

Request for Proposals Number: 23-22

Addendum 3

Date: April 4, 2023

Acknowledgment of Addenda

The undersigned acknowledges receipt of the following addenda to the bidding document:

**THE COMPLETED ACKNOWLEDGEMENT OF ADDENDA FORM
SHOULD BE RETURNED WITH BID RESPONSE PACKAGE: NOT
SENT TO RIPTA SEPARATELY**

NOTE: Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the bid.

Name of Bidder

Street Address

City, State, Zip

Signature of Authorized Official

Date



DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT
PROJECT

ADDENDUM NO. 3 (23-22A3)

DATED: April 4, 2023

To RFP No. 23-22 (Issuance Date: January 17, 2023)

ADDENDUM NO. 3 (23-22A3)

DATED: April 4, 2023

To RFP No. 23-22 (Issuance Date: January 17, 2023)

Request for Proposals No.23-22, issued on January 17, 2023 (as amended the “RFP”) is hereby amended as follows:

1. Request for Proposals

The body of the Request for Proposals is hereby deleted in its entirety and replaced with Appendix I hereto.

For informational purposes only, Exhibit A hereto contains changed pages showing the textual changes to body of the Request for Proposals made by this Addendum 3.

2. Schedule 2 (Draft Preliminary Services Agreement)

Schedule 2 (Draft Preliminary Services Agreement) to the RFP is hereby deleted in its entirety and replaced with Schedule 2 (Draft Preliminary Services Agreement) hereto.

For informational purposes only, Exhibit B hereto contains changed pages showing the textual changes to such Schedule 2 (Draft Preliminary Services Agreement).

3. Schedule 3 (Project Agreement Term Sheet)

Schedule 3 (Project Agreement Term Sheet) to the RFP is hereby deleted in its entirety and replaced with Schedule 3 (Project Agreement Term Sheet) hereto.

For informational purposes only, Exhibit C hereto contains changed pages showing the textual changes to such Schedule 3 (Project Agreement Term Sheet).

4. Schedule 5 (RFP Proposal Forms)

Schedule 5 (RFP Proposal Forms) to the RFP is hereby deleted in its entirety and replaced with Schedule 5 (RFP Proposal Forms) hereto.

For informational purposes only, Exhibit D hereto contains changed pages showing the textual changes to such Schedule 5 (RFP Proposal Forms).

5. Responses to Proposers’ Questions and Comments

Attached hereto as Exhibit E are RIPTA’s response to the written questions and comments received from Proposers on or prior to the submission date specified in the RFP.

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Appendix 1

Body of Request for Proposals



DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT

REQUEST FOR PROPOSALS

RFP No. 23-22

Dated: January 17, 2023

As modified by:

Addendum No. 1 dated January 25, 2023

Addendum No. 2 dated February 1, 2023

Addendum No. 3 dated April 4, 2023

Proposals Due: April 17, 2023, 1:00 PM Eastern Time

ABOUT RIPTA

Created in 1964, the Rhode Island Public Transit Authority (“RIPTA”) is a body politic and corporate, vested with the power of eminent domain to acquire transit property or any interest therein. It has primary responsibility for directing statewide fixed-route bus service and ADA paratransit service operations. RIPTA is managed under the direction of a seven-member policy board of directors. RIPTA is committed to protecting the environment and providing safe, reliable, quality transit service that is responsive to customer needs, with particular emphasis on Rhode Island's families, children, transit dependent populations, elderly and people with disabilities.

AGENCY OBJECTIVES

As the statewide public transit organization, RIPTA has a primary role to expand access and mobility opportunities for Rhode Islanders by undertaking actions and supportive strategies, directly and in collaboration with others, to provide a full range of options to the single-occupant automobile. These key mobility strategies include: (a) transit design and service strategies which help improve the livability of communities and act as a stimulus for neighborhood renewal; (b) technological advancements which increase travel options and convenience; and (c) collaborative land use strategies and economic development initiatives that foster transit ridership and pedestrian movement through transit-friendly land use and development.

MISSION STATEMENT

RIPTA’s mission is to provide safe, reliable, and cost-effective transit service with a skilled team of professionals responsive to our customers, the environment, and committed to transit excellence.

DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT

SUMMARY OF KEY INFORMATION

RFP ISSUER	Rhode Island Public Transit Authority
RFP TITLE	Public-Private-Partnership for the design, construction, financing, operation and maintenance of the Dorrance Street Transit Center Joint Development Project.
CONTACT PERSON	All communications relating to this procurement shall exclusively be in writing and directed to the RIPTA Representative at TransitCenterP3@ripta.com .
RFP ISSUANCE	January 17, 2023
PRE-PROPOSAL MEETING	February 13, 2023
DEADLINE TO SUBMIT FINAL QUESTIONS & COMMENTS	March 21, 2023
PROPOSAL SUBMISSION DEADLINE	April 17, 2023
PROPOSALS SUBMISSION LOCATION	Rhode Island Public Transit Authority Purchasing Department Room 217 705 Elmwood Avenue Providence, RI 02907
PROPOSER PRESENTATIONS & INTERVIEWS	April 27-28, 2023
ANNOUNCEMENT OF SUCCESSFUL PROPOSER	May 2023

Table of Contents

- 1. INTRODUCTION AND OVERVIEW 5
 - 1.1. INTRODUCTION 5
 - 1.2. ELIGIBILITY..... 5
 - 1.3. PROGRESSIVE PROJECT DELIVERY..... 5
 - 1.4. PROCUREMENT PROCESS 6
 - 1.5. STRUCTURE OF RFP 7
 - 1.6. DEFINITIONS..... 7
 - 1.7. ABBREVIATIONS 13
 - 1.8. INTERPRETATION 13
- 2. PROJECT OVERVIEW 15
 - 2.1. BACKGROUND 15
 - 2.2. GENERAL PROJECT DESCRIPTION..... 15
 - History and Context. 15
 - Project Site. 17
 - 2.3. PROJECT OBJECTIVES 19
 - 2.3.1. Transit and Transportation Objectives 19
 - 2.3.2. TOD / Housing and Mixed-Use Development Objectives 19
 - 2.3.3. Urban Design and Placemaking Objectives..... 20
 - 2.3.4. Sustainability, Equity and Economic Development Objectives..... 20
 - 2.3.5. Procurement Objectives 21
 - 2.4. PROJECT SCHEDULE..... 21
 - 2.5. GENERAL SCOPE OF SERVICES..... 21
 - 2.5.1. Phase 1 – Preliminary Services..... 22
 - 2.5.2. Phase 2 – Project Services..... 24
 - 2.5.3. Off-Ramp Rights 26
 - 2.6. COMPENSATION..... 26
 - 2.6.1 Compensation to the Project Company for Preliminary Services..... 26
 - 2.6.1 Compensation to the Project Company under the Project Agreement 27
 - 2.7. OWNERSHIP AND TITLE..... 27
 - 2.8. SUBCONTRACTING OF LOCAL & DISADVANTAGED BUSINESS ENTITIES..... 27
 - 2.9. PREVAILING WAGE 28
 - 2.10. EQUAL OPPORTUNITY EMPLOYER 28

Request for Proposals No. 23-22

- 3. RFP Process 30
 - 3.1. RFP SCHEDULE..... 30
 - 3.2. COMMUNICATIONS PROTOCOLS..... 30
 - 3.2.1. Communications 30
 - 3.2.2. RIPTA Representative..... 30
 - 3.2.3. Rules of Conduct 31
 - 3.3. CLARIFICATION AND AMENDMENT OF RFP 32
 - 3.3.1. Examination and Clarification of the RFP..... 32
 - 3.3.2. Requests for Clarification and Amendment..... 33
 - 3.4. PROPOSAL PREPARATION PERIOD 33
 - 3.4.1. Pre-Bid RFP Meeting 33
 - 3.4.2. Project Site Visits..... 33
 - 3.4.3. Proposer Due Diligence and Investigation..... 33
 - 3.4.4. Virtual Data Room..... 34
 - 3.4.5. Professional Advice 34
 - 3.4.6. Individual Commercially Confidential Meetings..... 34
 - 3.4.7. RFP and Draft Agreement Changes During the Proposal Preparation Period 35
 - 3.4.8. Request for Proposals Addenda..... 36
 - 3.5. IMPROPER CONDUCT 37
 - 3.5.1 Non-Collusion..... 37
 - 3.5.2 Definition of Conflicts of Interest..... 37
 - 3.5.3 Prohibition on Conflicts of Interest..... 38
 - 3.5.4 Existence of Conflicts of Interest 38
 - 3.5.5. Exclusivity..... 39
 - 3.6. CONFIDENTIALITY AND PUBLIC DISCLOSURES 39
 - 3.7. OWNERSHIP OF PROPOSAL MATERIALS 40
- 4. Proposal submission requirements 41
 - 4.1. GENERAL SUBMISSION REQUIREMENTS..... 41
 - 4.1.1. Required Signatures 41
 - 4.1.2. Requirements to Submit a Responsive Proposal 41
 - 4.2. LEADER DESIGNATION 42
 - 4.3. PROPOSAL SUBMISSION DATE & LOCATION 42
 - 4.3.1. Proposal Due Date 42

Request for Proposals No. 23-22

- 4.3.2. Proposal Submission Location 42
- 4.4. PROPOSAL ORGANIZATION AND MARKINGS..... 43
- 4.5. PROPOSAL CONTENT 43
 - 4.1.1. Proposal Packages..... 43
 - 4.1.2. Required Forms..... 43
- 4.2. PROPOSAL FORMAT 43
- 4.7. MODIFICATIONS, WITHDRAWALS AND LATE SUBMITTALS 45
 - 4.7.1. Modifications of a Proposal 45
 - 4.7.2. Withdrawal of Proposals..... 45
 - 4.7.3. Late Proposals 45
- 4.8. Proposal Validity Period 45
- 4.9. PROPOSAL SECURITY 45
 - 4.9.1 Proposal Security 45
 - 4.9.2 Forfeiture of Proposal Security 46
 - 4.9.3 Return of the Proposal Security 47
- 4.10. PROPOSER'S COSTS 47
- 5. EVALUATION PROCESS..... 48
 - 5.1. EVALUATION PROCESS AND CRITERIA 48
 - 5.2. BASIS OF AWARD 48
 - 5.3. SELECTION COMMITTEE AND APPROVALS 48
 - 5.4. EVALUATION PROCEDURE 48
 - 5.4.1. Phase 1: Proposal Responsiveness Review 48
 - 5.4.2. Phase 2: Proposal Evaluation 50
 - 5.4.3. Evaluation Categories and Relative Weighting 58
 - 5.4.4. Total Score and Award 58
 - 5.5. CLARIFICATIONS AND ADDITIONAL INFORMATION 59
 - 5.6. WAIVER OF NON-CONFORMITIES 59
 - 5.7. NO OBLIGATION TO AWARD 59
 - 5.8. AWARD NOTICE..... 59
 - 5.9. DEBRIEFINGS & PROTESTS 59
 - 5.9.1. Debriefings 59
 - 5.9.2. Protests 60
 - 5.10. Definitive Award Date 61

Request for Proposals No. 23-22

- 5.11. PRELIMINARY SERVICES AGREEMENT NEGOTIATIONS & EXECUTION..... 61
- 5.12. CONDITIONS PRECEDENT TO EXECUTION OF THE PSA..... 62
- 5.13. FAILURE TO SATISFY SUCCESSFUL PROPOSER REQUIREMENTS 62
- 5.14. WITHDRAWAL OF SUCCESSFUL PROPOSER STATUS..... 62
- 6. RIPTA RESERVED RIGHTS & DISCLAIMERS 64
 - 6.1. RESERVED RIGHTS..... 64
 - 6.2. SPECIFIC REQUIREMENTS – RHODE ISLAND BUSINESS LICENSE..... 65
 - 6.3. RIPTA DISCLAIMERS 65
 - 6.4. GOVERNING LAW 66
- RFP Schedules Table of Contents..... 67
- Schedule 1 – Proposal Submission Requirements 68
 - Package A – Transmittal Letter and Executive Summary 68
 - Package B – Organization & Management 69
 - Package C – Project Approach 75
 - Package D – Price Proposal 80
 - Package E – Comments to Draft Preliminary Services Agreement and Term Sheet 81
- Schedule 2 – Draft Preliminary Services Agreement 82
- Schedule 3 – Draft Term Sheet 83
- Schedule 4 – Proposal Forms 84
- Schedule 5 – Scope of Basic Services (Appendix 1 to Preliminary Services Agreement)..... 85

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1. INTRODUCTION AND OVERVIEW

1.1. INTRODUCTION

The Rhode Island Public Transit Authority (“RIPTA”) is soliciting proposals (“Proposals”) from qualified and experienced entities or teams (“Proposers”) to design-build-finance-operate-maintain (“DBFOM”) the Dorrance Street Transit Center Joint Development Project through a progressive joint development project delivery model. This Request for Proposals (“RFP”) contemplates a single-phase procurement, inclusive of the evaluation of qualifications, as well as technical and pricing components.

Defined terms used in this RFP have the meanings set forth in Section 1.6 below.

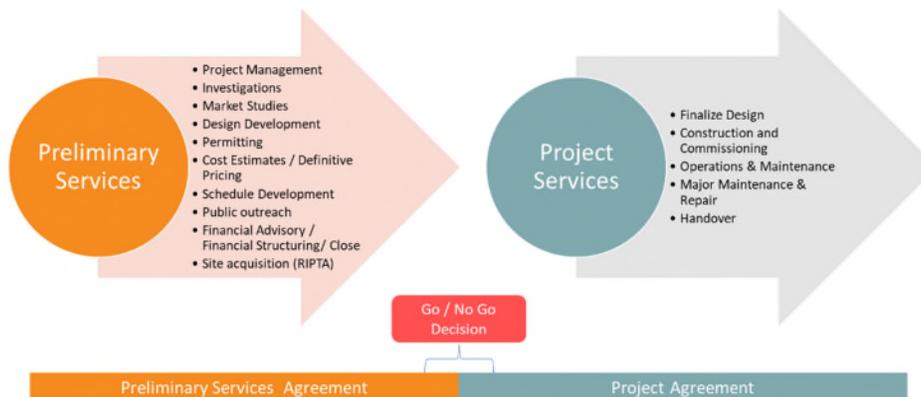
1.2. ELIGIBILITY

Only those Proposers meeting the minimum qualifications set forth in Section 5.4.1.2 of this RFP shall be deemed eligible to participate in the procurement under this RFP (the “RFP Process”).

1.3. PROGRESSIVE PROJECT DELIVERY

The Project will be developed and delivered on a progressive DBFOM basis which consists of two separate, consecutive phases of work, each governed by a separate agreement with RIPTA:

- 1) **Preliminary Services Phase.** The first phase (the “Preliminary Services Phase”) includes the Project Company (as defined below) undertaking pre-development professional services, such as project management, design development (up to an approximately 60% design level), permitting, scheduling, cost-estimating, value-engineering, public outreach, funding and financial advisory, securing financing, as well as other professional advisory services, as set forth in detail in the Draft Preliminary Services Agreement attached hereto as Schedule 2 (such services hereinafter referred to as the “Preliminary Services”).
- 2) **Project Delivery Phase.** Following the successful completion of the Preliminary Services Phase, the Project Company will be responsible for closing any required financing, completion of design, construction, commissioning, operation, and long-term major maintenance, repair, replacement and management of the Infrastructure Facility (as defined below), as well as long-term Property Management services of the Transit-Oriented Development, as set forth in the draft Project Agreement Term Sheet attached as Schedule 3 (such services hereinafter referred to as the “Project Services”, and such phase hereinafter referred to as the “Project Services Phase”). Such Project Services are subject to update and refinement and during the Preliminary Services phase.



Request for Proposals No. 23-22

The costs for the Preliminary Services will be paid by RIPTA to the Project Company, as and to the extent described in Section 2.6 of this RFP. As part of the Preliminary Services, the Project Company will be obligated to develop the design of the Facilities (as defined below), the funding and financing plan, the operation, maintenance and management plan and other deliverables (as described in the draft Preliminary Services Agreement), in an interactive and collaborative manner with RIPTA, to a level sufficient to make a final fixed-price proposal to perform the Project Services upon completion of the Preliminary Services (“Definitive Project Submittal”), all as detailed in the Draft Preliminary Services Agreement. Prior to submission of the Definitive Project Submittal, RIPTA will provide the Project Company with a Draft Project Agreement (as defined below), the material terms of which are reflected in the Project Agreement Term Sheet set forth in Schedule 3 hereto.

The second phase (the Project Services Phase) will only be performed should RIPTA and the Project Company agree on an annual service fee payment for the Infrastructure Facility, guaranteed design-build schedule, performance guarantees and other final terms and conditions of the Project Agreement. In the event that RIPTA and the Project Company are able to agree to final terms and execute a Project Agreement, the Project Company will perform the Project Services and RIPTA will make annual availability payments (the “Service Fee”) to the Project Company once the Project has demonstrated performance and all other conditions for the acceptance of the Project have been achieved. In the event that RIPTA and the Project Company are unable to agree on final terms and conditions of the Project Agreement, RIPTA shall have certain rights including the right to execute an “off-ramp” option as set forth in the Draft Preliminary Services Agreement. A more detailed description of the Project delivery method is included in Section 2 of this RFP.

1.4. PROCUREMENT PROCESS

This RFP is being issued as a single-stage procurement process. The RFP Process shall commence with the issuance of this RFP and terminate upon (i) the execution of the Preliminary Services Agreement with the Project Company selected on the basis of this procurement or (ii) the date that RIPTA notifies Proposers that the procurement has been terminated, whichever occurs first.

Request for Proposals No. 23-22

1.5. STRUCTURE OF RFP

This RFP consists of this document and the following Schedules and Proposal Forms:

RFP Schedules & Proposal Forms		
Schedules	Schedule 1	Proposal Submission Requirements
	Schedule 2	Draft Preliminary Services Agreement
	Schedule 3	Project Agreement Term Sheet
	Schedule 4	Proposal Forms
	Schedule 5	Scope of Basic Services
Proposal Forms		
<i>Technical Proposal Forms</i>	Proposal Form 1	Proposal Transmittal Letter
	Proposal Form 2	Major Participants
	Proposal Form 3	Proposer Team Member List
	Proposal Form 4	Minimum Qualification Confirmation
	Proposal Form 5	Experience Summary
	Proposal Form 6	Key Personnel List
	Proposal Form 7	Relationship Disclosure Form
	Proposal Form 8	Statement of Ownership
	Proposal Form 9	Affidavit of Non-Collusion
	Proposal Form 10	Certification of Restrictions on Lobbying
	Proposal Form 11	EEO Compliance Certificate
	Proposal Form 12	Proposal Security
	Proposal Form 13	Preliminary Services Schedule
	Proposal Form 14	Financial Information
<i>Price Proposal Forms</i>	Proposal Form P-1	Preliminary Services Fee
	Proposal Form P-2	Design-Build Subcontractor Fee
	Proposal Form P-3	Operations Subcontractor Fee
	Proposal Form P-4	Return-on-Equity

1.6. DEFINITIONS

Certain capitalized terms used in this RFP have the meaning set forth below. Terms that are capitalized in this RFP but not defined below have the meaning set forth in the Draft Preliminary Services Agreement set forth in Schedule 2 or the Project Agreement Term Sheet set forth in Schedule 3, as applicable.

