms, expected credit rating, approach to securing debt and key risks;
- (d) Project Equity – description of Proposer's anticipated sources of equity, including identification of equity members, amount, equity return requirement, key terms, approach to securing equity and key risks;
- (e) Schedule – anticipated schedule to secure and close financing for the Project; and
- (f) Risks, Impacts and Mitigants - a description of potential risks, impacts and mitigation measures related to any financing that may be assumed in the Financial Plan.

4.2 **Development and Construction Costs**

Proposer must provide the following indicative (proposed may submit ranges, if necessary and appropriate) details for the development, design and construction of the project:

- (a) Description of upfront development and pursuit costs;
- (b) Expected term of construction period;
- (c) Capital project cost estimates and its components, at a conceptual level ; and
- (d) Design and soft cost estimates and its components.

4.3 **Operations and Maintenance Costs**

Proposer must provide the following details for the operations and maintenance of the Project:

- (a) Expected term for operations and maintenance; and
- (b) Annual operations and maintenance costs for each year of the operating period, including routine operations and maintenance, overhead / SPV costs and major maintenance / lifecycle costs.

5. Preliminary Financial Model (Tab 3)

The Financial Proposal must include a financial model, consistent with the requirements set out in this Exhibit G-3 (the "Financial Model").

5.1 General and Structural Requirements

The Financial Model must be an electronic file constructed in an MS Excel 2007 (or more recent version) (English United States) compatible format and shall not require the use of external modules. Proposers are encouraged to make the Financial Model as user-friendly as possible. The Financial Model must satisfy each of the following requirements:

- (a) Each worksheet of the Financial Model must identify the version and the date of issue. If the Financial Model MS Excel file is password-protected, the password must be provided. No part of the Financial Model must be separately hidden, locked or protected with a password. The Financial Model must be formatted to facilitate printing.
- (b) The Proposer is encouraged to avoid the use of circular references in calculations. For all macros, all programming code shall be made visible (i.e., not password protected), well-structured and fully documented.
- (c) Other than an optional title/disclaimer and/or instructions worksheet, the Financial Model must use only the following three types of worksheets:
 - (i) Input worksheets;
 - (ii) Calculation worksheets; and
 - (iii) Output worksheets.
- (d) Worksheet names must be descriptive and not use spaces (e.g., titles such as "CashFlows" or "Cash_Flows" shall be used instead of "Cash Flows").
- (e) A separate color coding scheme (e.g., blue font on yellow fill color) must be consistently used for input cells and/or cells that reference other worksheets, with a distinct scheme for each worksheet referenced. Other color coding can also be used, but must be fully explained in the model's instruction worksheet (if used) and/or the Assumptions and Instruction Book.
- (f) For each calculation or output worksheet using time periods, the following requirements apply:
 - (i) A column must be used for the same period in each of its occurrence within the worksheet (e.g., July 1, 2018 through June 30, 2019 for entire column G);
 - (ii) A row must generally contain only one formula, copied across all columns within the worksheet. Cells in which a different formula is used (e.g., the first column or a row total) must be clearly indicated (e.g., by color, border, or label); and
 - (iii) Values that are obtained from input worksheets must be clearly indicated (e.g., by color or label).

- (g) Summary output worksheets in the Financial Model and the Financial Plan must also be provided in either a monthly or quarterly basis during the design and construction period and on a quarterly, semi-annual or an annual basis during the operating period based on the State's fiscal year ending June 30.