<p>“Addendum” means any addendum to this RFP.</p>
<p>“Additional Services” means those services that are in addition to the Basic Services (as defined in the PSA), as described in subsection 3.2(B) of the PSA.</p>
<p>“Affiliate” means in relation to any Person:</p> <ul style="list-style-type: none"> a. any other Person having Control of that Person; b. any other Person over whom that Person has Control; c. any Person over whom any other Person referred to in (a) above also has Control; or

Request for Proposals No. 23-22

<p>d. only with respect to the use of the term “Affiliate” in Proposal Forms of this RFP, any consortium, partnership or joint venture involving such Person (whether alone or with others, and whether directly or indirectly at any tier),</p> <p>where “Control” of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises control over that controlled Person’s affairs.</p> <p>In the case of a Financing Member, if the Financing Member is an investment fund, “Affiliate” includes such Financing Member’s general partner and any other investment fund in which its general partner is an equity investor as a general partner.</p>
<p>“Affordable” or “Affordable Housing” means all forms of housing, including workforce housing, offered to households with incomes no higher than 120% of the Area Median Income (“AMI”), adjusted for family size.</p>
<p>“Applicable Law” means (1) any federal, State or local law, code, regulation, consent order or agreement; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to: (a) the siting, permitting, design, acquisition, construction, equipping, start-up, testing, operation, maintenance, repair, replacement or management of transit facilities, including the facilities contemplated by the Project; and (b) any law pertaining to health, safety, fire, environmental protection and building codes applicable to the Project.</p>
<p>“Authority” or “RIPTA” means the Rhode Island Public Transit Authority.</p>
<p>“Breakage Fee” means the amount payable to the Project Company by RIPTA in the event of a termination of this Agreement or if RIPTA exercises its off-ramp option, as such amount is calculated in accordance with Appendix 2 (Compensation) of the PSA.</p>
<p>“Business Day(s)” means any day during which RIPTA administrative offices are operating and open for general business activities.</p>
<p>“Capital Charge Component” means the component of the Service Fee in any given period that would be payable by RIPTA to the Project Company pursuant to the Project Agreement, if a Project Agreement is executed by the parties, representing the cost of the Design-Build Services, any amounts withheld by RIPTA from the Preliminary Services Fee in accordance with the PSA, and the financing associated therewith.</p>
<p>“Commercial Component” means, generally, the activities related to the TOD.</p>
<p>“Common Infrastructure” is broadly defined as the collection of Project elements that are shared by the Transit Center and TOD, including shared or common areas such as open space (whether public or private), shared services areas (e.g., storage spaces, waste handling facilities), shared utility / building system spaces and vertical / horizontal distribution chases, etc.</p>
<p>“Confidential Information” has the meaning set forth in Section [3.6] of this RFP.</p>
<p>“Conflict of Interest” is defined in Section 3.5.2. (<i>Definition of Conflict of Interest</i>) of this RFP.</p>

<p>“Consultant Support Team” means those entities identified in Section 3.5.3. of this RFP.</p>
<p>“Deadline” means any applicable deadline set forth in the Section 3.1 (<i>RFP Schedule</i>) of this RFP.</p>
<p>“Definitive Project Submittal” means the submittal required to be made by the Project Company regarding pricing, technical and commercial information pursuant to the Preliminary Services Agreement as described in Section 3.13 (Definitive Project Submittal) of the PSA, and Task 5 (Definitive Project Submittal) of Appendix 1 (Scope of Basic Services) of the PSA.</p>
<p>“Design-Build-Finance Services” means the Design-Build Work and any private financing associated therewith.</p>
<p>“Design-Build Subcontract” means the agreement to be entered into between the Project Company and its Design-Build Subcontractor, including the Appendices and the Transaction Forms, to perform Design-Build services for the Project.</p>
<p>“Design-Build Subcontractor” means the Lead Design-Build entity with whom the Project Company enters into the Design-Build Subcontract.</p>
<p>“Design-Build Subcontractor Fee” means the fee proposed on Proposal Form P-2.</p>
<p>“Design-Build Work” means the work relating to the design, permitting, construction, commissioning and acceptance testing of the Project (including the Demolition Work) to be performed by the Project Company pursuant to the terms of the Project Agreement.</p>
<p>“Draft Preliminary Services Agreement” means the draft agreement for the Preliminary Services, as set forth in Schedule 2.</p>
<p>“Draft Project Agreement” means the draft of the Project Agreement to be prepared by RIPTA and provided to the Project Company prior to the submission of the Definitive Project Submittal.</p>
<p>“Eligible Security” means a reputable financial institution authorized to issue bonds, letters of credit, or sureties in the State having either:</p> <ul style="list-style-type: none"> (a) a long-term unsecured debt rating of at least (i) “A” by Standard & Poor’s Rating Services; (ii) “A” by Fitch, Inc., (iii) “A2” by Moody’s Investor Service, Inc., or (iv) “A” by DBRS, Inc.; or (b) a rating of at least “A-” and “Class VIII” from A.M. Best Company, Inc.
<p>“Facility” or “Facilities” mean collectively or individually, the (i) Transit Center, (ii) the Transit-Oriented-Development, and (iii) Common Infrastructure.</p>
<p>“Financial Advisor” means the member of the Proposer’s team that will be responsible for providing advisory services to RIPTA under the Preliminary Services Agreement with regard to funding and financing issues, as well as responsible for structuring financing on behalf of the Project Company.</p>
<p>“Financing Member” means each member of a Proposer’s team that will contribute equity or at-risk private capital to the Project Company for the purposes of performing the Project obligations.</p>
<p>“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.</p>

<p>“Guarantor” means each parent company or other entity (in either case, if any) that is nominated by the Proposer in its Proposal that would support and guarantee the obligations of a Financing Member, Lead Design-Builder (or Lead Design-Builder Member), Lead Operator (or Lead Operator Member), or Lead Affordable Housing Developer (or Lead Affordable Housing Developer Member).</p>
<p>“Individual Commercially Confidential Meeting” means the Proposer’s confidential one-on-one meeting(s) with RIPTA and members of its Consultant Support Team, as further described in Section 3.4.6. of this RFP.</p>
<p>“Infrastructure Facility” means, collectively, the Transit Center and Common Infrastructure.</p>
<p>“Infrastructure Facility Maintenance” means the customary collection of facility management, engineering, repairs and maintenance, renewals and replacement, and other activities necessary to ensure that the Infrastructure Facility provides an adequate level of service, excluding the activities expressly retained by RIPTA (RIPTA O&M).</p>
<p>“Key Personnel” means any individual identified on Proposal Form 6 in the Proposal.</p>
<p>“Lead Affordable Housing Developer” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the planning and management of the multi-family and mixed-use workforce and affordable housing, including subcontracting, management, supervision and administration of the affordable housing component of the Project.</p>
<p>“Lead Affordable Housing Developer Member” means, where the Lead Affordable Housing Developer is an incorporated or unincorporated joint venture, each member or joint venture in the Lead Affordable Housing Developer.</p>
<p>“Lead Design-Builder” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the performance of design, engineering and construction work for the Project, including the subcontracting, management, supervision and administration of the design and construction for the Project.</p>
<p>“Lead Design-Builder Member” means, where the Design-Builder is an incorporated or unincorporated joint venture, each member or joint venturer in the Design-Builder.</p>
<p>“Lead Commercial Developer” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for developing, financing, and managing of market-rate multi-family and mixed-income housing and mixed-use projects, including subcontracting, management, supervision and administration of the commercial component of the Project.</p>
<p>“Lead Commercial Developer Member” means, where the Lead Commercial Developer is an incorporated or unincorporated joint venture, each member or joint venture in the Lead Commercial Developer.</p>
<p>“Lead Member” means the Proposer team member duly designated in the Proposal as the leader and single point of contact for the Team for purposes of the procurement, as set forth in <u>Section 4.2 (Leader Designation)</u> of this RFP.</p>
<p>“Lead Operator” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the facilities maintenance over the term of the Project Agreement.</p>

“Lead Operator Member” means where the Lead Operator is an incorporated or unincorporated joint venture, each member or joint venture in the Lead Operator.

“Major Participant” means each of the following:

- (a) each Financing Member (if a Financing Member is an investment fund, the fund’s general partner(s);
- (b) the Lead Design-Builder;
- (c) each Lead Design-Builder Member (if any);
- (d) the Lead Operator;
- (e) each Lead Operator Member (if any);
- (f) the Lead Affordable Housing Developer;
- (g) each Lead Affordable Housing Developer Member (if any);
- (h) the Lead Commercial Developer;
- (i) each Lead Commercial Developer Member (if any); and
- (j) each Guarantor.

“Operation Services” means all services relating to Infrastructure Facilities Maintenance (including all routine and major maintenance, repair and replacement) and all Property Management services, as further described in the Preliminary Services Agreement and Project Agreement Term Sheet.

“Operations Charge Component” means the component of the Service Fee representing the cost of the Operation Services.

“Operations Subcontractor” means the Lead Operator that will be primarily responsible to the Project Company for performing the Infrastructure Facilities Maintenance Services.

“Operations Subcontractor Fee” means the fee proposed on Proposal Form P-3.

“Preliminary Services” means the services that the Project Company will perform prior to the execution of the Project Agreement, pursuant to the Preliminary Services Agreement, as described in Appendix 2 of the Draft Preliminary Services Agreement set forth in Schedule 2 hereto.

“Preliminary Services Fee” means the fixed price for Preliminary Services as set forth on Proposal Form P-1.

“Procurement Schedule” means the schedule set forth in Section 3.1 of this RFP.

“Project” means the Dorrance Street Transit Center Joint Development and Project Services.

“Project Agreement” means the agreement or agreements to be entered into between RIPTA and the Project Company following completion of the Preliminary Services and submission of the Definitive Project Submittal by the Project Company for the performance of the Project Services.

“Project Agreement Term Sheet” means the term sheet that summarizes material terms anticipated to be reflected in the Draft Project Agreement and final Project Agreement, as set forth in Schedule 3.

“Project Company” means the corporation, limited liability company, partnership, joint venture, or other legal entity that is determined to have the best value Proposal and that enters into the Preliminary Services Agreement with RIPTA.

<p>“Project Services” means Design-Build-Finance Services and Operation Services that will be required to be performed by the Project Company pursuant to the Project Agreement.</p>
<p>“Project Site” or “Site” means the real property on which the Project will be built.</p>
<p>“Property Management” means the collection of facility management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and other activities that are customary in the real estate industry for the Commercial Component of the Project.</p>
<p>“Proposal” means the proposal submitted by a Proposer in accordance with the terms of this RFP.</p>
<p>“Proposal Submittal Date” means the date by which Proposals must be submitted to RIPTA, as set forth in the Procurement Schedule.</p>
<p>“Proposer” means an entity or team submitting a Proposal in response to this RFP.</p>
<p>“Proposer Team” means the Proposer itself and the individuals and other entities, including Major Participants and Key Personnel identified as members of its team. At a minimum, the Proposer Team must include entities that hold the appropriate licenses required by applicable laws including, without limitation, R.I. Gen. Laws § 5-65-1 <i>et seq.</i>, and 415-RICR-00-00-1 <i>et seq.</i></p>
<p>“Request for Proposals” means this Request for Proposals No. 23-22 for the Dorrance Street Transit Center Joint Development Project, as issued by RIPTA.</p>
<p>“Return-on-Equity” means the Proposer’s proposed equity return for the Project Company, as proposed on Proposal Form P-4.</p>
<p>“RIPTA” means the Rhode Island Public Transit Authority;</p>
<p>“RIPTA O&M” generally means the collection of operations and maintenance (O&M) activities that will be conducted by RIPTA within the Transit Center, which generally comprises: transit operations; O&M of work areas, storage areas and rooms, and any electrical infrastructure of the transit vehicles; O&M of the Furniture, Fixtures, and Equipment (FF&E) of support spaces such as administration offices, break rooms, kitchens, restrooms, locker rooms, training facility, custodial support rooms, and other support spaces within the Transit Center; O&M of the communications and information technology systems necessary for RIPTA transit operations, administration, training, and other activities; O&M activities such as replacement parts inventory, custodial, waste management, pest control, building security, snow removal, uniforms, catering, and other such services that RIPTA customarily performs in its existing transit facilities. The definition of services retained by RIPTA will be further clarified during the Preliminary Services period.</p>
<p>“RIPTA Representative” means the individual designated in Section 3.2.2 of this RFP.</p>
<p>“Selection Committee” means the group of individuals selected by RIPTA to evaluate the Proposals, interview Proposers, and make a recommendation for the selection of the Project Company to the RIPTA Board.</p>
<p>“Service Fee” means the fee to be paid by RIPTA to the Project Company following Acceptance (as defined in the PSA) of the Project as compensation for the Project Services, including any amounts withheld by RIPTA from the Preliminary Services Fee in accordance with the PSA, should the parties execute a Project Agreement.</p>

“Successful Proposer” means the Proposer who has been determined by RIPTA to have submitted the best value Proposal in response to this RFP until either (i) such Proposer enters into the Preliminary Services Agreement with RIPTA (becoming the “Project company”) or (ii) RIPTA revokes the status of the Proposer as the “Successful Proposer” in accordance with Section 5.14 of this RFP.

“State” means the State of Rhode Island.

“Technical Requirements” means the Project Requirements set forth in Attachment 1 to Appendix 1 of the draft Preliminary Services Agreement.

“Transit Center” means the facility designed and constructed on the Project Site by the Project Company to provide bus berths, bus boarding and alighting areas, public waiting areas, RIPTA operational and administrative areas, and similar, with the primary purpose of facilitating bus operations.

“Transit-Oriented Development” or **“TOD”** means the facility or facilities designed and constructed by the Project Company on the Project Site to be integrated with the Transit Center in order to provide a combination of mixed-use spaces and housing, including both market-rate and affordable units, and their associated support spaces (e.g., lobbies, vertical and horizontal circulation, storage, open space, rooms for building systems, offices for property management and resident services, and resident amenities such as laundry and community room). Commercial uses may include, but are not limited to, neighborhood-serving retail.

“Transportation Demand Management” means a layer of policies, programs, information, services, and tools that work with the transportation infrastructure and operations to support the use of sustainable modes for all trips, in accordance with the Rhode Island Statewide Model (RISM) maintained by the Rhode Island Statewide Planning Program.

“Virtual Data Room” means the website located at <https://www.dropbox.com/sh/foia4xdrt5ix2sz/AABXUygc6189buvVmlDGFpJha?dl=0>, where certain documents relating to this RFP are provided, including general reference background documents, Project Site related information and referenced Minimum Design and Construction Requirements.

1.7. ABBREVIATIONS

DBA	Davis Bacon Act
DBFOM	Design-Build-Finance-Operate-Maintain
FTA	Federal Transit Administration
O&M	Operations & Maintenance
PA	Project Agreement
PSA	Preliminary Services Agreement
RFP	Request for Proposals
TDM	Transportation Demand Management
TOD	Transit Oriented Development

1.8. INTERPRETATION

In this RFP:

Request for Proposals No. 23-22

- a) Any action, decision, determination, consent, approval and any other thing to be performed, made, or exercised by or on behalf of RIPTA, including the exercise of “discretion” or words of like effect, unless the context requires it, is at the sole, absolute, and unfettered discretion of RIPTA.
- b) The use of headings is for convenience only, and headings are not to be used in the interpretation of this RFP.
- c) A reference to a Section, Appendix, Schedule, or Exhibit, unless otherwise indicated, is a reference to a section, appendix, schedule or exhibit of this RFP.
- d) Words imputing any gender include all genders, as the context requires, and words in the singular include the plural and vice versa.
- e) The word “including” when used in this RFP is not to be read as limiting.
- f) Each appendix attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

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2. PROJECT OVERVIEW

2.1. BACKGROUND

RIPTA is issuing this RFP to Proposers for the design, construction, financing, operation and maintenance of the Dorrance Street Transit Center Joint Development Project in accordance with the requirements of this RFP.

The issuance of this RFP is being undertaken by RIPTA with the intent to solicit Proposers to provide the best solution for the Project, consistent with RIPTA's Project and procurement goals identified in Section 2.3 (*Objectives*) of this RFP.

Recent resolutions, approvals, and issuances substantiating this procurement process include the following:

- a) Approval of Transit Master Plan ("Transit Forward RI 2040") by the State Planning Council on December 10, 2020.
- b) RIPTA Board Resolution dated June 15, 2022, in which the Board resolved to empower the Chief Executive Officer to take such actions as may be necessary, pursuant to R.I.G.L. §39-18-6 to obtain certain parcels of property located in Providence, Rhode Island for the construction of a new intermodal facility known as the Dorrance Street Transit Center.
- c) RIPTA Board Resolution dated December 14, 2022 in which the Board resolved to empower RIPTA to initiate a competitive procurement to select an entity to develop the Project under a progressive public-private-partnership.

2.2. GENERAL PROJECT DESCRIPTION

History and Context. RIPTA is Rhode Island's statewide transit provider, serving nearly every community in the state with 53 fixed routes, on-demand zone service and paratransit services. RIPTA provides over 16 million transit trips annually on 229 fixed-route buses. Service is centered in the Providence Metro Region, with passenger hubs located in historic city centers in Providence, Pawtucket, Warwick and Newport.

Since 1990, Kennedy Plaza has served as the central transfer point of RIPTA's statewide bus network for RIPTA of Providence. Kennedy Plaza is a public park owned by RIPTA's Downtown Providence Parks Conservancy. Every year, approximately 3 million passengers utilize Kennedy Plaza.¹ Due to transportation challenges found at Kennedy Plaza, RIPTA is pursuing the development of a new intermodal facility known as the Dorrance Street Transit Center.

The Project is envisioned to be a mixed-use development that will include an enclosed intermodal transit center and RIPTA administrative offices, as well as an adjacent mixed-use, transit-oriented development.

¹ Based on FY19 pre-COVID ridership.

Request for Proposals No. 23-22

In contrast to the current sprawling footprint of Kennedy Plaza, spread out in various locations across an urban park, the new Project will provide a single organized location.

Initially serving three million transit users annually, and considering anticipated growth,² the new state-of-the-art Dorrance Street Transit Center Joint Development Project is currently envisioned to entail well over 27,000 square feet of new vertical construction for the intermodal transit center. The facility will host an approximately 27,000 square-foot (“sf”) indoor intermodal facility and 36,000 sf ground-floor bus berth space. The transit center will also feature a state-of-the-art passenger arrival and seating area with passenger amenities, RIPTA office space, and multi-modal accommodations for bicyclists. RIPTA is likewise interested in creating a public meeting space with an open-air terrace, as well as other amenities to serve the community at large.

Additionally, the Project is envisioned to include a multistory, mixed-use TOD development, with first-floor retail and affordable housing residential space on the upper floors. The TOD development will offer improved multimodal mobility for local residents and employees, while offering economic development progress for RIPTA.

The Project was first conceptualized in 2014, when Rhode Island voters approved a bond referendum to improve RIPTA transit services via a new transit hub in the downtown area. Endorsed by stakeholders and gaining public support, the Dorrance Street Transit Center rose to priority status with the adoption of RIPTA’s long-



range Transit Master Plan, “[Transit Forward RI 2040](#),” by the State Planning Council on December 10, 2020. Transit Forward RI 2040 outlines a detailed service expansion plan to be implemented over the next 20 years, with the relocation of the transfer hub to Dorrance Street serving as a baseline for supporting key expansion initiatives, including the following:

- Two high-capacity transit (bus rapid transit / light rail transit) services connecting the wider metropolitan area with Providence;
- Frequent transit service on 15 additional routes (expanded from four today);
- Offering more frequent service for longer hours on nearly all other routes;
- Extend bus service to new areas (10 new routes, extending service to 7,714 new riders);
- Adding six new rapid bus lines, serving an anticipated 5,025 new riders; and

² As projected in RIPTA’s long-term transit master plan.

Request for Proposals No. 23-22

- Potential transition to articulated buses and fleet electrification.

Project Site. Since 2021, RIPTA has been engaged in discussions with state, local, and community leaders about its intent to develop a new, multistory, and mixed-use transit center at a site located at the intersection of Dorrance and Dyer Streets. Reception to this idea has been generally positive.

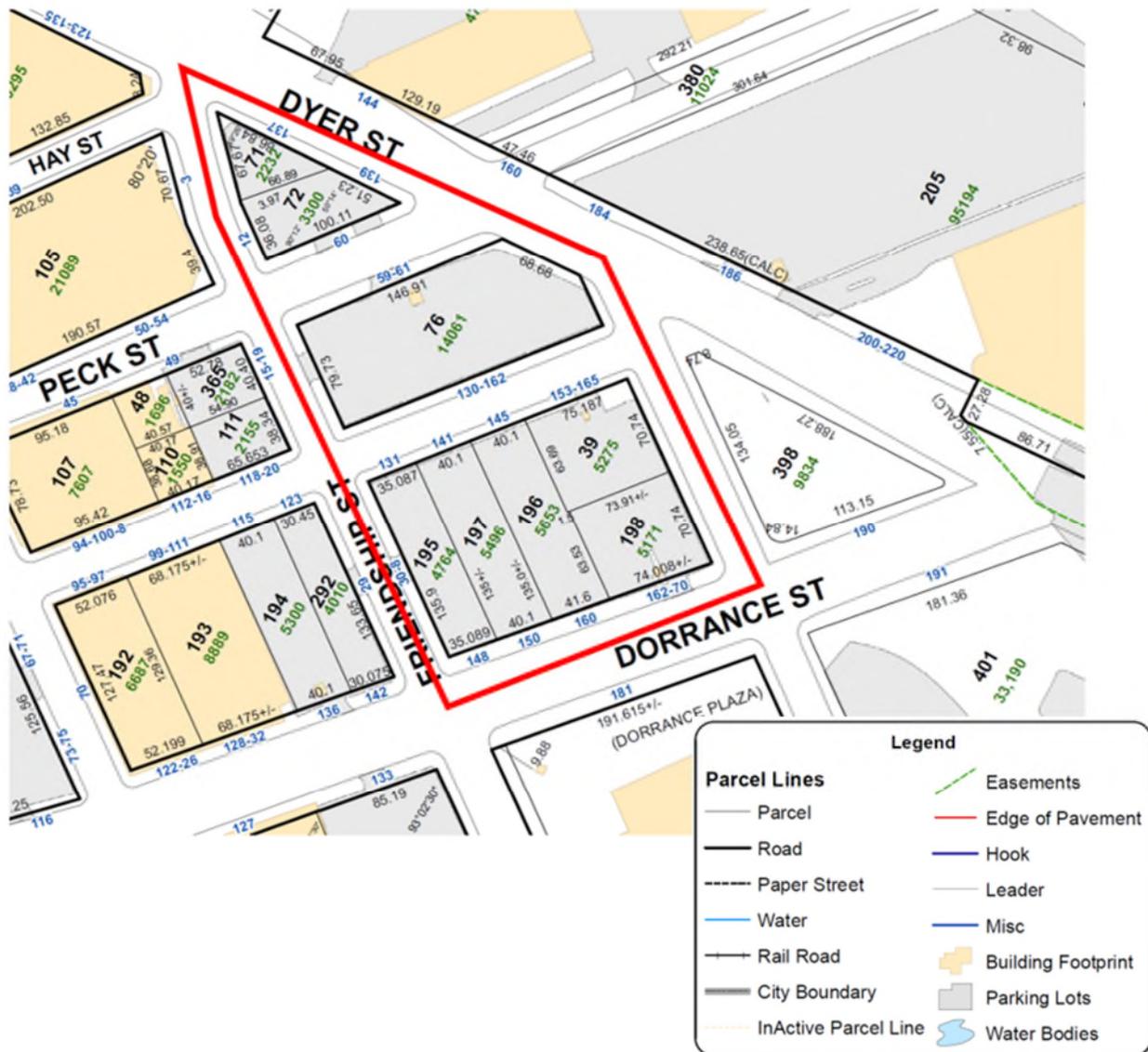
The proposed Project Site lies between Providence’s central business district and the rapidly evolving Innovation District and is preferred because of its proximity to the Downtown Transit Connector (which offers a bus every five minutes between Providence Station and Rhode Island Hospital) and because it has sufficient space to develop a facility that can both accommodate projected transit service needs and provide for mixed-used TOD value capture and commercial opportunities.

Figure 1: Project Site Location



Request for Proposals No. 23-22

Figure 2: Project Site Property Map



Located in a designated “**Opportunity Zone**,” the Project Site is comprised of three contiguous parcels owned by a single entity. RIPTA has initiated efforts to secure the Project Site but does not yet control the Project Site. Project Site acquisition will take place either during the Preliminary Services phase or concurrently with financial close. Pursuant to Chapter 18, General Laws of Rhode Island, RIPTA constitutes a body politic and is vested with the power of eminent domain to acquire transit property or any interest therein.

Request for Proposals No. 23-22

2.3. PROJECT OBJECTIVES**2.3.1. Transit and Transportation Objectives**

RIPTA's primary transit and transportation objectives in delivering the Project are to:

- (i) Deliver a modern, resilient and reliable Transit Center by 2026 that prioritizes passenger needs by facilitating transfers, enhancing safety and security, and improving passenger amenities to accommodate RIPTA's long-range expansion plans detailed in its Transit Master Plan, "[Transit Forward RI 2040](#)";
- (ii) Create an efficient and enduring Transit Center that enhances the surrounding community and is designed to elevate the traditional and utilitarian perception of a bus terminal;
- (iii) Deliver and operate a future-ready Transit Center that is flexible and capable of meeting projected increases in ridership and changes in technology over the next 30 years, including the transition to a zero-emission fleet;
- (iv) Construct a new public asset that is resilient to projected climate change effects, and that provides a safe, secure environment for RIPTA's employees and physical assets;
- (v) Improve conditions for passengers, the public, contractors/vendors, and RIPTA's workforce of transit operators and front-line administrative staff through a new, state-of-the-art Transit Center;
- (vi) Obtain a reliable and visually appealing Project design that will satisfy the Project and program requirements, as well as other performance criteria defined by RIPTA, while also enhancing and improving the local community;
- (vii) Implement an inclusive and transparent stakeholder engagement process from design and environmental review through construction completion;
- (viii) Deliver a bright, safe and world class traveler experience that allows passengers and the public to enjoy an intuitively designed transit center, seamlessly integrated with retail offerings and other amenities;
- (ix) Provide a Transit Center that seamlessly integrates into the TOD and allows for connectivity to the surrounding business and residential community.
- (x) Build a project that is financially feasible and fiscally responsible;
- (xi) Maximize financial stewardship by linking payments to performance over the life-cycle of the facility; and
- (xii) Minimize life-cycle costs, consistent with the above objectives.

2.3.2. TOD / Housing and Mixed-Use Development Objectives

RIPTA's primary objectives related to the TOD include:

- (i) Maximize the use and value of the Project Site with a mixed-use residential and commercial development and provide dense, mixed-income housing with a substantial percentage of below-market-rate units;
- (ii) Provide a transit-oriented development physically and functionally integrated with the Transit Center that supports a vibrant, sustainable, and equitable community through dense, walkable, mixed-use spaces and housing;

Request for Proposals No. 23-22

- (iii) Increase the supply of transit-accessible housing by optimizing the number of dwelling units, which includes workforce and affordable housing, near the Transit Center;
- (iv) Support transit-oriented development and promote the use of public transportation;
- (v) Ensure that the TOD, and particularly the housing and commercial component, is financially feasible, with an initial base target of 40% of housing units being affordable, while further encouraging the maximization of the percentage of below market rate units;
- (vi) Support and enhance Providence's and the State's economic development goals by creating a regionally acclaimed transit-oriented development;
- (vii) Enhance the local economy by creating, both directly and indirectly, short-term and long-term jobs and housing opportunities for Providence residents; and
- (viii) Leverage private sector expertise and experience to scale, scope, design, build and manage the housing and commercial components of the TOD in a manner that minimizes public expenditures and promotes a vibrant local community.

2.3.3. Urban Design and Placemaking Objectives

RIPTA's primary objectives related to the urban design and placemaking include:

- (i) Enhance safety and reduce conflicts between transit, commercial vehicles, bicyclists, drivers, and pedestrians.
- (ii) Improve the architectural and urban design character of the Project Site;
- (iii) Ensure a safe and secure Project construction and operational environment;
- (iv) Create safe, walkable, visually appealing and intuitive common areas and conduits leading to and from the Transit Center that are efficiently integrated with the TOD and the broader community; and
- (v) Reasonably incorporate amenities requested by the public and RIPTA workforce during outreach events, such as accommodations for bicyclists, a public meeting space with an open-air terrace, etc.

2.3.4. Sustainability, Equity and Economic Development Objectives

RIPTA's primary objectives related to sustainability, equity and economic development include:

- (i) Demonstrate RIPTA's leadership in sustainable development by constructing an environmentally low-impact facility that would increase the Project Site's resource efficiency, especially with regard to energy management and energy efficiency;
- (ii) Deliver a sustainable Project that minimizes its carbon footprint and reduces greenhouse gas emissions by leveraging renewable energy and other energy efficiency initiatives;
- (iii) Design and construct the Project such that it achieves LEED Gold rating;
- (iv) Increase opportunities for Local and Disadvantaged Business Entities to participate in the Project;
- (v) Enhance the local economy by creating, both directly and indirectly, short-term and long-term jobs and housing opportunities for Providence residents; and
- (vi) Encourage community benefits programs, such as workforce development, apprenticeships, etc., that will support sustainable economic growth.

Request for Proposals No. 23-22

2.3.5. Procurement Objectives

RIPTA is pursuing the following procurement objectives for the Project:

- (i) **Progressive Development.** Undertake a progressive development process that optimizes opportunity for public input and feedback on the key aspects of the Project's design and functionality, while allowing RIPTA to make fully-informed value-for-money decisions;
- (ii) **Private Sector Innovation.** Leverage private sector innovation and expertise to deliver the Project in the timeliest and most cost-effective manner possible, while also optimizing project delivery risk transfer to the Project Company;
- (i) **Schedule.** Achieve the earliest date of operations that is consistent with reliable and high-quality design and construction;
- (ii) **Cost Savings.** To the extent that it is financially feasible, generate value from the TOD to offset the costs of the Transit Center and Common Infrastructure;
- (iii) **Risk Transfer.** Transfer design, construction, financing, maintenance, and real estate market risks to the Project Company so provide RIPTA with budget and schedule certainty;
- (iv) **Integrated Project.** Combine the public infrastructure Transit Center with a mixed-use TOD including a housing and commercial component, so that the project is seamlessly integrated and delivers public benefits to the neighborhood and the community in general to the greatest extent feasible;
- (v) **Life-Cycle Asset Management.** Achieve reliable and efficient operations and effective maintenance;
- (vi) **Maximize Competition.** Attract best-in-class and experienced Proposers to maximize competitive pressures and ensure that RIPTA receives the best value as a result of this procurement opportunity;
- (vii) **Entitlements, Inclusivity, and Community Engagement.** Implement a robust inclusivity program that addresses RIPTA requirements for local and disadvantaged business enterprise participation; and
- (viii) **Federal funding.** Ensure that the procurement and delivery approach are implemented in such a way that does not impede potential access to federal grants and loans.

2.4. PROJECT SCHEDULE

In accordance with the Technical Proposal Instructions in Schedule 1, Package C, Proposers are required to propose their Preliminary Services Schedule on Proposal Form 13 (*Schedule for Preliminary Services*). RIPTA anticipates that the Preliminary Services shall be completed within a maximum of eighteen (18) months from the execution of the Preliminary Services Agreement.

2.5. GENERAL SCOPE OF SERVICES

The Draft Preliminary Services Agreement and Project Agreement Term Sheet set forth in Schedules 2 and 3, respectively, of this RFP describe the comprehensive rights and obligations of RIPTA and the Project Company in connection with each of the two phases of the Project. The sections that follow provide general information regarding the anticipated scope of services for each phase.

Request for Proposals No. 23-22

The services to be performed by the Project Company will be delivered in two phases:

Phase 1 – Preliminary Services Phase, governed by the Preliminary Services Agreement; and

Phase 2 – Project Services Phase, governed by the Project Agreement.

The Project Services will only be delivered by the Project Company if the Project Company and RIPTA can agree upon final terms and conditions, and execute a Project Agreement, at the completion of the Preliminary Services.

2.5.1. Phase 1 – Preliminary Services

The Preliminary Services (phase 1) are more fully described in Appendix 1 of the Draft Preliminary Services Agreement. During the Preliminary Services period, the Project Company will be required to provide all architectural, engineering, geotechnical, landscape planning, project management, cost estimating, financial structuring, public outreach, market studies and other professional services necessary to perform the Preliminary Services required by the Preliminary Services Agreement. The Preliminary Services shall be provided on a progressive basis, pursuant to each specific Task set forth in the Preliminary Services Agreement.

In general, work will be progressed in accordance with the following sequence:

Task 1 - Project Kick-Off & Visioning

Task 2 – Initial Due Diligence & Conceptual Options Package

Task 3 – Basis of Design Package Submittal

Task 4 – 30% Package Submittal

Task 5 – 60% Package Submittal

Task 6 – Definitive Project Submittal

In summary, the Preliminary Services for each task include, but are not limited to, the following:

- (i) Provide a preliminary evaluation of the Project based on RIPTA’s objectives and standards. The preliminary evaluation will identify key project risks, as well as assess and recommend any reasonable alternatives to be considered in order to ensure the most effective and efficient Project development, with consideration for construction, life-cycle costs and operation, commercial revenue off-sets and payment structures;
- (ii) Provide general project management services with regard to project development and coordination with RIPTA;
- (iii) Develop the Project execution plan, including Project schedule;
- (iv) Perform a review of all existing documentation;
- (v) Complete a comprehensive review of the Project Site and contiguous areas that may be affected by the Project;
- (vi) Perform comprehensive geotechnical investigations and produce a geotechnical analysis report;

Request for Proposals No. 23-22

- (vii) Undertake market studies to assist in optimizing the size and scale of the TOD, including coordination with third parties on the scoping and scaling of affordable housing units;
- (viii) Produce three development options for the Project and, once an option is selected with input from RIPTA, progressively develop and submit design reports and cost estimates for both the Infrastructure Facility and TOD;
- (ix) Perform other engineering studies (such as subsurface investigations, traffic studies, utility mapping, etc.) to support design and cost estimating;
- (x) Identify Project permitting requirements and preparation of all necessary permit applications, and facilitation of regulatory agency approval of all permits that are the Project Company's responsibility (RIPTA will sign permit applications and attend permitting coordination and review meetings with regulatory agencies as necessary);
- (xi) Progressively develop the engineering design (including preparing and submitting intermediate design review packages) to an approximate 60% level;
- (xii) Develop and implement a public outreach and communications plan to ensure public input into the Project design in accordance with the *"Dorrance Street Transit Center Joint Development Public-Private-Partnership Public Involvement and Communications Plan Requirements"* included in the PSA technical requirements;
- (xiii) Undertake a funding and financing options assessment for RIPTA to help identify the optimal financing structure for the Project and support RIPTA with federal grant and loan applications (as requested);
- (xiv) Progressively develop a commercial feasibility study and pro forma for housing and mixed-use commercial and retail opportunities;
- (xv) Develop a major maintenance repair and replacement plan for the Infrastructure Facility;
- (xvi) Progressively develop cost estimates, including final fixed price pricing for the Infrastructure Facility as part of the Definitive Project Submittal;
- (xvii) Progressively prepare a financial model and provide detailed, updated cost estimates as the design is advanced;
- (xviii) Prepare a financing plan with committed financing;
- (xix) Submit a Definitive Project Submittal to perform the Design-Build Work and the Operation Services over the Term;
- (xx) Take all steps necessary to assist RIPTA with Site acquisition; and
- (xxi) Assist RIPTA with its project funding and financing efforts (such as federal grants and loans, Private Activity Bonds allocation requests, affordable housing tax credits, etc.), including the provision of information about engineering, environmental and economic matters and the organization and resources of RIPTA, as required to obtain funding and financing and to satisfy the associated administrative requirements.

Request for Proposals No. 23-22

Following the incorporation of RIPTA comments of the 60% Submission described in the Preliminary Services Agreement, the Project Company will be required to submit to RIPTA a Definitive Project Submittal, as further described in the Preliminary Services Agreement, which will include, among other things:

- (i) a proposed fixed price for the Design-Build Work for the Infrastructure Facility;
- (ii) performance guarantees;
- (iii) a guaranteed design-build schedule;
- (iv) a plan of finance with the terms of committed private financing for the Infrastructure Facility, as well as a guaranteed financing plan for the TOD;
- (v) the proposed annual compensation schedule for the Infrastructure Facility set forth as the annual Service Fee for each year of the Service Period and further broken down into:
 - a. the proposed Capital Charge Component of the Service Fee for each year; and
 - b. the proposed Operations Charge Component of the Service Fee for each year; and
- (vi) an audited financial model with accompanying financial model.

The Definitive Project Submittal will be based upon the Minimum Design and Construction Requirements; the terms and conditions of the Draft Project Agreement, as negotiated; the design documents developed by the Project Company pursuant to the Preliminary Services Agreement; the major maintenance and repair plan; the funding and financing plan developed on a collaborative basis with RIPTA pursuant to the Preliminary Services Agreement; the Preliminary Services Fee, the Design-Build Subcontractor Fee, the Operations Subcontractor Fee, and the Return-on-Equity, as proposed on Proposal Form P-1, Proposal Form P-2, Proposal Form P-3, and Proposal Form P-4, respectively; and the reports, market studies and investigations undertaken by the Project Company pursuant to the Preliminary Services Agreement. The Definitive Project Submittal shall include a detailed and comprehensive open-book description and substantiation of all pricing components for the Infrastructure Facility. Proposers should carefully review the Draft Preliminary Services Agreement set forth in Schedule 2.

In the event the Project Company and RIPTA reach agreement on the Definitive Project Submittal, they shall execute the Project Agreement, and the Project Company shall proceed to close on its financing and commence the Design-Build-Finance Services and Operation Services pursuant to the terms of the Project Agreement.

2.5.2. Phase 2 – Project Services

The Project Services (phase 2) will be performed pursuant to the Project Agreement, which will be prepared by RIPTA (based on the material terms incorporated in the Term Sheet attached as Schedule 3 to this RFP), and fully negotiated by RIPTA and the Project Company, prior to the Project Company's delivery of the Definitive Project Submittal. All of the Preliminary Services shall be completed prior to execution of the Project Agreement. Proposers should carefully review the Project Agreement Term Sheet set forth in Schedule 3.

RIPTA anticipates entering into a Project Agreement with a Project Company that would be responsible for (a) the Transit Center and the Common Infrastructure, with a likely term of 30 years, with an associated

Request for Proposals No. 23-22

performance-based Service fee (availability payment); and (b) the TOD, with a term of up to 75 years, with associated rights to receive rental income.³

In summary, the Project Services include, but are not limited to, the following:

2.5.2.1. Design-Build

The Project Company will be responsible for finalizing all designs, securing all remaining permits and constructing the Project in accordance with all applicable laws and the Design and Construction Requirements set forth in the Project Agreement. The Design-Build Scope requires the Project Company to undertake all remaining design and construction responsibilities required to successfully deliver the Transit Center and TOD to successful completion by the substantial completion date set out in the Project Agreement, including, but not limited to, the following:

- a) Overall project management activities;
- b) Obtaining necessary permits, approvals and authorizations;
- c) Site preparations to accommodate the Project;
- d) Finalizing engineering studies and Project design work;
- e) Community outreach and coordination of design and construction matters;
- f) All construction activities necessary to deliver the Project in accordance with the Design and Construction Requirements to Operational Readiness;
- g) The connection of utilities and other site services;
- h) Testing and commissioning of the Infrastructure Facility (including the training and orientation of RIPTA personnel about the new Transit Center); and
- i) Substantial completion and final completion of the Project.

2.5.2.2. Private Financing

With the exception of milestone payments, or as otherwise agreed between RIPTA and the Project Company during the Preliminary Services period, the Project Company will be solely responsible for arranging for, obtaining and repaying all financing necessary for the Project at its own cost and risk, without liability or recourse to RIPTA. All debt or other obligations issued or incurred by the Project Company in connection with the Project Agreement will be issued or incurred only in the name of the Project Company. RIPTA will have no liability or obligation to pay debt service on any such debt or other obligations, or to join in, execute or guarantee any note of other evidence of indebtedness of the Project Company.

2.5.2.3. Operations and Maintenance

The Project Company shall be responsible for Infrastructure Facilities Maintenance (maintenance, repair and life-cycle maintenance of the Infrastructure Facility) at prescribed service levels, as well as Property Management of the TOD, in each case under the terms and conditions set forth in the Project Agreement and in compliance with all with applicable laws. RIPTA shall retain responsibility for the operation of the Infrastructure Facility, as well as for its cleaning and grounds management (snow removal, trash removal,

³ RIPTA reserves the right to consider an extension of this TOD term if there are tangible benefits in terms of the percentage of affordable housing units, public benefits and/or other financial benefits.

Request for Proposals No. 23-22

etc.). The Operations Scope requires the Project Company to undertake all responsibilities required to successfully operate and maintain the Project at prescribed levels during the Services Period, including, but not limited to, the following:

- a) Overall facilities management of the Project facilities, including, among other, budgeting, human resources, ongoing training and capacity building, health and safety programs, etc.;
- b) Infrastructure Facilities Maintenance to ensure the Infrastructure Facility is maintained at prescribed levels, in compliance with the technical requirements forth in the Project Agreement, including monitoring, incident logging, standard operating procedures, etc.;
- c) Property Management of Transit-Oriented Development facilities, in compliance with the terms set forth in the Project Agreement;
- d) Routine and preventative maintenance of the Infrastructure Facility to ensure that the facilities and equipment continue to operate efficiently and in compliance with specified Operating and Maintenance Standards over the Services Period, including, but not limited to, maintaining asset inventories, designing and implementing proactive and preventative maintenance programs, utilizing maintenance software such as 'CMMS', etc.;
- e) Life-cycle asset maintenance of the Infrastructure Facility at prescribed physical and performance standards during the Term, including the obligation to transfer the Transit Center to RIPTA at the end of the Term in accordance with the Handback Requirements set forth in the Project Agreement; and
- f) Communications and reporting, including the obligation of the Project Company and RIPTA to work together and coordinate on all aspects of public communication and consultation, as set out in the Project Agreement.

2.5.3. Off-Ramp Rights

RIPTA shall reserve the right to terminate the Preliminary Services Agreement at any time prior to the completion of the Preliminary Services. Upon exercise of its off-ramp rights, pursuant to the terms and conditions of the Preliminary Services Agreement, all finished or unfinished documents and other Deliverable Material shall become the property of RIPTA, and the Project Company shall be paid a Breakage Fee to cover otherwise uncompensated Preliminary Services performed in accordance with the requirements of the Preliminary Services Agreement through the effective date of termination, in accordance with such Preliminary Services Agreement.

2.6. COMPENSATION

2.6.1 Compensation to the Project Company for Preliminary Services

The Project Company shall incur and pay for the cost of all Preliminary Services and shall be compensated for such services only to the extent and in accordance with this section 2.6.1.(Compensation to the Project Company for Preliminary Services) and Appendix 2 (Compensation) of the Preliminary Services Agreement.

To retain some level of risk transfer, as well as to incentivize performance through the use of at-risk capital, the Project Company will be partially compensated for Preliminary Services on a current basis, with 85% of eligible costs compensated upon completion of individual Tasks.

Request for Proposals No. 23-22

For those amounts withheld by RIPTA during the Preliminary Services period, the Project Company shall be compensated through either:

1. Payment by RIPTA of a Breakage Fee in accordance with Appendix 2 (*Compensation*) of the Preliminary Services Agreement in the event such Preliminary Services Agreement is terminated or RIPTA exercises its option to off-ramp; or
2. If the parties execute the Project Agreement, the previously withheld amounts of the Preliminary Services Fee shall be compensated either through a milestone payment paid by RIPTA at commercial close of the Project Agreement or included in the Project Company's financing and paid to the Project Company by RIPTA as part of the Capital Charge Component of the Service Fee (availability payment).

Any Additional Services shall be incurred and compensated as mutually agreed by the parties.

2.6.1 Compensation to the Project Company under the Project Agreement

Infrastructure Facility. The compensation structure for the contract services provided under the Project Agreement with respect to the Infrastructure Facility is anticipated to take the form of a Service Fee determined principally on the basis of the following:

1. **Capital Charge** component, reflecting the amortization of any withheld Preliminary Services Fee, a fixed lump sum design-build price; and any private financing of the foregoing;
2. **Operating Charge** component, reflecting the Project Company's management, operations, maintenances, and repair and replacement costs.

The amount of the Service Fee will be subject to deductions in the event that the Project Company fails to meet any performance standards or requirements established in the Project Agreement.

Transit Oriented Development. As compensation for the TOD component of the project, the Project Company will retain the right to receive rental and commercial income over a likely contractual term of 75 years (TOD term), with some of said rental and commercial income expected to off-set the cost of the Infrastructure Facility. The Project Company shall be required to make payments to RIPTA (or as an offset to the Service Fee) for the use of the Project Site and Common Infrastructure.

2.7. OWNERSHIP AND TITLE

Ownership of the Infrastructure Facility shall be retained by RIPTA. In no event shall the Project Company have any ownership interest in the Infrastructure Facility or the Project Site. The Project Company shall hold title to the TOD facility, on the basis of a ground lease arrangement with RIPTA.

2.8. SUBCONTRACTING OF LOCAL & DISADVANTAGED BUSINESS ENTITIES

It is the policy of RIPTA to ensure non-discrimination in the procurement of goods and services. It is RIPTA's intention to create a level playing field on which all contractors and subcontractors (if any) can compete fairly for contracts. RIPTA promotes equity of opportunity in contracting; and to that end, encourages the full participation of federal-, state- or locally-certified disadvantaged business enterprises (DBE), women, minority, LGBT and disabled veteran-owned businesses. The selected Proposer is expected to make a good faith effort to utilize such subcontractors under the Project Agreement, even if the Proposer has the capability to complete the Project Agreement work with its own workforce. This is also applicable to Proposers that are "Equal Business Opportunity" firms. RIPTA

Request for Proposals No. 23-22

and its Contractors shall not discriminate on the basis of race, color, religion, national origin, age sexual orientation, disability, gender identity, expression, or veteran status, in the award and performance of DOT-assisted contracts. RIPTA expects that Disadvantaged Business Entities (DBE) are given maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds, pursuant to 49 CFR Part 26. The PSA will not be financed in whole or in part with Federal funds, but the Project Agreement may be. Consequently, the DBE requirements of 49 CFR Part 26, as amended, apply to the Project Agreement, and RIPTA and the selected Proposer shall take all necessary and reasonable steps to ensure that DBE's have the maximum opportunity to compete for work under the Project Agreement. RIPTA expects DBE utilization and participation on the Project Agreement (but not the PSA), regardless of whether a specific DBE contract goal is set at the preliminary services stage or thereafter. Proposers shall view the Rhode Island Minority Business Enterprise (RIMBE) website for a list of Disadvantaged Business Enterprise vendors that may be interested in working with your company on the Project Agreement. All submitted DBEs must be certified by the State of Rhode Island at the time of Project Agreement execution. The DBE Directory can be found here: <https://dedi.ri.gov/divisions-units/minority-business-enterprise-compliance-office/us-dot-disadvantaged-business>.

2.9. PREVAILING WAGE

The Project Company and subcontractors, including listed, replacement and sub-tier subcontractors, performing construction work on this Project shall be subject to Applicable Law requirements, including, without limitation, the DBA (as defined below).

The Project Company and subcontractors, including listed, replacement and sub-tier subcontractors, performing work on the Project shall be required to pay all workers employed on the Project not less than the specified general prevailing wage rates for the work classification in which they are performing. The Project Company is responsible for ascertaining and complying with all applicable general prevailing wage rates for trades workers and any rate changes that may occur during the Term. Prevailing wage rates and rate changes are to be posted at the job site for workers to view. Prevailing wage determinations for journeymen can be obtained at: <https://sam.gov/wage-determination/RI20230001/3>

Proposers should also be aware that the Davis-Bacon Act ("DBA"), 40 U.S.C. Chapter 31, Subchapter IV, provides well-established standards for the payment of prevailing wages and fringe benefits for laborers and mechanics who work in construction, alteration and repair (including painting and decorating). Under the DBA, covered workers must be paid no less than the wages and fringe benefits that prevail for their classification (or occupation) in their locality.