5.2 Financial Model Elements

5.2.1 Input Data Requirements

The Financial Model must clearly indicate in one or more input worksheets all assumptions supporting the calculation of projections, including:

- (a) Macroeconomic assumptions (including inflation and escalation rates);
- (b) Accounting Practices
- (c) Accounting and federal, state and local tax and regulation assumptions pertaining to Developer;
- (d) design and construction work expenditures, other capital expenditures including development and pursuit costs, and fees payable in connection with any expected Project debt and letters of credit supporting deferred equity amounts;
- (e) Assumptions relating to any availability payments and milestone payments;
- (f) Any Early Work expenditures;
- (g) renewal work expenditures;
- (h) Developer general administrative costs;
- (i) All financial metrics for Project debt and associated instruments (such as swaps), including base interest rates and credit spread assumptions for applicable maturities for each assumed debt issuance;
- (j) All financing metrics for equity investments;
- (k) Funding source(s) and deposits into and drawdown of reserve accounts;
- (l) Insurance-related payments, premiums (the premium paid for each insurance policy shall be separately identified); and
- (m) Details regarding Proposer's anticipated operating and maintenance expenditures in each year of the operating period.

5.2.2 Worksheets and Outputs

The Financial Model must dedicate output worksheets for each of the following:

- (a) Quarterly design and construction period sources and uses of funds;
- (b) Annual design and construction period sources and uses of funds;

- (c) Annual cashflow waterfall during the operating period;
- (d) Sensitivity Analysis;
- (e) Developer Annual Balance Sheet;
- (f) Developer Annual Profit and Loss Statement; and
- (g) Developer Annual Cash Flow Statement.

5.3 **Assumptions and Instructions Book**

In accordance with the Financial Model, the Financial Proposal must include sufficient information and instructions regarding the operation of the Financial Model to ensure that the State will be able to read, use and modify the Financial Model, including a description of the function and intended use of any macros.

5.4 **Sensitivity Analysis**

The Proposer must include a sensitivity analysis demonstrating the potential range of outcomes and impact on the State's required contributions to the Project. The Proposer must present the effect of variations on the any availability payments, milestone payments and other contributions expected from the State due to:

- (a) Construction costs: + / - 10% in anticipated construction costs
- (b) Operating and maintenance costs: + / - 10% in anticipated operating and maintenance costs
- (c) Lifecycle costs: + / - 10% in anticipated lifecycle costs
- (d) Debt: + / - 50 basis points in interest rate

5.5 **Other Information**

Proposer must include any other information or sensitivities relating to the Financial Plan that the Proposer considers to be material or valuable for offering the State a better understanding of its Financial Proposal.

6. **Private Development (Tab 4)**

The Financial Proposal must include the Proposer's narrative description of the following information:

- (a) Identification of the Private Development Parcel(s) that the Developer intends to use along with any additional parcels (privately or publicly-owned) where Private Development would occur.
- (b) Description of any key terms that the State should consider when approaching a ground lease. Where the Private Development is on State-owned land, the State intends to enter into a market standard long-term ground lease with the Developer which will serve as the primary governing document for the Private Development portion of the Project.

- (c) Description of the type(s) of use(s) planned for the Private Development from the list of allowable uses: an office building, residential or student housing, a hotel, retail development and associated parking facilities. Provide the approximate size (square feet, number of units, etc.) and configuration (height, massing, etc.) of the proposed structure(s). Describe the anticipated architectural design and physical appearance of the proposed structures considering the location adjacent to the Rhode Island State House and associated view corridors.
- (d) Evidence of market support to justify the proposed use type(s) indicated. Please include a discussion of current and anticipated local market demand with reference to current development projects and planned pipeline as well as key metrics (e.g., rents and vacancy).
- (e) Discussion of the link (both physical and perceived) between the PITC and the Private Development. Indicate the ways in which these two components of the overall project relate to one another.
- (f) Description of an anticipated development timeline illustrating construction periods, delivery dates and any phasing.
- (g) Approach to securing approvals, permits and entitlements for the proposed Private Development.
- (h) Description of the anticipated project costs, financial structure and sources of funding for the proposed Private Development. Indicate any anticipated revenue-sharing arrangements with the State.
- (i) Identification of any State or local subsidy programs that will potentially be used for the Private Development, including the programs offered by CommerceRI.
- (j) Discussion of the fiscal and economic impacts of the proposed Private Development, including job creation, property and sales tax growth, population growth, etc.
- (k) Description of how the proposed Private Development satisfies the Private Development Objectives:
 - (i) Support and enhance Providence's and the State's Economic Development Goals by creating a regionally acclaimed development that is aesthetically linked to the PITC.
 - (ii) Enhance the local economy by creating, both directly and indirectly, short-term and long-term jobs for Rhode Island residents.
 - (iii) Stimulate economic activity and synergy in the Capital Center.
 - (iv) Be an architecturally compelling building or buildings that will complement the State House and surrounding community and integrate with the PITC.
 - (v) Provide sufficient parking to meet the demands of the Private Development and to the extent any State House parking is displaced, replacement of the State House parking in accordance with the Technical Guidelines.