These DBA requirements generally apply to projects financed using federal dollars, including projects financed using federal grants, loan guarantees, and loans, such as Transportation Infrastructure Finance and Innovation Act ("TIFIA").

2.10. EQUAL OPPORTUNITY EMPLOYER

- (a) RIPTA is an equal opportunity employer and shall require the Project Company to have and adhere to a policy of equal opportunity and to comply with all applicable federal, State, and local laws and regulations, and to not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or

Request for Proposals No. 23-22

reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship); or against any other person on the basis of sex which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding); race, religion, color, national origin (including language-use restrictions); ancestry, religious creed (including religious dress and grooming practices); political affiliation, disability (mental and physical, including HIV or AIDS); medical condition (cancer and genetic characteristics) and genetic information; marital status, parental status, gender, age (40 and over); pregnancy, military, and veteran status; sexual orientation, gender identity and gender expression; the exercise of family and medical care leave; the exercise of pregnancy disability leave; or the request, exercise, or need for reasonable accommodation.

- (b) The Project Company's policy must conform with applicable State and federal guidelines, including, without limitation, the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations"; Title VI of the Civil Rights Act of 1964, as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (§503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); the Rhode Island Rules and Regulations Relating to Equal Employment Opportunity (220-RICR-80-05-03); and the Rhode Island General Laws related to Equal Opportunity and Affirmative Action (including, without limitation, RIGL §28-5).

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Request for Proposals No. 23-22

3. RFP PROCESS

3.1. RFP SCHEDULE

The following table summarizes the anticipated RFP schedule for the Project:

Activity	Date
Launch RFP Process	January 17, 2023
Pre-Bid Meeting	February 13, 2023 @ 10 a.m.
Deadline for Submission of Proposed Agenda for Individual Commercially Confidential Meetings	February 16, 2023 @ 1:00 p.m. Eastern
Individual Commercially Confidential Meetings	February 22-28, 2023
Final Day to Submit any Questions or Comments	March 21, 2023 @ 1:00 p.m. Eastern
Issue Final RFP Addendum	March 31, 2023
Proposal Submittal Deadline	April 17, 2023 @ 1:00 p.m. Eastern
Proposer Presentation and Interviews	April 27-28, 2023
Announcement of Successful Proposer	May, 2023
Execution of Preliminary Services Agreement	May 2023

RIPTA reserves the right to modify or amend this timeline as it deems, in its sole discretion, convenient or necessary.

3.2. COMMUNICATIONS PROTOCOLS

3.2.1. Communications

Except as otherwise stipulated in this RFP, all communications regarding the Project, including the distribution of all solicitation materials and requests for clarification and amendment, shall be made through and posted on the [State of Rhode Island Purchasing portal](#). Proposers must register to receive emailed announcements and to download/upload procurement-related documentation. Proposers are solely responsible for reviewing the information made available on, and distributed through, the State of Rhode Island Purchasing portal regarding this procurement.

3.2.2. RIPTA Representative

Proposers are prohibited from contact related to this procurement with any RIPTA employee or official or any member of the Consultant Support Team (other than the designated RIPTA Representative) from the date this RFP is issued until the Preliminary Services Agreement has been duly executed. Violation of this provision may be grounds for immediate disqualification. All inquiries concerning this procurement (including RIPTA departments responsible for any Governmental Approval required in connection with the Project) must be addressed to the following designated “**RIPTA Representative**” for this procurement:

John Chadwick, Executive Director of Procurement and Inventory
 Email: TransitCenterP3@ripta.com

Only written requests to the above addressee will be considered. No requests for additional information or clarification to any other RIPTA office, consultant, or employee will be considered. If RIPTA determines

Request for Proposals No. 23-22

that a change or clarification to the RFP is needed, all responses will be in writing and will be made available as an Addendum to all Proposers.

3.2.3. Rules of Conduct**3.2.3.1. No Improper Influence**

Proposers are expected to conduct themselves with professional integrity, and shall refrain from all activities aimed at influencing decisions related to the Project, the RFP or the RFP Process. Any substantiated allegation that a Proposer or any employee, member, agent, consultant, advisor, representative, promoter, or advocate of the Proposer or any of its team members has engaged in prohibited communications or attempted to unduly influence the selection process may be cause for RIPTA to disqualify the Proposer, or to disqualify the Proposer, its team members and/or any employee, member, agent, consultant, advisor, representative, promoter or advocate of such Proposer or team member, from participating with the Proposer, in each case, in the absolute discretion of RIPTA.

3.2.3.2. Rules of Contact

Beginning with the issuance of this RFP and through the later of either the (i) execution of the Preliminary Services Agreement, or (ii) notification by RIPTA of the formal termination of this procurement, the following rules of contact will apply. Contact includes, without limitation, mail, face-to-face communication, telephone calls, text messaging, facsimile, email or other written communications. The RIPTA Representative for this RFP is identified in Section 3.1.2. of this RFP.

The rules of contact are designed to promote a fair, unbiased, and legally defensible procurement process. RIPTA is the single source of information regarding the Project procurement.

- (i) Communication with other Proposers. No Proposer, nor any of its members, may communicate with another Proposer or members of another Proper Team with regard to this procurement or the Project, except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer Team provided that such subcontractor is not a Major Participant, so long as those Proposers establish a protocol (satisfactory to RIPTA) prior to such communication to ensure that the subcontractor will not act as a conduit of information between the Proposers. This prohibition does not apply to public discussions regarding the RFP at RIPTA-sponsored informational meetings (if any) that are attended by more than one Proposer.
- (ii) Proposer Representatives. Contact between the Proposers and RIPTA (questions and responses to questions) will only be through the RIPTA Representative and the Proposer's designated representatives.
- (iii) Ex-Parte Communications. No Proposer, or representative of a Proposer, through their employees, agents, consultants, advisors or other representatives, shall have any *ex parte* communications regarding the RFP or the Project with RIPTA or any RIPTA officials, employees, staff, advisors, contractors or consultants involved with the RFP or the Project, except for communications expressly permitted by the RFP or approved in advance by the RIPTA Representative, in such person's absolute discretion. The foregoing restriction does not prohibit or restrict communications regarding matters unrelated to the RFP or the Project, or

Request for Proposals No. 23-22

participation in RIPTA public meetings or any public or Proposer workshop related to the RFP or Project.

- (iv) RIPTA Representative. Unless specifically authorized elsewhere in this RFP, the RIPTA Representative shall be RIPTA's sole point of contact for Proposers throughout the RFP Process.
- (v) Stakeholders. Without limiting the foregoing, communication by or on behalf of any Proposer with any entity listed below (the "Stakeholders"), including any of the Stakeholder's employees, officials, agents, consultants, advisors or other representatives, regarding the RFP or the Project is prohibited, except for communication expressly permitted by the RFP or approved in advance by the RIPTA Representative, in RIPTA's absolute discretion:
 - (a) employees, officials and representatives of State agencies;
 - (b) employees, officials and representatives of RIPTA of Providence;
 - (c) employees, officials and representatives of RIHousing;
 - (d) environmental, regulatory and permitting agencies; and
 - (e) Project Site property owners.

It is the intent of RIPTA that it will provide any necessary coordination during the RFP Process with Stakeholders so that, among other things, the RFP Process may be implemented in a fair, competitive and transparent manner and with uniform information. Information requests concerning Stakeholders should be sent to the RIPTA Representative, who, in RIPTA's discretion, may arrange for general or separate meetings between one or more Stakeholders and the Proposers, or facilitate delivery of responses to such questions by a Stakeholder.

- (vi) Any communications in breach of the foregoing clauses (i) – (v) may result in disqualification from the RFP Process, in the absolute discretion of RIPTA.
- (vii) RIPTA will not be responsible for any oral exchange or any other information or exchange that occurs outside of the official process specified in this Section 3.2.3.

3.3. CLARIFICATION AND AMENDMENT OF RFP

3.3.1. Examination and Clarification of the RFP

Each Proposer shall be solely responsible for:

- (a) examining, with appropriate care and diligence, the RFP and supplementary information (including the RFP, draft Preliminary Services Agreement, Project Agreement Term Sheet and all Addenda); and
- (b) requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained in the RFP, or of any provision that the Proposer fails to understand.

Failure of a Proposer to make such review and to request such clarification shall be at its sole risk, and no relief for error or omission will be provided by RIPTA.

Request for Proposals No. 23-22

3.3.2. Requests for Clarification and Amendment

Proposers may submit questions, comments or requests for clarifications relating to this RFP. Notwithstanding any deadline set forth in the Procurement Schedule, Proposers are encouraged to submit their questions as and when they are ready for submittal (prior to the deadline).

RIPTA requires that all questions, requests for information and clarifications relating to this RFP from interested parties and Proposers, and any of their representatives be made in writing via email directly to the RIPTA Representative. Written questions must include the requestor's name, email address, and the Proposer represented. Only RIPTA's written responses to questions that are issued in Addenda to the RFP can be relied upon by the Proposers. RIPTA will not respond to any oral inquiries or requests regarding this RFP. No oral information provided by RIPTA staff or members of the Consultant Support Team will be binding on RIPTA or members of the Consultant Support Team, nor will it change, modify, amend or waive the requirements of this RFP in any way.

In general, inquiries and response will be distributed to all Proposers; provided, however, an inquiry and response may be distributed only to the Proposer who submitted the question if, in the judgment of RIPTA, it does not require a change or clarification to the RFP, it contains information that is proprietary to the Proposer, and it is fair or appropriate to do so.

RIPTA has the right not to respond to any inquiry or request. In addition, RIPTA reserves the right, in its sole discretion, to consider and respond to any questions submitted after the final comment and question deadline set forth in Section 3.1 of this RFP.

3.4. PROPOSAL PREPARATION PERIOD

3.4.1. Pre-Bid RFP Meeting

RIPTA will offer a pre-bid RFP meeting for interested parties and potential Proposers. The meeting will take place at RIPTA's Transportation Conference Room located at 269 Melrose Street, Providence, RI. A link will also be provided for those preferring to attend virtually. The intent of the pre-bid meeting is to provide a brief overview of the Project and RFP to Proposers prior to the submission of Proposals. The material set forth in this RFP is intended to take precedence, in its entirety, over any discussions or materials issued pursuant to the pre-bid meeting. Proposer participation in the pre-bid meeting is not required but is recommended. Additional details regarding Pre-Bid RFP meeting logistics will be posted as an addendum to the RFP on the State purchasing site (<https://ridop.ri.gov/vendor-resources/all-solicitations>) approximately two weeks prior to the date of such meeting.

3.4.2. Project Site Visits

Access to the Project Site vicinity is not currently restricted, however, Proposers should be aware that the Project Site is currently owned by a third party and is therefore located on private property. Proposers shall not hold RIPTA liable for any damage caused by or to the Proposer or its representatives during any Project Site visit.

3.4.3. Proposer Due Diligence and Investigation

Proposers must satisfy themselves, through personal investigation and any other lawful means they deem necessary, as to the conditions affecting the contract services and the cost thereof. Proposers are solely

Request for Proposals No. 23-22

responsible for conducting their own independent research and due diligence for the preparation of Proposals. In order to provide Proposers with sufficient opportunities to conduct due diligence for the Project and prepare their Proposals, RIPTA also invites Proposers to review any background documents, including, but not limited to, those included in the Virtual Data Room, and to schedule and attend one individual commercially confidential meeting.

The Successful Proposer is solely responsible for conducting its own independent research and due diligence, for negotiation of the Preliminary Services Agreement and the Project Agreement, and for the subsequent delivery of the contract services. Information derived from any part of this RFP, or from RIPTA or its advisors, does not relieve the Project Company from any risk associated with providing the contract services and meeting the requirements of this RFP. RIPTA and its advisors are not responsible for the completeness or accuracy of any information presented in this RFP, or otherwise distributed or made available during the RFP Process unless such materials are explicitly identified as materials the Proposer may rely on.

3.4.4. Virtual Data Room

Additional documents relating to this RFP and the Project will be accessible in the Virtual Data Room (<https://www.dropbox.com/sh/foia4xdrt5ix2sz/AABXUygc6189buvVmldGFPjha?dl=0>). Unless noted otherwise in this RFP, such documents are provided for reference and background information only and RIPTA makes no representation that the documents made available in the Virtual Data Room are accurate, complete, pertinent, or of any other value to Proposers. Notwithstanding the foregoing it is RIPTA's expectations that the Project Agreement will require the Project Company's final design documents to comply with and incorporate the Minimum Design and Construction Requirements in their entirety. RIPTA shall not be responsible for any interpretations thereof or conclusions drawn therefrom.

It is the Proposer's responsibility to check the Virtual Data Room frequently and access any additional documents that may be uploaded by RIPTA from time to time during the proposal preparation period. Each Proposer is solely responsible for reviewing all documents made available prior to submitting its Proposal. RIPTA assumes no responsibility or liability whatsoever for assuring the distribution of any documents to Proposers.

3.4.5. Professional Advice

Proposers are responsible for obtaining professional advice from their own advisors and experts. This includes legal advice, together with any other professional advice a Proposer determines to be appropriate or necessary.

3.4.6. Individual Commercially Confidential Meetings

3.4.6.1. Purpose

RIPTA shall invite Proposers to schedule one individual meeting with RIPTA and members of its Consultant Support Team ("*Individual Commercially Confidential Meetings*"), with the anticipated dates for such meetings set forth in Section 3.1 of this RFP. Each Individual Commercially Confidential Meeting will be proprietary and confidential, in that only one Proposer team will meet with RIPTA at a time. The purposes of the Individual Commercially Confidential Meetings include: (i) providing Proposers with the opportunity

Request for Proposals No. 23-22

to discuss the RFP, the Draft Preliminary Services Agreement and the Project Agreement Term Sheet with RIPTA, particularly to the extent that clarifications and comments require discussion, (ii) providing an opportunity for Proposers to discuss any questions relating to the RFP Process, the progressive P3 structure, and/or required services, and (iii) other purposes established by RIPTA.

Proposers must raise any good faith concerns they have about delivering the Project under the terms set out in the RFP, Preliminary Services Agreement and/or Draft Project Agreement Term Sheet during their Individual Commercially Confidential Meetings.

3.4.6.2. Meeting Materials

Each Proposer will provide the RIPTA Representative, via email, with a proposed meeting agenda, a list of attendees, a list of prioritized issues it would like to discuss during the Individual Commercially Confidential Meeting, and any materials relevant to such issues, at least five business days before the scheduled meeting. To the extent that such list of prioritized issues involves comments to the Draft Preliminary Services Agreement and/or the Project Agreement Term Sheet, Proposers will submit such comments in accordance with Section 3.4.7. of this RFP. RIPTA will use such materials to develop the agenda with discussion timeframes and distribute such agenda approximately three days prior to each meeting with the respective Proposer.

3.4.6.3. Attendees

At each Individual Commercially Confidential Meeting, a Proposer is expected to include such Key Personnel as the Proposer considers reasonably necessary for effective communication with RIPTA and to fulfill the objectives of the Individual Commercially Confidential Meeting. RIPTA may, in its discretion, limit the number of participants at a meeting. All participation in Individual Commercially Confidential Meetings is expected to be virtual.

3.4.6.4. RIPTA Responses are Non-Binding

To facilitate free and open discussion at the Individual Commercially Confidential Meetings, Proposers should note that any comments provided by or on behalf of RIPTA during any Individual Commercially Confidential Meeting, including in respect of any particular matter raised by a Proposer, or which is included in any documents or information provided by a Proposer prior to or during the Individual Commercially Confidential Meeting, and any positive or negative views, encouragement or endorsements perceived by a Proposer to have been expressed by or on behalf of RIPTA during the Individual Commercially Confidential Meetings to anything said or provided by Proposers, will not in any way bind RIPTA and will not be deemed or considered to be an indication of a preference by RIPTA, even if adopted by the Proposer. Proposers may not rely upon anything said or indicated at an Individual Commercially Confidential Meeting, except as set forth in an Addendum to the RFP, and RIPTA will not discuss any Proposals with a Proposer other than the Proposer's own Proposal.

3.4.7. RFP and Draft Agreement Changes During the Proposal Preparation Period

3.4.7.1. Comments to RFP, Draft Preliminary Services Agreement or Project Agreement Term Sheet

Each Proposer must identify issues or specific provisions of this RFP, Draft Preliminary Services Agreement, including all Transaction Forms and Appendices, or Project Agreement Term Sheet that the Proposer

Request for Proposals No. 23-22

requests to have clarified or amended. RIPTA invites Proposers to discuss possible clarifications or amendments to the RFP, Draft Preliminary Services Agreement or Project Agreement Term Sheet during the Individual Commercially Confidential Meetings, as follows:

- (a) Proposers may raise for discussion aspects of this RFP, Draft Preliminary Services Agreement or Project Agreement Term Sheet regarding commercial, legal, design, build, and operations and maintenance matters.
- (b) Proposers must provide RIPTA with requested changes to the RFP Draft Preliminary Services Agreement or Project Agreement Term Sheet [in advance of the Proposer's Individual Commercially Confidential Meeting] and indicate which requested changes or comments to the RFP Draft Preliminary Services Agreement or the Draft Project Agreement Term Sheet the Proposer would like to prioritize during discussion at the Individual Commercially Confidential Meeting.
- (c) Proposers must clarify how the requested change to the RFP, Draft Preliminary Services Agreement or Project Agreement Term Sheet would lead to better "value for money" for RIPTA.
- (d) RIPTA also reserves the right to require a Proposer, subject to prior written notice, to be prepared to discuss any issue at an Individual Commercially Confidential Meeting, which issue the Proposer has not previously requested be the subject of such a discussion.

3.4.7.2. Proposed Amendments to the RFP Package

RIPTA will consider Proposers' comments and requested clarifications or amendments, and may in its discretion amend the RFP, draft Preliminary Services Agreement and/or Project Agreement Term Sheet. Pursuant to Section 3.4.8 (*Request for Proposals Addenda*) of this RFP, RIPTA will issue written Addenda if it amends the RFP, Draft Preliminary Services Agreement and/or Project Agreement Term Sheet, together with all appropriate revisions or clarifications.

Notwithstanding the Proposer's right to comment in its Proposal on the final draft Preliminary Services Agreement and Project Agreement Term Sheet, Proposers are required to base their Proposals on the terms and conditions of the final Draft Preliminary Services Agreement and final Project Agreement Term Sheet. Accordingly, while RIPTA may, after the selection of the Successful Proposer, negotiate any nonmaterial proposed changes to the terms and conditions of the final Draft Preliminary Services Agreement and Project Agreement Term Sheet, in no event will the acceptance or rejection by RIPTA of any suggested change result in an increase in the pricing offered by the Proposer in the Proposal. Price changes will be limited to those appropriate to any negotiated work scope changes.

If RIPTA determines, based on comments to the RFP, draft Preliminary Services Agreement or Project Agreement Term Sheet or otherwise, that the RFP contains an error, ambiguity or mistake, RIPTA reserves the right to modify the RFP to correct the error, ambiguity or mistake at any time prior to Proposal submission.

3.4.8. Request for Proposals Addenda

This RFP is subject to revision after the date of advertisement via written Addenda. Any such Addenda will be made available to Proposers via email, posted on the State of Rhode Island Purchasing portal (<https://ridop.ri.gov/vendor-resources/all-solicitations>), and through the State's Virtual Data Room

Request for Proposals No. 23-22

described in Section 3.4.4 (*Virtual Data Room*) of this RFP. These Addenda will be issued by, or on behalf of, RIPTA and will constitute a part of this RFP. Notwithstanding RIPTA's intent to email Addenda, it is the Proposer's responsibility to check the State of Rhode Island Purchasing portal frequently and access such Addenda. Each Proposer is solely responsible for obtaining all Addenda prior to submitting its Proposal. RIPTA assumes no responsibility or liability whatsoever for the distribution of Addenda to Proposers.

Each Proposer is required to acknowledge in its Proposal transmittal letter the receipt of all Addenda issued as of the Proposal Submittal Date. All responses to this RFP will be prepared with full consideration of the Addenda issued prior to such response.

3.5. IMPROPER CONDUCT**3.5.1 Non-Collusion**

Each Proposer shall submit, together with its Proposal Letter in the form of Proposal Form 1, a Non-Collusion Declaration in the form attached as Proposal Form 9. Neither the Proposer, nor any of its members, may undertake any of the prohibited activities identified in the Non-Collusion Declaration.

3.5.2 Definition of Conflicts of Interest

For purposes of this RFP, "**Conflict of Interest**" means the following:

- (a) Any situation or circumstance where a Proposer or any of its Major Participants, subcontractors or advisors has a conflict of interest or a potential conflict of interest under Applicable Law, including, without limitation, Rhode Island General Laws §36-14-6;
- (b) Any situation or circumstance where a Proposer or any of its Major Participants or subcontractors:
 - (i) has other commitments, relationships, financial interests or involvement in ongoing litigation that:
 - 1) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of RIPTA's independent judgment; or
 - 2) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its obligations deriving from this procurement;
 - (ii) is or has been under contract with RIPTA to prepare procurement documents for the Project; or
 - (iii) has knowledge of or access to confidential information (other than confidential information disclosed by RIPTA in the normal course of the procurement process of strategic or material relevance to the RFP or to the Project that is not available to other Proposers and that could or could be seen to give the Proposer an unfair competitive advantage; and
- (c) An "organizational conflict of interest" which is defined as follows:

"Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the

Request for Proposals No. 23-22

contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

3.5.3 Prohibition on Conflicts of Interest

Each Proposer is prohibited from:

- (a) directly or indirectly receiving any advice relating to the Project or the RFP from any Person with a Conflict of Interest; or
- (b) including as a Major Participant, or contractor, subcontractor or consultant to the Proposer or any Major Participant,

any Person with a Conflict of Interest, including the following entities that have been retained by RIPTA to advise and provide support to RIPTA on this Project:

- (i) Nixon Peabody LLP;
- (ii) Illuminati Infrastructure Advisors, LLC;
- (iii) New Harbor Group;
- (iv) AECOM; and
- (v) Pannone Lopes Devereaux & O’Gara LLC.

Collectively these entities and individuals shall constitute the “**Consultant Support Team**”. Members of the Consultant Support Team are not eligible to assist or participate as Proposer Team members with any Proposer.

Additional members may be added to the Consultant Support Team for the Project. RIPTA will identify any new members in an Addenda, if and when a member is added.

3.5.4 Existence of Conflicts of Interest

- (a) If a Proposer discovers any perceived, potential or actual Conflict of Interest, the Proposer must promptly disclose the same to RIPTA in a written statement delivered by the Proposer Representative to the RIPTA Representative, including:
 - (i) the names and contact information of the Persons to which the perceived, potential or actual Conflict of Interest relates;
 - (ii) a description of the perceived, potential or actual Conflict of Interest; and
 - (iii) a description of the steps taken or proposed to be taken to mitigate the perceived, potential or actual Conflict of Interest.
- (b) If a Conflict of Interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the RFP Process, RIPTA may, in its discretion, disqualify such Proposer.
- (c) RIPTA may grant exceptions to the policy set forth in Section 3.5.3 (*Prohibition on Conflicts of Interest*) of this RFP upon written request from a Proposer, if it is determined that the relevant party’s involvement is in the best interest of the public and does not constitute an unfair advantage. Proposers seeking such exception are advised to submit a written request as soon

Request for Proposals No. 23-22

as possible because RIPTA will not extend, or be responsible for, any failure to respond to any such request prior to the Proposal Submission Deadline.

- (d) RIPTA guidelines in this RFP are intended to augment applicable federal, state and local law and rules. All applicable laws will also apply to Proposers and may preclude certain firms and their entities from participating on a Proposer Team. Proposers should disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest, and must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor or subcontractor may result, or could be viewed as, an organizational conflict of interest.

3.5.5. Exclusivity

Major Participants of a Proposer shall not, directly or indirectly, participate in any capacity on more than one Proposer. This prohibition includes the participation on different Proposers by a Major Participant of any Proposer through related corporate entities, such as an entity that directly or indirectly controls another entity, or two entities that are under common control. If any Major Participant fails to comply with this prohibition, all Proposers on which it is participating may be disqualified from submitting a Proposal.

3.6. CONFIDENTIALITY AND PUBLIC DISCLOSURES

Proposers should be aware that Proposals submitted in response to an RFP are subject to the Rhode Island Access to Public Records Statute, Rhode Island General Laws Title 28, Chapter 2 and other implementing regulations concerning the release of such information to third parties pursuant to the Rhode Island Access to Public Records Act (APRA). In accordance with the APRA, certain information is subject to public disclosure. Please be advised that should a Proposer deem any portion of its proposal as confidential or proprietary, it must be conspicuously indicated on those portions so deemed. However, and in accordance with the APRA, Proposers are hereby notified that every portion may still be subject to disclosure under the APRA.

All information submitted by Proposers that they consider confidential or a proprietary trade secret and not releasable to third parties, including their employees, agents, consultants and representatives ("Confidential Information") must be clearly and conspicuously so marked. To this end, the Proposer must do the following:

- (a) Clearly mark all proprietary or trade secret information as such in its Proposal at the time each such Proposal is submitted and include a cover sheet stating "**DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION**" and identifying each section and page that has been so marked;
- (b) Include a written statement with its Proposal justifying the Proposer's determination that certain records are proprietary or trade secret information for each record so defined;
- (c) Submit with the Proposal one electronic copy, on a flash drive, of the full Proposal that has all the proprietary or trade secret information redacted from the Proposal and label such copy of the Proposal: "Proposal Public Copy"; and

Request for Proposals No. 23-22

- (d) Defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless RIPTA and its agents and employees from any judgments awarded against RIPTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives RIPTA’s cancellation or termination of this procurement or award and subsequent execution of a Project Agreement. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the confidential business information is in possession of RIPTA.

All Confidential Information, which is clearly identified as such, and submitted to RIPTA shall, to the extent as RIPTA determines permitted by law or for which a court order directs RIPTA not to disclose, shall be held in confidence and used only in the evaluation process for the RFP.

Proposers shall be solely responsible for protecting their own trade secrets or proprietary information and will be responsible for all costs associated with protecting such information from disclosure. RIPTA has no duty to defend proprietary or confidential information from any public records request.

RIPTA may disclose submissions received in response to this RFP to both members and advisors to the Selection Committee. Each person acting on behalf of the Selection Committee shall sign and provide Nondisclosure Agreements to RIPTA. The Selection Committee may incorporate key parts of the Proposals into their report to the Board.

RIPTA will not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked as proprietary or trade secret information in any Proposal, nor will RIPTA be in any way financially responsible for any costs associated with securing any such order, nor for any loss associated with the release of information marked proprietary or trade secret information or otherwise.

3.7. OWNERSHIP OF PROPOSAL MATERIALS

All materials submitted in response to any part of this RFP will become the sole property of RIPTA, without payment or liability for payment. Notwithstanding anything to the contrary, no documents will be returned to Proposers.

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4. PROPOSAL SUBMISSION REQUIREMENTS

4.1. GENERAL SUBMISSION REQUIREMENTS

Proposers shall submit a Proposal in accordance with the instructions provided in this section of the RFP. All Proposals must be complete, with all requested information, data and attachments. To facilitate review of Proposals, Proposers are urged to be thorough but brief and, where practically possible, use tables and diagrams as opposed to text.

Proposers are advised that, as part of the finalization of the Preliminary Services Agreement portions of the selected Proposer's Proposal will be included or integrated into the agreement. RIPTA reserves the right to include (or exclude) in the Preliminary Services Agreement any information submitted in the Proposal.

Failure of the Proposer to provide all requested information in the requested format may result in a determination by RIPTA, in its sole discretion, that the Proposal is non-responsive to the requirements of this RFP.

4.1.1. Required Signatures

The Proposal Transmittal Letter must be signed by a duly authorized Proposer Representative and accompanied by evidence of signatory authorization as specified in Proposal Form 1 (*Proposal Transmittal Letter*).

4.1.2. Requirements to Submit a Responsive Proposal

- (a) Tentative or contingent commitments will not be considered in the evaluation of a Proposal, unless such commitments are clarified to the satisfaction of RIPTA at its request, or RIPTA waives any related requirement pursuant to Section 7 (*RIPTA Rights and Disclaimers*) of this RFP. For example, items modified by phrases such as "we may" or "we are considering" will not be considered in the evaluation process since they do not indicate a firm commitment, unless clarified or waived. The Proposal may not include any reservations, qualifications, conditions, assumptions or exceptions to or deviations from the requirements of the RFP, unless approved by RIPTA in writing. If the Proposal does not fully comply with the instructions and requirements contained in this RFP, including the Schedules and Forms, or if a Proposal contains a substantive change to any portion of this RFP, including to the Schedules and Forms, it may be deemed non-responsive in RIPTA's absolute discretion.
- (b) If a Proposal is deemed non-responsive, RIPTA may disqualify the Proposal from further consideration, in RIPTA's absolute discretion. Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing and to all other requirements of the RFP Process.
- (c) Each Proposal must be submitted in the format specified by RIPTA in this RFP.
- (d) Each Proposer may submit only one Proposal. Multiple or alternate Proposals may not be submitted.
- (e) In RIPTA's absolute discretion, a Proposal may be considered non-responsive and may be disqualified from the RFP Process for any of the following reasons:
 - (i) the Proposal is submitted in a format other than as specified in this RFP;

Request for Proposals No. 23-22

- (ii) any part of the Proposal is missing from the Proposal package or otherwise does not meet the requirements of this Section 4.2 (*Requirements to Submit a Responsive Proposal*);
- (iii) the Proposer is, or will be, unable to meet legally required professional licensing certifications and/or contractor licensing requirements;
- (iv) RIPTA 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;
- (v) a Proposal includes (x) any conditions or provisions reserving a Proposer's right to accept or reject an award if it is selected as Successful Proposer, or (y) any conditions to entering into the Project Agreement;
- (vi) any required information is not included in the Proposal; or
- (vii) any other reason that the Proposal is non-responsive to any other instructions, requirements, terms or conditions of the RFP, as determined by RIPTA.

4.2. LEADER DESIGNATION

In the event a Proposer is a consortium or joint venture, the Proposer should designate in its Proposal one of its members as the Leader ("*Lead Member*"). The Lead Member shall act as the contact point for the Proposer for purposes of notifications from RIPTA and should be authorized by all other Proposer Team Members to act on their behalf for the purposes of the procurement.

4.3. PROPOSAL SUBMISSION DATE & LOCATION**4.3.1. Proposal Due Date**

Each Proposer must submit its Proposal in hardcopy on or before 1:00 p.m. Eastern Time on the Proposal Submission Deadline set forth in Section 3.1 (*RFP Schedule*) of this RFP.

Proposals or unsolicited modification requests received after the deadlines stipulated in this RFP will be returned to the Proposer without consideration or evaluation.

In addition to the original hardcopy of the Proposal, each Proposer must also submit one hardcopy copy and a USB flash drive of its Proposal. The original hardcopy submittal should include original signatures. Proposals will not be considered complete until the original, hard copy and USB flash drive containing the Proposal are all received by RIPTA.

4.3.2. Proposal Submission Location

The original, one hardcopy and flash drive containing the electronic version the Proposal may be delivered by hand or sent to RIPTA through postal or commercial courier services to the following address:

CONTRACTS MANAGER
Rhode Island Public Transit Authority
Purchasing Department
Room 217
705 Elmwood Avenue
Providence, RI 02907

Request for Proposals No. 23-22

It is the Proposer's sole responsibility to ensure delivery of its Proposal at the time and place specified herein and RIPTA will have no liability or responsibility therefor.

4.4. PROPOSAL ORGANIZATION AND MARKINGS

The Proposer shall submit one original hardcopy and one hard paper copy of its Proposal, as well as one USB flash drive of its Proposal (including an electronic copy of the confidential version described in Section 3.6 of this RFP). The following information should be included on the outside of the package containing the hard copy and USB flash drive: (a) name of Proposer, and (b) "RFP No. 23-22 - Dorrance Street Transit Center Joint Development Project".

For the hard copy, each section of the Proposal shall be organized in accordance with Schedule 1 of this RFP and entitled accordingly. For the electronic version of the Proposal, each package of the Proposal (as set forth in Schedule 1 of this RFP) shall be a separate file and the title of each file shall clearly indicate which package each file is submitted in response to. Additionally, the USB flash drive must provide a consolidated file containing the entirety (all packages) of Proposal.

In the event of any conflict, the original hardcopy version shall take precedence over the electronic version.

4.5. PROPOSAL CONTENT

The Proposal contents will include only the information requested in Schedule 1 (Proposal Submission Requirements).

4.1.1. Proposal Packages

Each of the following packages will be clearly marked:

Package A (Transmittal Letter and Executive Summary)

Package B (Statement of Qualifications & Experience)

Package C (Project Approach)

Package D (Price Proposal)

Package E (Preliminary Services Agreement and Project Agreement Term Sheet Comments)

4.1.2. Required Forms

Failure to provide all information and all completed Proposal Forms in the format specified in Schedule 1 may result in RIPTA's rejection of the Proposal, or assignment of a lower score. All blank spaces in the Proposal Forms must be filled in as noted and no changes may be made in the phraseology of this RFP or in the items mentioned therein. Any alterations, additions (other than expanding forms in order to properly include all required information or adding additional signature blocks to accommodate signatures from multiple Proposer Team members) or deletions made to the format of the Proposal Forms may render a Proposal non-responsive.

4.2. PROPOSAL FORMAT

- (a) Proposals must be prepared on 8 ½" by 11" sized white paper and bound. Double-sided printing is required for hardbound copies. 11" by 17" pages are allowed for schematics,

Request for Proposals No. 23-22

organizational charts and other drawings or schedules, but not for narrative text. The font size must be no smaller than 12-point font, except for tables, which may be prepared using 9-point font as long as it is still clearly legible. Graphics shall not consist of text only. Printed lines may be single-spaced. Insofar as is practical or economical, all paper stock used will be composed of recycled materials.

- (b) All pages must be numbered in sequential order.
- (c) Proposers are encouraged to reduce the repetition of identical information within several sections of the Proposal by making appropriate and specific cross-references to other sections of their Proposal.
- (d) The electronic Proposal submission shall be in searchable Adobe (.pdf) format, provided that completed Forms in a Proposal may be submitted in either searchable Adobe (.pdf) or Word format, and provided, further, that scanned signed letters and Forms may be submitted in non-searchable Adobe (.pdf) format.
- (e) The hardcopy shall be provided in a three-ring binder. Each binder of the Proposal shall be labeled to indicate its contents and shall include tabs and dividers as appropriate to facilitate RIPTA's review of its contents. Multiple three-ring binders may be submitted, as necessary.
- (f) Proposals will be in the English language and will use the English measure of units.
- (g) Any information quantified in currency must be provided in US dollars. If financial statements are converted from a foreign currency into US dollars, the conversion method(s) must be explained.
- (h) Audiovisual materials will not be accepted unless in response to a specific RIPTA request.
- (i) Confidential information shall be submitted with the Proposal in accordance with Section 3.6 (*Confidentiality and Public Disclosure*) of this RFP and may be submitted in separate PDF files or in separately sealed envelopes for each member of the Proposer. These should be combined into a single electronic folder or inserted into a single three-ring binder. Whenever a Proposal contains confidential information, a sheet should be inserted in the appropriate section with a statement directing RIPTA where to locate the information within the Proposal.

For the avoidance of doubt, submitting information as CONFIDENTIAL does not relieve Proposers of any requirement to provide information in an electronic format.

- (j) Sales brochures are not desired unless directly related to the Proposal and referenced in the text. Audiovisual materials will not be accepted unless in response to a specific RIPTA request.
- (k) Proposal submittals should be clear and concise, with contents limited only to the information requested for each section of Schedule 1 (*Proposal Submission Requirements*) of this RFP. Brevity is strongly encouraged. Non-applicable content, marketing and promotional information, brochures, letters of support, etc. will not be reviewed.

Request for Proposals No. 23-22

4.7. MODIFICATIONS, WITHDRAWALS AND LATE SUBMITTALS**4.7.1. Modifications of a Proposal**

- (a) Proposers may modify their Proposal in writing prior to the Proposal Submission Deadline.
- (b) Any modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly marked as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the original Proposal and all previous modifications, if any, submitted by such Proposer. If multiple modifications are submitted, they shall be sequentially numbered so RIPTA can accurately identify the final Proposal.
- (c) Modifications must contain complete Proposal Sections, complete pages or complete Forms as described in Section 4.5 (*Proposal Content*) of this RFP. Line-item changes will not be permitted.

4.7.2. Withdrawal of Proposals

- (a) In the event that a Proposer submits a Proposal prior to the Proposal Submission Deadline, such Proposal may be withdrawn only by a written and signed request received by the RIPTA Representative before the Proposal Submission Deadline.
- (b) A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal, provided that the new Proposal is received before the Proposal Submission Deadline.
- (c) No Proposal may be withdrawn on or after the Proposal Submission Deadline.

4.7.3. Late Proposals

Except as otherwise set forth in Section 4.7.2 (*Withdrawal of Proposals*) above, proposals, modifications and withdrawal requests received after the Proposal Submission Deadline will be rejected without consideration or evaluation by RIPTA.

4.8. Proposal Validity Period

- (a) A Proposal submitted in response to this RFP is binding upon the Proposer and is considered irrevocable for a minimum of one hundred and eighty (180) days following the Proposal Submission Deadline (the “**Proposal Validity Period**”).
- (b) Any Proposer may elect, in its absolute discretion, to extend the validity of its Proposal beyond the Proposal Validity Period.
- (c) Any Proposer that agrees to extend the validity of its Proposal beyond the Proposal Validity Period will, as a condition to RIPTA’s acceptance of such extension, provide an amended or replacement Proposal Security covering the extended Proposal Validity Period.

4.9. PROPOSAL SECURITY**4.9.1 Proposal Security**

- (a) As security for its commitment to enter into the Preliminary Services Agreement in accordance with its Proposal commitments, each Proposer shall deliver one or more complete, irrevocable,

Request for Proposals No. 23-22

properly executed standby letters of credit in favor of RIPTA (the “**Proposal Security**”) along with its Proposal.

- (b) The Proposal Security shall be in an aggregate amount equal to (\$150,000). The Proposer may submit more than one letter of credit in the substantially in the form of Proposal Form 12 (*Proposal Security*), as its Proposal Security; provided that the amount of all such Proposal Security will equal \$150,000 in the aggregate.
- (c) The Proposal Security must be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. If, at any time following the Proposer's submission of its Proposal Security to RIPTA, any issuer ceases to be an Eligible Security Issuer, the Proposer shall promptly notify the RIPTA Representative in writing of such change and within fifteen (15) days of such notice, the Proposer shall deliver to RIPTA a new Proposal Security from a replacement Eligible Security Issuer. Upon RIPTA's receipt of such replacement Proposal Security, RIPTA will promptly return the replaced Proposal Security to the Proposer.

4.9.2 Forfeiture of Proposal Security

Each Proposer understands and agrees that RIPTA will be entitled to draw on its Proposal Security in its entirety if:

- (a) the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal (except as otherwise permitted pursuant to this RFP);
- (b) the Proposer otherwise violates any material term or condition of this RFP;
- (c) following notification by RIPTA to the Proposer that such Proposer is the Successful Proposer:
 - (i) the Successful Proposer fails to fulfill its obligations relating to the finalization and execution of the Preliminary Services Agreement; and/or
 - (ii) the Successful Proposer insists on material changes to the draft Preliminary Services Agreement as a condition of its execution; or
- (d) any of the following occurs:
 - (i) the Proposer fails to (A) notify RIPTA that the issuer of the Proposal Security is not an Eligible Security Issuer, or (B) deliver replacement Proposal Security, if applicable, in each case, in accordance with Section 4.9.1 (*Proposal Security*) of this RFP; or
 - (ii) RIPTA determines that the Proposal Security submitted by such Proposer contains a material alteration from the form of Proposal Security set forth in Proposal Form 12 (*Proposal Security*) of this RFP that has not been previously approved by RIPTA, as applicable,

Request for Proposals No. 23-22

provided, that to the extent that RIPTA draws on the Proposer's Proposal Security pursuant to this Section 4.9.2 and the Proposer replaces such drawn cash with replacement Proposal Security from an Eligible Security Issuer in compliance with this RFP, RIPTA will return such drawn cash to the Proposer.

4.9.3 Return of the Proposal Security

- (a) RIPTA will retain the Proposal Security of each unsuccessful Proposer until the earliest to occur of the following:
- (i) the Project Company and RIPTA have executed the Preliminary Services Agreement;
 - (ii) RIPTA has terminated the RFP Process and cancelled the RFP; or
 - (iii) the expiration of such Proposer's Proposal Validity Period (as it may have been extended in accordance with the RFP).
- (b) Following the occurrence of any of the foregoing events, RIPTA will return the Proposal Security of each unsuccessful Proposer within seven (7) Business Days, except any Proposal Security drawn by RIPTA, in accordance with the terms of this RFP,

provided that RIPTA may elect, in its absolute discretion, to return any Proposer's Proposal Security at an earlier date.

4.10. PROPOSER'S COSTS

Except as otherwise provided in this RFP, the cost of preparing a Proposal, and any and all other costs incurred by a Proposer at any time during the RFP Process, shall be borne solely by such Proposer.

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5. EVALUATION PROCESS

5.1. EVALUATION PROCESS AND CRITERIA

In order to ensure a fair, uniform and transparent basis of award, upon RIPTA's receipt of the Proposals, RIPTA will proceed to review the Proposals pursuant to the evaluation procedures and criteria established in this RFP.

5.2. BASIS OF AWARD

The selection of the most advantageous Proposal will be based on **best value**, determined in accordance with the evaluation procedures and weighted criteria stated in this Section 5 (*Evaluation Process*) of the RFP.

5.3. SELECTION COMMITTEE AND APPROVALS

RIPTA will establish a Selection Committee ("Selection Committee") comprised of qualified experts and professionals with experience in diverse Project elements, which will be responsible for evaluating the Proposals and making a recommendation to RIPTA as to the Successful Proposer. Proposals may be reviewed by RIPTA, the Consultant Support Team, and other experts as deemed necessary and appropriate by RIPTA; however, only RIPTA employees will have voting rights within the Selection Committee. Execution by RIPTA of the Preliminary Services Agreement is subject to certain approvals, as required under Applicable Law which includes final approval by the Board, and compliance with all Applicable Laws and regulations.

5.4. EVALUATION PROCEDURE

The evaluation process shall contemplate a multi-phase process whereby, before making its best value determination, RIPTA will first evaluate Proposals to determine whether they are responsive based on the threshold evaluation factors described in Section 5.4.1 (*Proposal Responsiveness Review*) of this RFP. Following the responsiveness review, all responsive Proposals will be evaluated in the manner described in this Section 5.4.2 (*Phase 2: Evaluation Categories and Weighing*) of this RFP, and the Selection Committee will assign an overall ranking to each Proposal based on which Proposal delivers the best value to RIPTA. RIPTA will not select any Proposer that RIPTA determines has submitted a non-responsive Proposal.

5.4.1. Phase 1: Proposal Responsiveness Review

5.4.1.1. Responsiveness Review of Proposals

RIPTA shall conduct a preliminary review of the Proposals to assess responsiveness and to identify any aspect of the Proposal that requires clarification. RIPTA may, in its sole discretion, request clarification of some or all Proposals in accordance with Section 5.6 (*Clarifications and Additional Information*) of this RFP. Any Proposal that RIPTA determines is incomplete in any material respect may be deemed non-responsive and rejected in its entirety. In such event, RIPTA may return the entire Proposal to the Proposer. Materially responsive Proposals will be evaluated based on compliance with all terms and conditions of this RFP, including, without limitation, the applicable submittal requirements specified in this RFP.

Request for Proposals No. 23-22

5.4.1.2. Minimum Qualifications Compliance Review

Following the general responsiveness review described in Section 5.4.1.1, all Proposals deemed to be responsive will then be reviewed to confirm compliance with the minimum qualifications (“Minimum Qualifications”) set forth herein. The Minimum Qualifications have been established to minimize Project risk and provide reasonable assurance that the required work will be performed successfully across all disciplines and will be assessed on a “pass” or “fail” basis.