- (vi) Minimize, over time, the overall Public Contribution Amount.

7. **Financing and Delivery Method Analysis (Tab 5)**

The Financial Proposal should contain the following information related to the value of the proposed financing and delivery method for the State. This analysis is meant to act as a vehicle for providing an explanation of the potential advantages or disadvantages of a Design-Build-Finance-Operate-Maintain (“**DBFOM**”) delivery method versus a more traditional Design-Build (“**DB**”) delivery method.

The Financial Proposal should include the following information related to a financing and delivery method analysis:

7.1 **Cost and Revenue Summary**

Description of preliminary cost estimates and anticipated revenues for both a DBFOM option and a DB option for the construction period plus an operating period of 30 years , including:

- (a) Capital construction costs accounting for any increased initial cost for higher quality materials for a DBFOM option, including both hard and soft costs.
- (b) Operations and maintenance costs, assuming operations by the State for a DB option and operations by a private partner for a DBFOM option. Include a discussion of the any advantages of operations and maintenance handled by a private operator.
- (c) Lifecycle replacement costs over the operating period.
- (d) Financing costs assuming public finance for the DB option and private finance for the DBFOM option, or some combination thereof.
- (e) Ancillary / transaction / procurement costs accounting for any increased costs related to a more complex / longer duration procurement process for the DBFOM option.
- (f) Any cost impacts related to the delivery method chosen for the project, including the effect of accelerated delivery based on a DBFOM option.
- (g) Preliminary estimates of net retail lease revenue generated from retail space within the PITC for both options with the State controlling leasing and operations in a DB option and the Developer controlling leasing and operations in a DBFOM option. Revenue sharing between the State and the Developer would occur under the DBFOM option.
- (h) Preliminary estimates of ground lease revenue to the State related to Private Development under the DBFOM option. Include a discussion of the benefits of Private Development incorporated into the DBFOM option.

7.2 **Risk Summary**

In addition, the Financial Proposal should include a description of how a DBFOM mitigates risk for the State and quantification of such benefit, to the extent possible. The risk analysis for the Project could include the following information:

- (a) Identify and describe the major risks surrounding delivery and operation of the PITC project; consider categorizing into major risks versus minor risks and based on the period (planning, construction, operations) in which each risk would likely arise.
- (b) Allocate the identified risks between the State, the Developer and those risks that are potentially shared.
- (c) Provide a high-level base cost for each risk (as possible), a probability of each risk occurring and potential cost impact (or estimation of magnitude) to determine the costs of each risk.
- (d) As possible, summarize the cost of risk retained by the State in both delivery options. Also, note the risk retained by the Developer which will become a risk premium for the DBFOM option.

While every effort should be undertaken to provide a quantification of the project risks, the State understands that there is not complete clarity on many aspects of the Project considering the early phase of project development. With this fact in mind, the Developer may substitute a qualitative analysis in those areas where a quantitative analysis is not possible at this point in the development of the Project.