The Minimum Qualifications will be evaluated on the basis of the information submitted in Proposal Form 4, as verified in Proposal Forms 5 and/or through reference checks. Only those Proposals materially meeting the following Minimum Qualifications will be deemed responsive. Any Proposal that RIPTA determines has failed to meet the Minimum Qualifications in any material respect will be deemed non-responsive and rejected in its entirety. The following are the Minimum Qualifications for eligibility in this RFP process:

Financing Capacity and Experience	<ol style="list-style-type: none"> 1. Lead Member and/or Financing Member must collectively evidence that it/they has/have served as a lead equity provider on at least 5 successful project financings or P3 projects involving public infrastructure with a capital investment amount of over \$200 million in the past 10 years.
Design-Build	<p>Lead Design-Builder, or the Lead Design-Build Members collectively, must meet the following criteria:</p> <ol style="list-style-type: none"> 1. Served as a lead design-builder or lead design-build member on the design and construction of at least 3 vertically integrated public infrastructure and mixed-use projects involving public transportation facilities, transit-oriented development projects or similar completed in the past 10 years. 2. Provide at least one Key Personnel who possesses experience of a minimum of three qualifying projects, each with the following characteristics: <ul style="list-style-type: none"> • Newly built public transportation passenger facility; • Construction value greater than \$50M; and • Currently in design or construction or completed within the last 15 year. 3. Capacity to meet all local Design-Build licensing requirements.
Affordable Housing Development	<ol style="list-style-type: none"> 1. The Lead Affordable Housing Developer, or the Lead Affordable Housing Developer Members collectively, must evidence relevant experience to successfully deliver the Project, including the development, financing, and management of affordable housing projects, and experience with TDM programs, environmental approvals, entitlements, and community outreach. To this end, it/they must provide evidence of successfully developing, financing, and managing at least 3 affordable housing and mixed-use projects involving the federal Low Income Housing Tax Credit program in the past 10 years.
Commercial Development	<ol style="list-style-type: none"> 1. Evidence of Lead Commercial Developer successfully developing, financing, and managing at least 3 projects that combine housing and mixed-use real estate development with public infrastructure, such as, but not limited to, transit-oriented developments, in the past 10 years.

Request for Proposals No. 23-22

Facilities Maintenance	1. Lead Operator, or the Lead Operator Members collectively, must evidence its/their ability to deliver performance-based life-cycle infrastructure facility maintenance programs by having served as a lead facilities management entity on at least 3 public infrastructure facilities in the past 5 years, such as, but not limited to, transit and transportation facilities.
Financial Advisor	1. The Financial Advisor must evidence that it has prior experience (within the past 5 years) advising public transportation and transit agencies on funding and financing options for infrastructure projects, including structures involving public-private-partnerships and federal grants and loans.
Progressive Services	1. The Proposer must demonstrate that its Lead Member and/or Lead Design-Build (or a Lead Design-Build Member) have prior successful experience managing and performing services under a preliminary services agreement, exclusive negotiation agreement, predevelopment agreement, or similar, which led to executing a Project Agreement and reaching commercial and financial close on a project involving public infrastructure.

5.4.2. Phase 2: Proposal Evaluation

Following the Proposal responsiveness review described above, responsive Proposals meeting the Minimum Qualifications threshold will be evaluated by the Selection Committee in accordance with the evaluation criteria set forth in this Section 5.4.2 of the RFP.

5.4.2.1. Organization & Management

The Selection Committee will award points to each Proposal for the evaluation criteria described herein based on the Selection Committee's judgment as to the merit, practicality, quality, strength and value of each Proposal, taking into account RIPTA's Project objectives.

The Selection Committee will evaluate each Proposer's organization and management based on the extent to which the proposed organization and management structure of the Proposer demonstrates the ability to successfully coordinate and deliver all components of the Project, taking into account Project size and complexity. RIPTA will verify and evaluate that Proposer organization addresses all key project technical and financial capability requirements as set forth in the RFP. Higher scores will be merited where there is a clear and logical management structure, with an alignment of interests amongst Major Participants and key subcontractors across multiple project elements (such as design, construction, financing, operations and maintenance). Higher scores will also be merited where there is demonstrated experience of the Major Participants working together as part of an integrated team in relation to successfully delivering comparable projects.

The suitability of the organization structure of the Proposer will take into consideration the following, among other, factors:

- (a) **Team Structure**
 - (i) Clarity and logic of the proposed organizational structure, including the reporting structures and hierarchy of Proposer members, and how such team structure aligns with the overall needs of the Project (including both the Preliminary Services and Project Services delivery phases);

Request for Proposals No. 23-22

- (ii) Whether the roles and responsibilities of all Proposer members are clearly defined and appropriate for the needs of the Project;
- (iii) Whether the Proposal demonstrates an efficient and clear decision-making process at both management and functional levels;
- (iv) Whether the Proposal clearly identifies and defines the responsibilities of Key Personnel; and
- (v) The extent to which the Proposer’s approach to teaming is effective, realistic and achievable, and relates and responds to the challenges and opportunities of the Project.

(b) Qualifications & Experience

The Selection Committee will evaluate each Proposer’s technical and financial qualifications and experience based on the information provided in Package B of the Proposal. The evaluation of qualifications and experience will address whether and to what extent the Proposer adequately exhibits successful prior experience on similar projects and demonstrates the technical and financial capabilities required to fulfill the requirements of the Project with respect to the delivery, financing, operation and maintenance and financing of transit centers and transit-oriented development.

The evaluation of each Proposer’s experience will consider the extent and depth of the experience of the Proposer and its Major Participants with the delivery of comparable projects. This will include considerations such as the design and construction of similar structures, and the operation and maintenance of similar facilities. Proposers shall be required to submit relevant reference projects, which will be evaluated on the degree to which they are comparable to the Project with respect to size, scale, and complexity.

The evaluation of each Proposer’s capabilities will be based on their capabilities statements, taking into account their ability to meet the diverse design, construction, financing, operations and maintenance requirements set out in the Preliminary Services Agreement and the Project Agreement Term Sheet.

The Proposer’s experience and capabilities will be evaluated on the basis of the following:

<p>Project Management & Financing</p>	<p>Relevant infrastructure project development and financing experience, with a track record of long-term investment in social and transit infrastructure and financial strength. Lead Member’s and Key Personnel’s experience managing complex teams on relevant projects. RIPTA will evaluate experience and capabilities with the following characteristics more favorably:</p> <ol style="list-style-type: none"> 1. Ability to develop a joint development project that has distinct public infrastructure and real estate components; 2. Ability to reach financial close on asset-level financing for the Project (which may include different types of debt); 3. Financial capability (based on audited financial statements and disclosures); 4. Ability to structure, negotiate and successfully obtain financing for comparable asset types, preferably through competitive selection of debt financing, and familiarity with the types of financing structures and sources potentially available; 5. Ability to successfully manage a complex multidisciplinary team and collaboratively work with RIPTA during both the Preliminary Services Agreement and the Project Agreement; 6. Track-record and ability to successfully manage and deliver the Project on time and on budget;
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Request for Proposals No. 23-22

7. Experience working (and funding such work on an at-risk basis) under a Preliminary Services Agreement leading to executing a Project Agreement and reaching commercial and financial close;
8. Experience meeting requirements for participation from Local Business Enterprise (LBE)/Disadvantaged Business Enterprise (DBE)/Minority-owned Business Enterprise (MBE)/ Women-owned Business Enterprise (WBE)/Small Business Enterprise (SBE) or other such disadvantaged business, as evidenced by experience in Rhode Island or in other jurisdictions with similar requirements;
9. Experience with workforce development programs, apprenticeship programs, and working in partnership with labor organizations; and
10. Experience in community outreach and community-driven processes.

Design-Build

Design-Builder and Key Personnel's relevant experience with the design and construction of public transportation facilities; experience with the design and construction of multi-family housing and mixed-use, transit-oriented projects; experience with the design and construction of vertically integrated public infrastructure and mixed-use projects; experience with community-informed design processes; track-record of safety and success. RIPTA will evaluate experience and capabilities with the following more favorably:

1. Experience successfully managing, designing, engineering and constructing comparable transit facilities, especially enclosed and/or multi-story facilities in urban locations, that have performed acceptably for their respective owners and operators in terms of functionality, flexibility, and efficiency, and that have delivered a safe and productive working environment for staff, riders and the public;
2. Experience planning, designing, and delivering projects that efficiently resolve the physical and technical interfaces and interactions within a building that accommodates different program types, especially if they are similar to this Project's joint development of housing and transit programs, but not limited to those two;
3. Experience performing design and construction services in the context of alternative delivery models, including design-build, design-build-maintain, design-build-finance-maintain, and/or design-build-finance-operate-maintain;
4. Experience with multi-family and mixed-use market-rate and affordable housing projects of similar size to the Project that are sensitive to neighborhood context in urban environments, including a track record of participating in community engagement that delivers successful outcomes;
5. Experience meeting requirements for participation from LBE/DBE/MBE/WBE/SBE or other such disadvantaged business, as evidenced by experience in Rhode Island or in other jurisdictions with similar requirements;
6. Track record and capabilities with regard to the design of sustainable infrastructure, as well as with the use of sustainable construction practices, all for the purpose of meeting or exceeding defined sustainability goals;
7. Experience with the design and construction of projects involving federal grants and loans, including, but not limited, to projects involving Davis-Bacon, Buy-America provisions, etc.;
8. Experience designing and building projects in Providence, including preparing and securing the issuance of building permits and construction documents, and experience meeting the applicable requirements and process for planning and design review, oversight, permitting, and approvals;
9. Experience with the design, permitting and construction of public infrastructure facilities and high-rise, multi-family housing and mixed-use projects, including vertical construction projects in urban environments;

Request for Proposals No. 23-22

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10. Track record and capabilities with regard to control cost of construction employing value engineering during the pre-construction design phase;
 11. Past performance on public transportation facility projects, including, but not limited to, bus transit centers;
 12. Past performance on projects that efficiently resolve the physical and technical interfaces and interactions within a building that accommodates different program types, especially if they are similar to this Project's joint development of housing and transit programs, but not limited to those two;
 13. Experience with workforce development programs, apprenticeship programs, and working in partnership with labor organizations;
 14. Experience in community outreach and community-driven processes; and
 15. Safety track-record, as measured by the Lead Design-Builder's (or the Lead Design Build Members') EMR.
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Affordable Housing Affordable Housing Developer and Key Personnel's relevant experience in developing, financing and managing affordable housing and mixed-use projects and experience with TDM programs, permitting approvals, entitlement, zoning, and community outreach of real estate projects. RIPTA will evaluate experience with the following characteristics more favorably:

1. Track record of community engagement that delivers successful outcomes of building community support for similar projects;
 2. Ability to successfully manage and deliver the affordable housing component in concert with the market-rate development through the planning, design, obtaining entitlements, securing financing (including low-income housing tax credit financing and other innovative sources of funding and financing), completing construction, and managing affordable housing projects;
 3. Experience meeting requirements for participation from LBE/DBE/MBE/WBE/SBE or other such disadvantaged business, as evidenced by experience in Rhode Island or in other jurisdictions with similar requirements;
 4. Experience with workforce development programs, apprenticeship programs, and working in partnership with labor organizations; and
 5. Experience identifying and delivering affordable housing and commercial projects with a public benefit component.
-

Commercial Commercial Developer and Key Personnel's relevant experience to successfully deliver the Project: Large and complex market-rate, multi-family and mixed-income housing and mixed-use projects, and experience with TDM programs, permitting approvals, entitlements, and community outreach. RIPTA will evaluate experience with the following characteristics more favorably:

1. Ability to successfully manage and deliver the Commercial Component in concert with the Affordable Housing Developer through planning, design, obtaining entitlements, securing financing (including for projects with ground leases, air rights agreements, or other comparable forms of ownership), completing construction, and managing housing and mix-used commercial projects;
 2. Experience with multi-family and mixed-use market-rate and mixed-income housing projects of similar size and a track record of community engagement that delivers successful outcomes;
 3. Demonstrated ability in projects that combine housing and mixed-use real estate development with public infrastructure, such as, but not limited to, transit-oriented developments;
-

Request for Proposals No. 23-22

-
4. Experience meeting requirements for participation from LBE/DBE/MBE/WBE/SBE or other such disadvantaged business, as evidenced by experience in Rhode Island or in other jurisdictions with similar requirements;
 5. Experience with workforce development programs, apprenticeship programs, and working in partnership with labor organizations; and
 6. Experience identifying and delivering housing and commercial projects with a public benefit component.
-

Facilities Maintenance

Facility Maintenance Provider and Key Personnel's demonstrated track record in developing and delivering performance-based Infrastructure life-cycle Facility Maintenance programs for public infrastructure facilities. RIPTA will evaluate experience with the following characteristics more favorably:

1. Social Infrastructure projects with long-term, fixed price, performance-based contracts where the public owner transfers the risk of managing and optimizing annual recurring maintenance of building, architectural, and structural systems, as well as major maintenance such as renewals and replacement of those systems;
2. Public transportation maintenance facility projects, including but not limited to bus transit centers;
3. Projects that efficiently resolve the physical and technical interfaces and interactions within a building that accommodate different program types, especially if they are similar to this Project's joint development of housing and transit programs, but not limited to those two;
4. Projects developed within a collaborative BIM-enabled environment that incorporated BIM deliverables into the operational start-up, operations, and maintenance phases, including activities such as, but not limited to, development of O&M manuals and training for the project owner; and
5. Projects involving shared operational or maintenance responsibilities with the public partner.

Financial Advisor

Financial Advisor and Key Personnel's relevant experience advising public transit agencies on funding and financing options for complex transportation infrastructure projects involving transit-oriented developments. RIPTA will evaluate experience with the following characteristics more favorably:

1. Relevant past experience advising public transit agencies on projects involving federal grants and loans;
 2. Experience with project finance for public infrastructure, including diverse public private partnership structures (such as design-build-finance-maintain, design-build-finance-operate-maintain, etc.);
 3. Experience with commercial real estate and affordable housing financing (including low-income housing tax credit financing, private activity bonds and other innovative sources of funding and financing);
 4. Experience preparing comparative value assessments to assist in determining the optimal mix of public and private financing; and
 5. Experience with value-capture and monetization initiatives involving public transit centers.
-

Request for Proposals No. 23-22

(c) **Prior Experience Working Together**

- (i) The number of Proposer Team Members that have worked together on relevant reference projects and the extent of such participation by Proposer members in such reference projects; and
- (ii) The outcome of projects where team members have worked together, including whether such reference projects were delivered on schedule and on budget.

5.4.2.2. Evaluation of Delivery Approach

The Selection Committee will award points to each Proposal for the evaluation criteria based on the Selection Committee’s judgment as to the merit, practicality, quality, strength and value of each Proposal, taking into account RIPTA’s Project objectives, including those set forth in Section 2.3. of this RFP. The delivery approach will be evaluated on the basis of the following:

<p>Project Understanding and Approach to Delivering Project Objectives</p>	<p>RIPTA will evaluate the Proposer’s understanding of the Project’s key risks and principal challenges and opportunities. This includes evaluating the Proposer’s understanding of the Project, including its technical and financial challenges and opportunities; the PSA process; current and expected market conditions for housing (affordable and market-rate) and financing of the Project’s components; and key Project drivers, such as community and stakeholder outreach, and environmental permitting and entitlements processes. RIPTA will evaluate Proposals more favorably that demonstrate how the Proposer’s approach, specifically during the PSA period, will help satisfy the objectives described in Section 2.3 of the RFP.</p>
<p>Preliminary Services (including schedule)</p>	<p>RIPTA will evaluate each Proposer’s Preliminary Services approach and schedule. The evaluation will consider the proposed approach to delivering key activities and tasks, as well as the proposed Project Schedule. Proposals that demonstrate how the Proposer would meet or exceed RIPTA’s overall schedule objectives, including Substantial Completion of the Infrastructure Facility by 2026, will be evaluated more favorably. RIPTA will also evaluate the Proposer’s understanding of key PSA risks and its proposed mitigation strategies, as well as the proposed approach and ability of the Proposer to work collaboratively and transparently with RIPTA throughout the PSA process, including obtaining approvals, to achieve and exceed the Project objectives detailed in Section 2.3.</p>
<p>Project Management Approach</p>	<p>RIPTA will evaluate the Proposer’s project management approach based on the Proposer’s ability to demonstrate an understanding of the approaches to successfully plan and execute the Project, including describing the use of the Proposer’s proven systems, processes and tools, and referencing real-world examples of project success. RIPTA will evaluate Proposals more favorably that clearly demonstrate a viable and proven approach toward project management, including budget, risk, and schedule management.</p>
<p>Cost Savings Approach</p>	<p>RIPTA will evaluate each Proposer’s approach to how the proposed commercial structuring and financing of the Project would resolve and optimize its value, with the goal of offsetting Transit Center costs. RIPTA will also evaluate the Proposer’s approach to providing transparency in all financial and cash-flow information, and their underlying sources, to support RIPTA’s review and scrutiny of all such information and assumptions through benchmarking and other means. RIPTA will evaluate Proposals more favorably that demonstrate how the Proposer’s approach will potentially offset Infrastructure Facility costs.</p>

Request for Proposals No. 23-22

Approach to Public Outreach	<p>RIPTA will evaluate the Proposer's approach to work with stakeholders and the public to achieve the Project goals and deliver public benefits. A more favorable score will be provided to Proposals that clearly demonstrate how the Proposer will partner with, and interact with, the communities served by the Transit Center and the Project throughout the process, including in developing alternatives and formulating solutions so that public input and recommendations are incorporated to the maximum extent possible. RIPTA will evaluate Proposals more favorably that detail a viable strategy and approach during the PSA phase to ensure ongoing engagement with the local community, including a description of how key Project stakeholders would be integrated in the PSA phase, particularly with respect to the providing feedback on Project design. RIPTA will also evaluate Proposals more favorably that meet or exceed the requirements set forth in the Public Outreach requirements detailed the Project Requirements set forth in Attachment 1 to Appendix 1 of the draft Preliminary Services Agreement.</p>
Integrated Project	<p>RIPTA will evaluate the proposed approach to resolving and managing anticipated key risks presented by the physical and commercial interfaces among the design-build, Infrastructure Facility Maintenance, and Property Management functions for the different components of the Project (Infrastructure Facility and TOD). The evaluation will be based on both the proposed approach, as well as how the Proposer's past experience with vertically integrated joint-development projects that accommodate different programs positively influence and shape the proposed approach on this Project to efficiently resolve its physical and commercial interface challenges and opportunities. RIPTA will evaluate Proposals more favorably that demonstrate how the Proposer's approach will help satisfy the objectives described in Section 2.3 of the RFP.</p>
Approach to Design-Build Work, Cost Estimating and Risk Management	<p>RIPTA will evaluate the proposed design and cost-estimating approach, describing how the Proposer will achieve the technical requirements and objectives of the Project in a high-quality and cost-effective manner within the context of the envisioned PSA progressive design-build process. Emphasis during the evaluation will be placed on the Transit Center as an essential asset for RIPTA's transit operations, including details around the proposed approach to addressing issues such as planning and designing the Transit Center and achieving sustainability and resiliency goals. RIPTA will also evaluate the Proposer's approach to the process of developing alternative technical concepts and the design-build project delivery method more generally to maximize innovation and budget and schedule performance. Finally, RIPTA will evaluate the Proposer's cost-estimating and cost control approach, including its expertise and resources used to develop pricing during the PSA period and to deliver the Preliminary Services within a fixed budget limit. RIPTA will also evaluate the Proposer's approach to risk management and risk mitigation during the PSA phase. RIPTA will evaluate Proposals more favorably that demonstrate how the Proposer's approach will help satisfy objectives described in Section 2.3 of the RFP.</p>
Approach to Facilities Management Services	<p>RIPTA will evaluate the Proposer's approach to Service operations, with an emphasis on the proposed approach to Infrastructure Facilities Maintenance Services. RIPTA will evaluate Proposals more favorably that demonstrate how the Proposer's approach will help satisfy the objectives described in Section 2.3 of the RFP.</p>

Request for Proposals No. 23-22

<p>Approach to Financing Services</p>	<p>RIPTA will evaluate the Proposer’s approach to Financing Services, including the provision of financial advisory services to RIPTA, financial structuring, and securing committed private financing. Proposals that demonstrate how the Proposer’s approach will help satisfy the objectives described in Section 2.3 of the RFP will be evaluated more favorably.</p>
<p>Approach to Inclusivity, Labor and Community Benefits</p>	<p>RIPTA will evaluate the Proposer’s approach to inclusivity, labor and community benefits. The evaluation will include the Proposer’s customized approach to satisfy the targeted DBE subcontracting requirements set forth in Section 2.8 of this RFP, as well as its approach to meeting EEOP, prevailing wage, Davis-Bacon and similar requirements. Likewise, RIPTA will evaluate the Proposer’s approach to the development of community benefits and construction workforce development programs. Proposals that demonstrate how the Proposer’s approach will help satisfy they objectives described in Section 2.3 of the RFP will be evaluated more favorably.</p>

5.4.2.3. Evaluation of Price Proposal

The proposed Preliminary Services Fee, Design-Build Subcontractor Fee, Operator Subcontractor Fee, and Return-on-Equity will each be separately scored.

The Proposal offering the lowest price component for each category will be awarded the applicable maximum allowable score.⁴ The Proposal scores (P_s) of other Proposals shall be computed in relation to the lowest proposed price component offered by any Proposer (P_{Best}) using the following formula:

$$P_s = M_p \times (P_{Best} / P)$$

Whereby,

M_p is the maximum points per evaluation category;

P_s is the score (point allocation) for the proposal under consideration;

P_{Best} is the lowest proposed fee offered by any Proposer; and

P is the proposed fee in the proposal under consideration.

Each price proposal score will be rounded to two decimal places.

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⁴ In the event that more than one Proposal reflects the exact same lowest proposed price for any given component, then each Proposal offering that same lowest proposed price will be awarded the maximum allowable points.

Request for Proposals No. 23-22

5.4.3. Evaluation Categories and Relative Weighting

Responsive Proposals will be evaluated and ranked by the Selection Committee using the criteria and weightings as set forth below.

Evaluation Criteria	Basis of Evaluation	Maximum Points Possible
Technical Proposal (50 points total)		
Organization and Management <ul style="list-style-type: none"> • Team Organization • Prior Experience Working Together • Key Personnel • Proposer Experience & Capabilities 	Package A and Package B	20
Delivery Approach <ul style="list-style-type: none"> • Project Understanding • Preliminary Services, including schedule • Project Management Plan • Cost Savings • Public Outreach • Integrated Project • Design-Build Work, Cost Estimating & Risk Management • Facilities Management Services • Financing Services • Entitlements, Inclusivity and Community Benefits 	Sections C-1 to C-11 of Package C	30
Price Proposal (50 points total)		
Return-on-Equity	Section D-1 of Package D	10
Design-Build Subcontractor Fee	Section D-2 of Package D	5
Operations Subcontractor Fee	Section D-3 of Package D	5
Preliminary Services Fee	Section D-4 of Package D	30
Total		100

5.4.4. Total Score and Award

After points have been assigned to every category, the Selection Committee will add the Proposal point scores for each Proposal. The Proposer submitting the Proposal that receives the highest total number of points will be deemed to provide the best value to RIPTA and will be designated the Successful Proposer.

In the event of a tie, RIPTA shall extend to those tying Proposers a request for a best and final price proposal for the purpose of determining the Successful Proposer.

Request for Proposals No. 23-22

5.5. CLARIFICATIONS AND ADDITIONAL INFORMATION

- (a) To facilitate the examination and evaluation of Proposals, RIPTA may, at any time during the Proposal evaluation, issue one or more requests for clarification to one or more Proposers, seeking additional information or clarification from a Proposer, and may request a Proposer verify or certify certain aspects of its Proposal. Proposers shall respond to any such request by such time as is specified by RIPTA in such request. The scope, length and topics to be addressed in requests for clarification shall be prescribed by, and subject to the absolute discretion of, RIPTA. Upon receipt of any requested additional information or clarification, the applicable Proposal or Proposals may be re-evaluated by RIPTA to consider such additional information or clarification.
- (b) Any additional information or clarification submitted by a Proposer pursuant to this Section 5.6 (*Clarifications and Additional Information*) shall become a part of the Proposer's Proposal.

5.6. WAIVER OF NON-CONFORMITIES

RIPTA, in its absolute discretion, may waive mistakes, clerical errors and minor irregularities, omissions, nonconformities or discrepancies unrelated to the material content of a Proposal, and may offer a Proposer the opportunity to clarify its Proposal or request revisions to all Proposals, in each case, in accordance with this Section 5.6 (*Waiver of Non-Conformities*) of this RFP. The provisions of this Section are not intended to, and shall not, limit in any manner any of the rights reserved by RIPTA under Chapter 6 (*RIPTA Reserved Rights & Disclaimers*) of this RFP.

5.7. NO OBLIGATION TO AWARD

This RFP does not commit or bind RIPTA to award or enter into a Preliminary Services Agreement with any Proposer.

5.8. AWARD NOTICE

After the evaluation of Proposals is duly completed and a Successful Proposer selected, RIPTA shall send written notification to all Proposers of the result, stating the rating and ranking of each Proposer, as well as the basis for such rating and ranking. Upon expiry of the protest period, pursuant to Section 5.9 (*Debriefings & Protests*) of this RFP and following formal approval by the State Equal Opportunity Office of the Project Company's Equal Employment Opportunity Employment Program, RIPTA shall post the "Final Notice of Award".

5.9. DEBRIEFINGS & PROTESTS**5.9.1. Debriefings**

RIPTA may conduct a debriefing, upon request, for any Proposer who is not the Successful Proposer. In a debriefing, RIPTA will discuss the relative strengths and weaknesses of the Proposer's Proposal, but RIPTA will not disclose or discuss any confidential information of another Proposer. Any debriefings will be provided at the earliest feasible time after award of the Project Agreement, or earlier in RIPTA's discretion.

Request for Proposals No. 23-22

5.9.2. Protests**5.9.2.1. General**

Protests will be accepted from Proposers whose direct economic interest would be affected by the award. RIPTA's Chief Financial Officer will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:

- a. Name, address and telephone number of protester.
- b. Identification of the solicitation or contract number.
- c. A detailed statement of the legal and factual grounds of protest, including copies of relevant documents.
- d. A statement as to what relief is requested.
- e. The protest should be sent to:

Chief Financial Officer
RI Public Transit Authority
Room 217
705 Elmwood Avenue
Providence, RI 02907
- f. Protests must be filed with RIPTA in accordance with RIPTA's procedures and time requirements. The protest to RIPTA must be complete and contain all the issues that the protester believes relevant. RIPTA will respond to each substantive issue raised in the protest. Failure to include an issue in the protest eliminates that issue from further consideration. All protest decisions entered by RIPTA are final in accordance with FTA "Third Party Contract" Regulation.
- g. On occasion, when considered appropriate, an informal conference on the merits of the protest with all interested parties may be held.

5.9.2.2. Protests Before Award

Solicitation Phase. Protests concerning the solicitation must be submitted in writing five (5) working days prior to the Proposal opening or closing date for receipt of Proposals. If the written protest is not received by the time specified, award may be made in the normal manner unless the Director of Purchasing, upon investigation, finds that remedial action is required. Oral protests not followed up by a written protest will be disregarded. Notice of a protest and the basis, therefore, will be given to all potential Proposers.

Pre-Award Phase. When a protest against the making of an award is received after receipt of Proposals but prior to award, the Director of Purchasing may determine to withhold the award pending disposition of the protest. The Proposer or Proposers whose Proposals might become eligible for award should be requested, before expiration of the time for acceptance of their Proposals, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for re-advertising. RIPTA will provide a written response to each material issue raised in the written protest.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to five (5) working days after resolution of the protest. If a protest has been filed with

Request for Proposals No. 23-22

Federal Transit Administration (FTA), award will not be made during the pendency of that protest. **It should be noted that the FTA will not substitute its judgment for that of RIPTA unless the matter is primarily a federal concern.** Circumstances where RIPTA would allow an exception to the stated protest award policy are:

- (a) The items to be procured are urgently required;
- (b) Delivery or performance will be unduly delayed by failure to make award promptly; or,
- (c) Failure to make award will otherwise cause undue harm to RIPTA or the Federal Government.

If award is made, the Director of Procurement will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

5.9.2.3. Protests after Award

A protest received not later than ten (10) working days after award shall be reviewed by RIPTA's Chief Financial Officer. The Project Company will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Authority's interest, the Chief Financial Officer should consider a mutual agreement with the Project to suspend performance on a no-cost basis.

5.10. Definitive Award Date

The "**Definitive Award Date**" shall mean the date on which the award to the Successful Proposal is legally confirmed. For the avoidance of doubt, said Definitive Award Date shall be either:

- (a) In the event of no protests, the Definitive Award Date shall be on the eleventh day following issuance of the Award Notice. In the event the eleventh day does not fall on a Business Day, the eighth day shall fall on the next Business Day; or
- (b) In the event of a duly submitted protest, then the Definitive Award Date shall be the first Business Day following the publication or notification of an authorized decision affirming the award determination.

5.11. PRELIMINARY SERVICES AGREEMENT NEGOTIATIONS & EXECUTION

Following award, RIPTA will begin negotiations with the Successful Proposer. As a requirement of this RFP process, the Successful Proposal is required to finalize negotiations and execute the Preliminary Services Agreement within a period of no longer than 30 days after the Definitive Award Date. If RIPTA and the top-ranked Proposer do not reach agreement, then RIPTA may negotiate with the next highest-ranked Proposer. This process will continue until RIPTA reaches an agreement with a Proposer or terminates the procurement. RIPTA may begin negotiating with the next highest-ranked Proposer whenever RIPTA determines that doing so is in its best interest, and RIPTA reserves the right to negotiate with more than one Proposer at the same time.

Proposers are reminded that acceptance by RIPTA of any suggestions included on the mark-up of the Draft Preliminary Services Agreement provided with their Proposals is at RIPTA's sole discretion and that, except as otherwise provided in the paragraphs above, RIPTA does not intend to discuss or negotiate any issue,

Request for Proposals No. 23-22

term or condition that is not specifically identified in the Proposer's mark-up of the Draft Preliminary Services Agreement.

The failure of the highest-ranked Proposer to comply with any of the requirements of this Section shall constitute grounds for RIPTA to negotiate the Preliminary Services Agreement with another Proposer. Nothing in the preceding sentence precludes RIPTA from exercising any of the other rights reserved to it under this RFP.

5.12. CONDITIONS PRECEDENT TO EXECUTION OF THE PSA

Prior to execution of the Preliminary Services Agreement, the Successful Proposer shall have provided to RIPTA evidence reasonable acceptable to RIPTA that:

(a) **Equal Employment Opportunity Plan**

The Successful Proposer has solicited and received formal approval by the State Equal Opportunity Office of the Project Company's Equal Employment Opportunity Plan.

5.13. FAILURE TO SATISFY SUCCESSFUL PROPOSER REQUIREMENTS

- (a) The Successful Proposer will be deemed to have failed to satisfy the requirements of the Successful Proposer set forth herein and shall forfeit its Proposal Security if the Successful Proposer (i) insists upon material amendments or changes to the terms or conditions of the Preliminary Services Agreement or; (ii) fails to comply with the conditions precedent to the Agreement Execution stipulated in Section 5.12. of this RFP; or (iii) fails to execute the Preliminary Services Agreement within the period set forth in section 5.11 above, unless if such failure (y) is a direct result of RIPTA actions or (z) is not a direct result of a failure or breach of the RFP by either the Project Company or one or more of its Major Participants.
- (b) In the event that the Successful Proposer fails to satisfy the Successful Proposer requirements, RIPTA may revoke its selection of the Successful Proposer, draw on the Successful Proposer's Proposal Security, and may take any other action described in Section 6.1 (*Reserved Rights*).

5.14. WITHDRAWAL OF SUCCESSFUL PROPOSER STATUS

Pursuant to Sections 5.13 and 6.1 (*Reserved Rights*), should RIPTA revoke the status of a Proposer as the Successful Proposer, RIPTA reserves the right, and shall be entitled, to:

- (a) Reject all Proposals and terminate the RFP Process;
- (b) Issue a Request for Proposal revision to all Proposers; or
- (c) Proceed with the Proposal that passed all steps of the evaluation process described in Section 5 (*Evaluation Process*) and achieved the next highest Total Proposal Score ("**Next Ranking Proposer**") to finalize (or attempt to finalize) a Project Agreement with that Proposer in accordance with Sections 5.11, 5.12, and 5.13 of this RFP. In such event, RIPTA shall notify the Next Ranking Proposer of its election by written notice (a "**Substitute Selection Notice**"). The Next Ranking Proposer shall, from and after the date

Request for Proposals No. 23-22

of receipt of the Substitute Selection Notice, assume the status of the Successful Proposer hereunder and shall meet the requirements set forth herein for the Successful Proposer. In the event that RIPTA delivers a Substitute Selection Notice to the Next Ranking Proposer, the Next Ranking Proposer shall be required to extend the expiration date of its Proposal Security to a date not earlier than ninety (90) calendar days after its receipt of the Substitute Selection Notice.

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6. RIPTA RESERVED RIGHTS & DISCLAIMERS

6.1. RESERVED RIGHTS

In connection with the procurement described in this RFP, RIPTA reserves any and all of the rights available to it under applicable law, which rights shall be exercisable by RIPTA in its sole discretion. Such rights include the right to, with or without cause and with or without notice:

- (a) Modify the procurement process or documentation described in this RFP;
- (b) Modify the scope of the Project, including, but not limited to, modifying the scope of the Project at any time during the Preliminary Services period in the following ways:
 - (i) Modifying the Minimum Design and Construction Requirements and/or considering alternatives for the Project;
 - (ii) electing to public or other financing structures not currently anticipated by RIPTA; or
 - (iii) extending the term of the Project Agreement;
- (c) Appoint additional evaluation teams to review Proposals and seek the assistance of outside technical, financial, legal and other experts and consultants;
- (d) Make independent calculations with respect to numbers and calculations submitted in a Proposal for purposes of their evaluation;
- (e) Require confirmation of information submitted by a Proposer, or require additional evidence of qualifications to perform the work described in this RFP;
- (f) Seek or obtain data from any source that has the potential to improve RIPTA's understanding and evaluation of such Proposal;
- (g) Undertake reference checks to further understand Proposer experience with reference projects;
- (h) Terminate evaluations of Proposals received at any time;
- (i) Reject any and all Proposals received at any time;
- (j) Not select any Proposer as a Proposer;
- (k) Disqualify any Proposer that changes its Proposal without RIPTA's approval;
- (l) Disqualify any Proposer or Proposer Team member from the procurement process for violating any rules or requirements of the procurement specified in (i) this RFP (ii) any other communication from RIPTA or (iii) applicable law;
- (m) Reject any Proposal that RIPTA determines includes pricing information that is not reasonable, responsible or balanced;

Request for Proposals No. 23-22

- (n) Accept, reject or seek additional information regarding a Proposer's request to make any changes to its organization;
- (o) Withdraw or cancel this RFP or any subsequent RFP, in whole or in part, at any time prior to the execution by RIPTA of the Preliminary Services Agreement, without incurring any cost obligations or liabilities;
- (p) Revise the evaluation factors or methodology prior to the Proposal Submittal Date;
- (q) Issue Addenda, supplements and modifications to this RFP;
- (r) Issue a new request for qualifications or request for proposals after cancellation of this RFP or any subsequent RFP;
- (s) Request best and final offers, or otherwise engage in simultaneous negotiations following the receipt of Proposals.
- (t) Develop some or all of the Project itself;
- (u) Disclose information submitted to RIPTA, as permitted by applicable law or this RFP;
- (v) Exercise any other right reserved or afforded to RIPTA under this RFP or applicable law; and
- (w) Exercise its discretion in relation to the matters that are the subject of this RFP as it considers necessary or expedient in the light of all circumstances prevailing at the time.

This RFP does not commit or bind RIPTA to enter into a contract or proceed with the procurement described in this RFP. RIPTA does not assume any obligation, responsibility or liability, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to this RFP, and all such costs shall be borne solely by each Proposer.

6.2. SPECIFIC REQUIREMENTS – RHODE ISLAND BUSINESS LICENSE

The Project Company and its subcontractors shall obtain and hold, to the extent required by law, Rhode Island business licenses during the period that the respective entity is doing business with RIPTA.

6.3. RIPTA DISCLAIMERS

In issuing this RFP and undertaking the Procurement Process contemplated hereby, RIPTA specifically disclaims any obligation to award or execute a Project Agreement pursuant to this RFP; and in submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

This RFP does not constitute an offer to contract with a Proposer nor an offer of employment.

In submitting a Proposal in response to this RFP, the Proposer further acknowledges and accepts the following:

- (a) Information supplied by RIPTA is for the convenience of the Proposers and is the best available information to the knowledge and belief of RIPTA. Unless otherwise stipulated herein, RIPTA

Request for Proposals No. 23-22

does not warrant that all the information provided in the Virtual Data Room is accurate or complete, and sole reliance upon the data is at the Proposer's risk.

- (b) In no event shall RIPTA be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Preliminary Services Agreement has been authorized and executed by RIPTA and then only to the extent set forth in the Preliminary Services Agreement, provided that the disclaimer in this Section 6.3. (*RIPTA Disclaimers*) shall not apply to the obligations of RIPTA to the Proposers during the RFP Process, which are expressly set forth in the RFP.
- (c) Neither RIPTA, nor any of its consultants, directors, officers or employees, shall be charged personally with any liability by a Proposer or another Person or held liable to a Proposer or another Person under any provision of the RFP or any statement made in the RFP, or because of the submission or attempted submission of a Proposal or other response, or otherwise. Each Proposer, by submitting a Proposal in response to the RFP, expressly waives any right it may have to bring a claim for any such liability.

6.4. GOVERNING LAW

This RFP shall be interpreted under, and its performance governed by, the laws of the State of Rhode Island, without regard to conflicts of laws principles.

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Schedule 2

Draft Preliminary Services Agreement

PRELIMINARY SERVICES AGREEMENT
FOR THE DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT

between

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

and

[INSERT]

Dated

[Insert Date]

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION	1
Section 1.1 Definitions.....	1
Section 1.2 Contract Interpretation	9
ARTICLE 2 REPRESENTATIONS AND WARRANTIES.....	10
Section 2.1 Representations and Warranties of the Project Company.....	10
ARTICLE 3 PERFORMANCE OF THE PRELIMINARY SERVICES	12
Section 3.1 Scope of Basic Services	12
Section 3.2 Changes to the Scope Of Services	13
Section 3.3 Work Schedule.....	14
Section 3.4 Changes to the Work Schedule	14
Section 3.5 Responsibility for Performance	15
Section 3.6 Standard of Care	16
Section 3.7 Compliance with Applicable Law	16
Section 3.8 Project Company Representatives and Personnel.....	16
Section 3.9 RIPTA Project Representative.....	17
Section 3.10 Subcontractors.....	17
Section 3.11 Coordination with RIPTA.....	18
Section 3.12 Intent of the Parties with Respect to Project Agreement(s).....	19
Section 3.13 Definitive Project Submittal	21
Section 3.14 Definitive Project Agreement	21
ARTICLE 4 COMPENSATION	25
Section 4.1 Payment by Project Company for Preliminary Services.....	25
Section 4.2 Compensation to the Project Company for Preliminary Services	25
Section 4.3 General Compensation Provisions.....	25
ARTICLE 5 DEFAULTS AND REMEDIES.....	26
Section 5.1 Project Company Defaults	26
Section 5.2 RIPTA Defaults	27
ARTICLE 6 TERMINATION AND TERMINATION FEE	27
Section 6.1 RIPTA Termination and Off-Ramp Rights.....	27
Section 6.2 Project Company Termination Rights	28
Section 6.3 Obligations of the Project Company Upon Termination	29
Section 6.4 Survival of Certain Provisions Upon Termination	30
Section 6.5 No Acceptance, Waiver or Release	30
Section 6.6 No Special, Consequential or Punitive Damages	31
ARTICLE 7 INSURANCE AND INDEMNIFICATION	31
Section 7.1 Insurance	31
Section 7.2 Indemnification by the Project Company	32

Section 7.3	Indemnification Procedures	32
Section 7.4	Releases.....	33
ARTICLE 8 DELIVERY, OWNERSHIP AND USE OF DOCUMENTS		33
Section 8.1	Form of Documents	33
Section 8.2	Ownership and Use of Deliverable Material	34
Section 8.3	Protection of Proprietary Rights	34
Section 8.4	Copyright	34
Section 8.5	Infringements	34
Section 8.6	Intellectual Property.....	35
Section 8.7	Copies and Changes.....	35
ARTICLE 9 MISCELLANEOUS		36
Section 9.1	Effective Date and Term.....	36
Section 9.2	Relationship of the Parties	36
Section 9.3	Approvals Not to Relieve Project Company/No Waiver	36
Section 9.4	Entire Agreement; Amendments.....	36
Section 9.5	Audit; Books and Records	36
Section 9.6	Confidentiality	37
Section 9.7	Notices	37
Section 9.8	Assignment	38
Section 9.9	Further Actions	38
Section 9.10	Binding Effect.....	38
Section 9.11	Dispute Resolution Procedures	38
Section 9.12	Rights Cumulative	39
Section 9.13	Governing Law and Jurisdiction and Venue.....	39
Section 9.14	No Third-Party Beneficiaries	40
Section 9.15	Provisions Required by Law	40
Section 9.16	Severability	40
Section 9.17	Joint Effort	40
Section 9.18	Counterparts	40
APPENDICES		
APPENDIX 1	SCOPE OF BASIC SERVICES ATTACHMENT 1A- GEOTECHNICAL INVESTIGATIONS WORKSCOPE	
APPENDIX 2	WORK SCHEDULE	
APPENDIX 3	REQUIRED INSURANCE	
APPENDIX 4	DESCRIPTION OF THE PROJECT SITE	
APPENDIX 5	KEY PERSONNEL AND APPROVED SUBCONTRACTORS	
APPENDIX 6	PROJECT AGREEMENT TERM SHEET	

**RHODE ISLAND PUBLIC TRANSIT AUTHORITY
PRELIMINARY SERVICES AGREEMENT**

This **PRELIMINARY SERVICES AGREEMENT** (this “**Agreement**”) is entered into as of _____, 2023, by and between the Rhode Island Public Transit Authority (“**RIPTA**”), and [_____], a [_____] [**Note: to be completed to reflect nature of Project Company**] (the “**Project Company**” and, together with RIPTA, the “**Parties**”).

RECITALS

A. RIPTA has determined to develop the Project (as defined below) using a progressive design-build-finance-operate-maintain project delivery method; the Project is contemplated to comprise the Transit Center, Common Infrastructure and Transit-Oriented Development (as such terms are defined below);

B. On January 17, 2023. RIPTA issued a Request for Proposals (No. 23-22) for the Project (as amended, the “**RFP**”) and received proposals (“**Proposals**”) in response thereto; the Project Company was determined by RIPTA to have submitted the best value Proposal in response to the RFP;

C. The Parties desire to enter into this Agreement, pursuant to which, the Project Company will work collaboratively with RIPTA to develop the Project to an advanced design stage (including by providing project management, planning, permitting, design, site investigations, constructability review, cost estimating, public outreach, financial advisory services, securing any required private financing and other professional services as described in this Agreement);

D. The culmination of such Preliminary Services (as defined below) will be Project Company’s submission of the Definitive Project Submittal (as defined below); and

E. The Parties anticipate that they will, prior the submission of the Definitive Project Submittal, fully negotiate and finalize the terms of a Project Agreement with respect to the Infrastructure Facility, and a separate a Project Agreement with respect to the Transit-Oriented Development, and that such negotiations shall reflect and incorporate the work product produced under the Preliminary Services and Appendix 6 (Project Agreement Term Sheet)) hereto;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. For the purposes of this Agreement, the following words and terms shall have the respective meanings set forth in this Section.

“**Additional Services**” means those services that are in addition to the Basic Services, as described in Section 3.2(b) (Additional Services).

“**Affiliate**” means any person directly or indirectly controlling or controlled by another person, corporation or other entity under direct or indirect common control with such person, corporation or other entity.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement.

“**Agreement Date**” means the date this Agreement is fully executed and delivered by the Parties hereto.

“**Appendix**” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Agreement and identified as such in the Table of Contents.

“**Applicable Law**” means (i) any federal, State or local law, code, regulation, consent order or agreement; (ii) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Governmental Body having appropriate jurisdiction; (iii) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (iv) any Governmental Approval, in each case having the force of law and applicable from time to time to: (a) the siting, permitting, design, acquisition, construction, equipping, start-up, testing, operation, maintenance, repair, replacement or management of transit facilities, including the facilities contemplated by the Project; and (b) any law pertaining to health, safety, fire, environmental protection and building codes applicable to the Project.

“**Architect-of-Record**” means the Project Company’s licensed professional architect registered in the State, who shall have responsibility for the performance of the Project Company with respect to its design and engineering obligations under this Agreement.

“**Basic Services**” means the services required to be performed by the Project Company under this Agreement (other than Additional Services) as set forth in Appendix 1 (Scope of Basic Services).

“**Basic Services Fee**” has the meaning set forth in Section 4.2 (Compensation to the Project Company for Preliminary Services).

“**Basis of Design Report**” or “**BODR**” has the meaning set forth in Appendix 1 (Scope of Basic Services).

“**Business Day**” means a day other than a Saturday, Sunday or an official RIPTA holiday.