7.3 Overall Summary

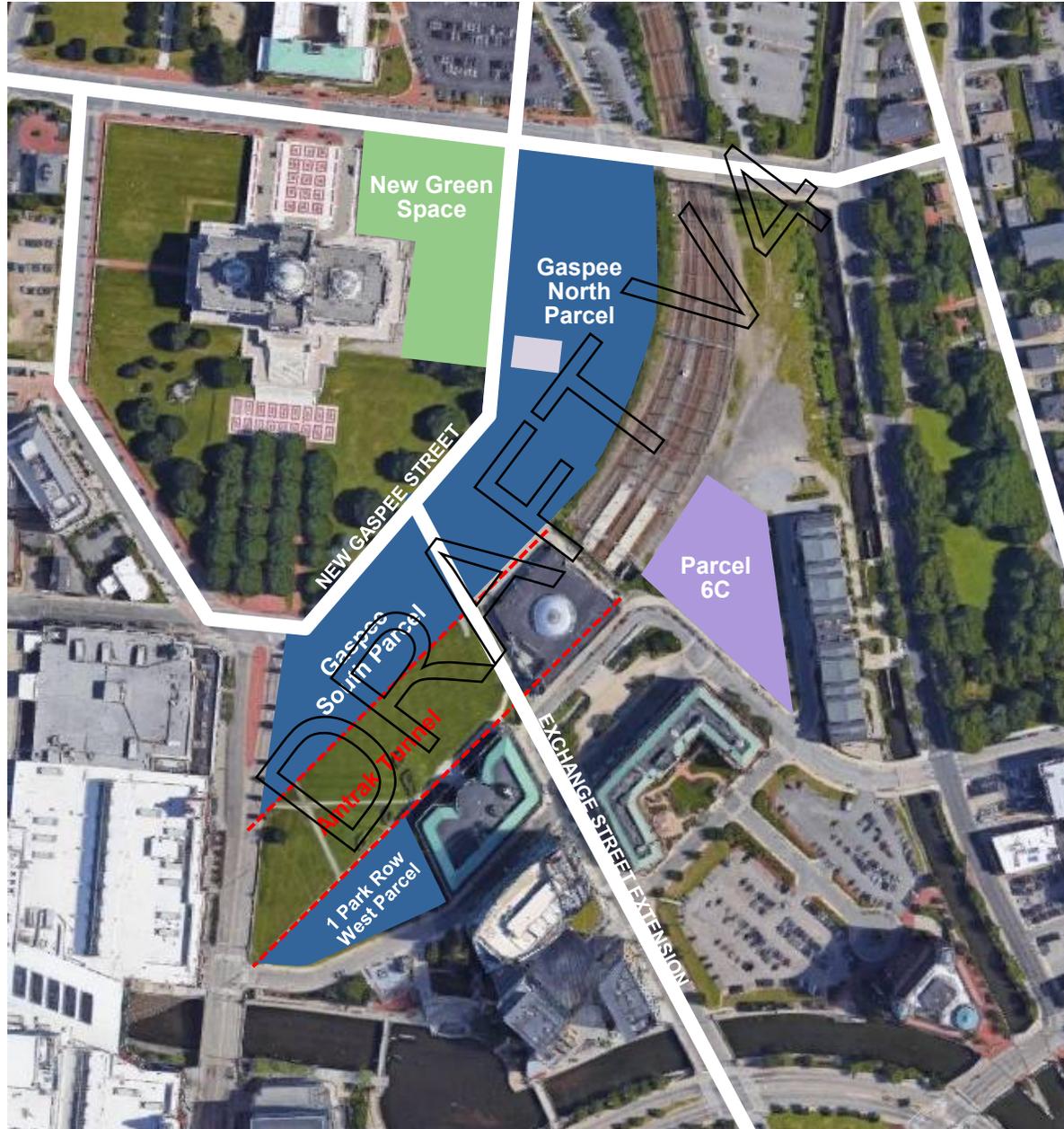
Provide a summary discussion of findings and tables demonstrating the benefit of the DBFOM method and providing a net present value (“NPV”) comparison of whole lifecycle cost for each delivery method. Include key assumptions used in the analysis as well, such as discount rate(s) assumed for any NPV analysis.

EXHIBIT H – Project Site

[Attached]

Draft Version 4

Project Site



- State Parcels
- Private Parcel
- State Boiler House