“**Capital Charge Component**” means the component of the Project Agreement Services Fee (under the Project Agreement relating to the Infrastructure Facilities) in any given year that is to be paid by RIPTA to the Project Company (pursuant to such Project Agreement) Parties, the Design-Build Price of the Infrastructure Facility, and/or the financing thereof, and any Holdback amount.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the Preliminary Services:

(i) the adoption, amendment, promulgation, issuance, modification, repeal or written change in any Applicable Law (other than a tax law), or the administrative or judicial interpretation thereof, on or after the Agreement Date, unless such Applicable Law was on or prior to the Agreement Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(ii) the order or judgment of any Governmental Body issued on or after the Agreement Date enforcing any Change in Law described in subsection (i) of this definition to the extent such order or judgment is not the result of intentional or negligent action, error or omission or lack of reasonable diligence of the Project Company; or

(iii) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Agreement Date in connection with the issuance, renewal or failure of issuance or renewal of, any Governmental Approval to the extent that such occurrence is not the result of intentional or negligent action, error or omission or a lack of reasonable diligence of the Project Company.

“Commercial Component” means, generally, the activities related to the TOD.

“Common Infrastructure” is broadly defined as the collection of Project elements that are shared by the Transit Center and TOD, including shared or common areas such as open space (whether public or private), shared services areas (e.g., storage spaces, waste handling facilities), shared utility / building system spaces and vertical / horizontal distribution chases, etc.

“Contract Standards” means the standards, terms, conditions methods, techniques and practices imposed or required by:

- (i) Applicable Law;
- (ii) Appendix 1 (Scope of Basic Services);
- (iii) any requirement imposed by the Required Insurance;
- (iv) the Standard of Care; or
- (v) the Minimum Design and Construction Requirements.

“Definitive Project Submittal” means the submittal required to be made by the Project Company regarding pricing, technical and commercial information pursuant to this Agreement as described in Section 3.13 (Definitive Project Submittal) and Task 6 (Definitive Project Submittal) of Appendix 1 (Scope of Basic Services).

“Deliverable Material” means all documents, reports, studies, design drawings, plans, estimates, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Project Company to RIPTA pursuant to this Agreement, including the Project Kick-Off & Visioning submittal package, Initial Due Diligence & Conceptual Options submittal package, Basis of Design Report or “BODR” submittal package, 30% submittal package, 60% submittal package, the Definitive Project submittal, the Technical Specifications, the Definitive Project Submittal, the Technical Deliverable Material, the Infrastructure Facility Operations Plan and the plan of finance, each as described in Appendix 1 (Scope of Basic Services).

“Design-Build” means a project delivery process in which both the design and construction of the Project are procured from a single entity.

“Design-Build Price” means the fixed lump sum price for the Design-Build Work that is established in the Definitive Project Submittal for the Infrastructure Facility and subsequently negotiated by the Parties.

“Design-Build Subcontractor” means the entity/team with whom the Project Company enters into a Subcontract to perform the Design-Build Work. There may be separate Design-Build Subcontractors for (i) the Infrastructure Facility, and (ii) the TOD.

“Design-Build Subcontractor Fee” means the Design-Build Subcontractor’s mark-up of [___]% for profit, risk and overhead on the Design-Build Work for the Infrastructure Facility (but not the TOD), as established in the Project Company’s Proposal and negotiated by the Parties prior to execution of the relevant Project Agreement, which will be reflected in the Definitive Project Submittal, and ultimately, the Project Agreement Services Fee pursuant to such Project Agreement.

“Design-Build Work” means the work relating to the design, permitting, site preparation, construction, commissioning and acceptance testing of the Project to be performed by the Project Company pursuant to the terms of the relevant Project Agreement.

“Facility” or **“Facilities”** mean collectively or individually, the (i) Transit Center, (ii) the Transit-Oriented-Development, and (iii) Common Infrastructure.

“Fees and Costs” means fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses incurred in connection with investigating, preparing for, defending or otherwise responding to any Legal Proceeding.

“Force Majeure Event” means naturally occurring events, including unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Project Site), landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics, pandemics (other than COVID-19) and other acts of God.

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Project.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Holdback” has the meaning set forth in Section 4.2 (Compensation to the Project Company for Preliminary Services).

“Infrastructure Facility” means, collectively, the Transit Center and Common Infrastructure.

“Infrastructure Facility Maintenance” means the customary collection of facility management, engineering, repairs and maintenance, renewals and replacement, and other activities necessary to ensure that the Infrastructure Facility provides an adequate level of service, excluding the activities expressly retained by RIPTA (RIPTA O&M).

“Legal Proceeding” means every claim, action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding related to this Agreement or the performances of the Parties hereunder, and all appeals therefrom.

“Loss-and-Expense” means, and is limited to, any and all loss, demand, liability, forfeiture, obligation, damage, settlement payment, fine, penalty, judgment, deposit, charge, tax, cost or expense relating to third-party claims, including all Fees and Costs.

“Minimum Design and Construction Requirements” means RIPTA’s minimum design and construction requirements for the Project, as set forth in [Attachment 1] (Minimum Design and Construction Requirements) of Appendix 1 (Scope of Basic Services).

“Operations Services” means all services relating to Infrastructure Facilities Maintenance (including all routine and major maintenance, repair and replacement) and all Property Management services, as further described in this Preliminary Services Agreement and Project Agreement Term Sheet.

“Operations Charge Component” means the charge to be included in the Project Agreement Services Fee in any given year for Operation Services with respect to the Infrastructure Facility.

“Operations Subcontractor” means the entity which will be primarily responsible to the Project Company for performing the Operation Services for the Infrastructure Facility.

“Operations Subcontractor Fee” means the Operations Subcontractor’s mark-up of ___% for profit, risk and overhead on the Operations Services, as established in the Project Company’s Proposal and negotiated by the Parties prior to execution of the applicable Project

Agreement, which will be reflected in the Definitive Project Submittal, and ultimately, the Project Agreement Services Fee pursuant to such Project Agreement.

“**Parties**” has the meaning set forth in the first paragraph of this Agreement.

“**Preliminary Services**” means, collectively, the Basic Services and any Additional Services under this Agreement.

“**Preliminary Services Fee**” has the meaning set forth in Section 4.2 (Compensation to the Project Company for Preliminary Services).

“**Project**” means the Project Improvements and the performance of the Project Agreement Services relating thereto.

“**Project Agreement**” means each agreement to be entered into between RIPTA and the Project Company following completion of the Preliminary Services and submission of the Definitive Project Submittal by the Project Company, for the performance of the relevant Project Agreement Services.

“**Project Agreement Date**” means, with respect to a Project Agreement, the date of execution of such Project Agreement by the Parties.

“**Project Agreement Services Fee**” means the fee to be paid by RIPTA to the Project Company (under the Project Agreement relating to the Infrastructure Facility) following operational readiness/final completion of the Infrastructure Facility, as compensation for the Project Agreement Services, and any Holdback amounts from the Preliminary Services Fee.

“**Project Agreement Term Sheet**” means the term sheet set forth in Appendix 6 (Project Agreement Term Sheet) hereto that sets forth the material terms which are anticipated to form the basis of the Project Agreement(s).

“**Project Company**” has the meaning set forth in the introductory paragraph to this Agreement.

“**Project Company Default**” has the meaning set forth in Section 5.1 (Project Company Default).

“**Project Company Project Manager**” has the meaning set forth in Section 3.8(a) (Project Company Representatives).

“**Project Company Project Representative**” has the meaning set forth in Section 3.8(a) (Project Company Representatives).

“**Project Improvements**” means all physical infrastructure comprising the Transit Center, Common Infrastructure and Transit-Oriented Development.

“Project Schedule” means the project schedule to be progressively prepared and updated by the Project Company and included in the Definitive Project Submittal pursuant to the requirements set forth in Appendix 1 (Scope of Basic Services).

“Project Services” means the services and work that will be required to be performed by the Project Company pursuant to a Project Agreement, including (i) the financing, design-completion, permitting completion, construction, commissioning, Infrastructure Facilities Maintenance and management services for the Infrastructure Facility, and (ii) the financing, design-completion, permitting, construction, commissioning, Property Maintenance and management of the TOD.

“Project Site” means one or more of the parcels of real property on which the above-ground and below-ground structures and equipment constituting the Facility are to be located.

“Property Management” means the collection of facility management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and other activities that are customary in the real estate industry for the TOD and Commercial Component of the Project.

“Proposal” means the proposal submitted by the Project Company in response to the RFP.

“Relief Event” means:

- (i) a Change in Law;
- (ii) a Force Majeure Event;
- (iii) required property access rights for the Project Company at the Project Site being denied;
- (iv) pre-existing Project Site conditions (including geotechnical, topographical, geological, seismic, hydrographical, hydrological, or physical conditions related to the Preliminary Services) that are not consistent with or reasonably inferable from (i) the information provided by or on behalf of RIPTA to the Project Company prior to the date hereof, or from publicly available information, (ii) the Project Company’s site visits prior to the date hereof, and that would not reasonably be expected to be found at a site at this location; and
- (v) action or inaction by RIPTA that is materially inconsistent with the Preliminary Services, including its failure to comply with the review periods set forth in Appendix 2 (Work Schedule);

that are not caused by the Project Company’s breach of this Agreement or willful or negligent act, error or omission, or failure to act in accordance with the Standard of Care, including the duty to mitigate and promptly notify RIPTA upon becoming aware of the occurrence of a Relief Event.

“Required Insurance” has the meaning set forth in Appendix 3 (Required Insurance).

“Return-on-Equity” the Project Company’s equity return of ____%, as set forth on Proposal Form 10 of the Project Company’s Proposal reflecting the blended equity internal rate of return, calculated on an after-tax basis at the level of the Project Company, assuming a ___%/___% debt/equity capital structure and a risk-free rate of ____% (in real terms). The relevant Return-on-Equity shall be reflected in the Definitive Project Submittal, and ultimately, the Project Services Fee pursuant to the relevant Project Agreement.

“RFP” means the Request for Proposals No. 23-22 for the Dorrance Street Transit Center Joint Development Project issued by RIPTA on January 17, 2023, as amended.

“RIPTA” has the meaning set forth in the first paragraph to this Agreement.

“RIPTA Board” means the Board of Directors of the Rhode Island Public Transit Authority.

“RIPTA Default” has the meaning set forth in Section 5.2 (RIPTA Default).

“RIPTA Indemnitee” has the meaning set forth in Section 7.2 (Indemnification by the Project Company).

“RIPTA O&M” generally means the collection of operations and maintenance (O&M) activities that will be conducted by RIPTA within the Transit Center, which generally comprises: transit operations; O&M of work areas, storage areas and rooms, and any electrical infrastructure relating to the transit vehicles; O&M of the Furniture, Fixtures, and Equipment (FF&E) of support spaces such as administration offices, break rooms, kitchens, restrooms, locker rooms, training facility, custodial support rooms, and other support spaces within the Transit Center; O&M of the communications and information technology systems necessary for RIPTA transit operations, administration, training, and other activities; O&M activities such as replacement parts inventory, custodial, waste management, pest control, building security, snow removal, uniforms, catering, and other such services that RIPTA customarily performs in its existing transit facilities. The definition of services retained by RIPTA will be further clarified during the Preliminary Services period.

“RIPTA Project Representative” has the meaning set forth in Section 3.9 (RIPTA Project Representative).

“Standard of Care” has the meaning set forth in Section 3.6(a) (Standard of Care).

“State” means the State of Rhode Island.

“Subcontract” means an agreement or purchase order by the Project Company, or a Subcontractor to the Project Company, as applicable.

“Subcontractor” means any person (other than employees of the Project Company) employed or engaged by the Project Company or any person directly or indirectly in privity with the Project Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the performance of the Preliminary Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“**Task**” means each of the tasks set forth in Appendix 1 (Scope of Basic Services) and identified as Tasks 1 through 6.

“**Technical Deliverable Material**” has the meaning set forth in Task 3 (BODR Package) of Appendix 1 (Scope of Basic Services).

“**Technical Specifications**” means the design, drawings and specifications for the Project, developed by the Project Company as part of the Preliminary Services, which will form the basis and minimum requirements of the remaining design work and the construction work to be performed pursuant to the Project Agreement.

“**Term**” means the period from the Agreement Date to the completion of the Preliminary Services, unless earlier terminated in accordance herewith.

“**Termination Fee**” means the termination fee paid by RIPTA to the Project Company in the event of a termination of this Agreement pursuant to Article 6.

“**Transit Center**” means the facility designed and constructed on the Project Site by the Project Company to provide bus berths, bus boarding and alighting areas, public waiting areas, RIPTA operational and administrative areas, and similar, with the primary purpose of facilitating bus operations.

“**Transit-Oriented Development**” or “**TOD**” means the Facility or Facilities designed and constructed by the Project Company on the Project Site to be integrated with the Transit Center in order to provide a combination of mixed-use spaces and housing, including both market-rate and affordable units, and their associated support spaces (e.g., lobbies, vertical and horizontal circulation, storage, open space, rooms for building systems, offices for property management and resident services, and resident amenities such as laundry and community room). Commercial uses may include, but are not limited to, neighborhood-serving retail.

“**Work Schedule**” means the schedule for the completion of each Task of the Preliminary Services, as set forth in Appendix 2 (Work Schedule).

Section 1.2 Contract Interpretation.

In this Agreement, unless the context otherwise requires:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any person includes such person’s successors and permitted assigns, to the extent that such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (c) words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(d) references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day. Each reference to time of day is a reference to Eastern Standard time or Eastern Daylight Saving time, as the case may be;

(e) reference to any agreement (including this Agreement), document, insurance policy or instrument means such agreement, document, insurance policy or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof including (in the case of agreements or instruments) by waiver or consent and references to all attachments thereto and instruments incorporated therein;

(f) any accounting term used and not otherwise defined in this Agreement has the meaning assigned to such term in accordance with generally accepted accounting principles consistently applied;

(g) “including” (and “include”) means (i) including without limiting the generality of any description preceding such term, and (ii), with respect to any description following such term, means “including, without limitation” and “including, but not limited to”;

(h) reference to Applicable Law means Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time;

(i) the words “shall” and “will” mean “must” and have equal force and effect;

(j) the words “herein,” “hereof,” or “hereunder” or similar words refer to this Agreement as a whole and not to any specific section or article;

(k) the table of contents and article, section, Exhibit, and Schedule titles and similar headings are inserted for convenience only and shall not be used for the purposes of construing or interpreting this Agreement;

(l) words and abbreviations not defined in this Agreement, which have well-known technical or design, engineering or construction industry meanings, are used in this Agreement in accordance with such recognized meanings; and

(m) all documentation to be supplied under this Agreement shall be provided in the English language and all dimensions shall be specified in the U.S. Customary System unless Owner authorizes the use of another system.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Project Company. The Project Company hereby makes the following representations and warranties to RIPTA, as of the date hereof (to induce RIPTA to enter into this Agreement);

(a) Existence, Good Standing, and Qualification. **[Note: to be updated to reflect the nature of the Project Company]** The Project Company is a [_____] duly organized, validly existing, and in good standing under the laws of [_____]. The Project Company is in good standing and qualified to do business in the State.

(b) Power and Authority/ Authorization and Execution. The Project Company has the power and authority to execute and deliver this Agreement, and to perform its obligations under this Agreement. The execution of this Agreement by the Project Company, and the performance of the Project Company's obligations under this Agreement, have been duly authorized by all necessary action of the Project Company. Each individual person executing this Agreement on behalf of the Project Company has been duly authorized to execute this Agreement on behalf of the Project Company.

(c) Enforceability. **[Note: to be updated to reflect the nature of the Project Company and any joint and several liabilities]** This Agreement constitutes a legal, valid, and binding obligation on the Project Company, enforceable against the Project Company 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.

(d) No Contravention. The execution of this Agreement by the Project Company, and the performance by the Project Company of its obligations under this Agreement does not conflict with, or result in a default or a violation of (i) [the Project Company's organizational documents] **[Note: to be updated to reflect the nature of the Project Company]**, (ii) any other agreement or instrument to which the Project Company is a party or which is binding on the Project Company or any of the Project Company's assets, (ii) any Applicable Law or judicial decree.

(e) No Litigation. There is no action, suit, proceeding, investigation, or litigation pending or, to the knowledge of the Project Company, threatened, that (i) could reasonably be expected to have a material adverse effect on the ability of the Project Company to perform its obligations under this Agreement; (ii) challenges or could adversely impact the Project Company's power and authority to execute this Agreement or to perform its obligations under this Agreement; (iii) challenges the validity or enforceability of this Agreement; or (iv) challenges the authority of the Project Company's representative(s) executing this Agreement.

(f) Prosecution of the Preliminary Services. The Project Company has the capacity (administrative, technical, financial and otherwise) to timely and orderly perform the Preliminary Services hereunder.

(g) Licenses, Skills, Expertise Etc. The Project Company and the major team members have (or will have by the time required) the required authority, qualifications, rights, franchises, licenses, certificates, privileges, professional ability, skills, and capacity to perform the Preliminary Services hereunder. The Project Company and the major team members have all Governmental Approvals that are required to begin the Preliminary Services hereunder. The Project Company has no reason to believe that any Governmental Approval required to be obtained by the Project Company will not be granted in due course and thereafter remain in effect so as to enable the Preliminary Services hereunder to proceed in accordance with this Agreement.

(h) Information Supplied by the Project Company. The information supplied and representations and warranties made by the Project Company in all submittals made to RIPTA with respect to the Project Company (and to the best of its knowledge after due inquiry, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.

(i) Conflicts of Interest. Neither the Project Company nor any of its directors, officers, members, partners, or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Preliminary Services hereunder. The Project Company further represents and warrants that, in the performance of this Agreement, no person having such interest or possible interest shall be employed by it.

(j) No Selling Agent Etc. No person or selling agency has been employed or trained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, or contingent fee. The Project Company further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the Parties.

ARTICLE 3

PERFORMANCE OF THE PRELIMINARY SERVICES

Section 3.1 Scope of Basic Services.

(a) Generally. The Project Company shall render and perform the Preliminary Services to and for RIPTA in accordance with Appendix 1 (Scope of Preliminary Services) and the terms and conditions of this Agreement. The Project Company's responsibility to perform the Preliminary Services shall include, without limitation, the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preliminary Services, and the performance of all services reasonably inferable from the Preliminary Services. The Project Company acknowledges and agrees that no Additional Services or additional compensation will be established as a result of the Project Company's inability to reasonably infer the services necessary to complete the Preliminary Services or submit a Definitive Project Submittal.

(b) Financial Advisor and Operator. In addition to the services set forth in Appendix 1 (Scope of Preliminary Services), the Project Company shall prepare and deliver to RIPTA, within thirty (30) calendar days following initiation of Task 1:

(i) a plan to competitively vet and onboard firms to serve as the Financial Advisor as defined in the RFP. The Project Company, in consultation with RIPTA, will select the Financial Advisor within sixty (60) calendar days following submission of such plan to RIPTA. The Parties acknowledge that the costs associated with the Financial Advisor are included within the Preliminary Services fee; and

(ii) a plan to competitively vet and onboard firms to serve as the Infrastructure Facilities Maintenance consultant to the Project Company, until such time that the Project

Company selects its Infrastructure Facilities Maintenance Provider (the “Operator”). The Project Company, in consultation with RIPTA, will select the Infrastructure Facilities Maintenance Consultant within sixty (60) calendar days following the submission of such plan to RIPTA. The Parties acknowledge that the costs associated with the Financial Advisor are included within the Preliminary Services fee.

(c) Order of Preliminary Services Tasks. The Project Company acknowledges that the Preliminary Services are segregated into discrete Tasks associated with the advancement of the Preliminary Services, and each Task is expected to be completed before proceeding to the next Task. Before proceeding with any Task, the Project Company shall confirm in writing, with the RIPTA Project Representative, that RIPTA agrees with the Project Company’s determination that any earlier Task has been completed and that RIPTA does not wish to suspend the Preliminary Services, as further described in Section 3.4(a) (Suspension and Delay). Until the Project Company has completed a Task, as determined by RIPTA Project Representative pursuant to this subsection, the Project Company shall not be entitled to any compensation for work performed for any subsequent Task.

Section 3.2 Changes to the Scope Of Services.

(a) Generally. RIPTA shall have the right to make changes to the scope of the Preliminary Services set forth in Appendix 1 (Scope of Preliminary Services) at any time and for any reason, in its sole and absolute discretion, by written notice to the Project Company, subject to the terms and conditions of this Section. Changes to the scope of the Preliminary Services may be made by RIPTA to account for a Relief Event or any other reason determined by RIPTA.

(b) Additional Services. The Project Company shall be entitled to a negotiated equitable adjustment to the Preliminary Services Fee and the Work Schedule in the event of any expansion of the scope of the Preliminary Services pursuant to this Section (the “**Additional Services**”). Any expansion of the scope of the Preliminary Services under this Section and the corresponding adjustment to the Preliminary Services Fee and the Work Schedule shall be reflected in a written amendment to this Agreement. The Project Company shall not be entitled to compensation for any Additional Services beyond the scope of the Preliminary Services unless, prior to the performance of any such Additional Services, the Project Company shall have received express written authorization from RIPTA to perform the Additional Services. In the absence of any change to the scope of the Preliminary Services memorialized in an amendment to this Agreement, the Project Company shall have no obligation to perform work outside the scope of the Preliminary Services.

(c) Additional Services Resulting from Delay. Extra costs resulting from delays caused solely by an expansion of the scope of Preliminary Services shall be deemed to be costs resulting from Additional Services, provided the Project Company demonstrates that the extra costs claimed (i) resulted from time or expenses actually incurred in performing the expanded scope of Preliminary Services, (ii) were incurred by Project Company as a direct result of such delay, and (iii) are documented to RIPTA’s satisfaction.

(d) Exclusions from Additional Services. Additional Services shall not include work or services necessary because of the Project Company’s errors, omissions or conflicts of any

type in the Project Company's plans, specifications, drawings and reports. All such services shall be performed at no additional cost to RIPTA, including any required corrections or revisions to reports, plans or specifications that are a result of any errors or omissions by the Project Company.

(e) Changes that Reduce the Scope of the Preliminary Services. RIPTA shall have the right to reduce the scope of the Preliminary Services at any time by written notice to the Project Company, provided, however, that RIPTA shall have no right to reduce the scope of any Preliminary Services that RIPTA has previously authorized the Project Company to commence and that the Project Company has already commenced. Such changes to the Preliminary Services shall be effective upon execution by the parties of an amendment hereto. Any reduction in the scope of the Preliminary Services shall result in an appropriate reduction in the Preliminary Services Fee, as well as adjustment to the Work Schedule, in each case as agreed by the Parties (acting reasonably), will be reflected in an amendment hereto.

Section 3.3 Work Schedule. The Work Schedule is set forth in Appendix 2 (Work Schedule). Time is of the essence in the performance of the Project Company's duties under this Agreement. The Project Company shall complete the Preliminary Services under this Agreement in strict accordance with the Work Schedule. The Project Company acknowledges and agrees that any delays in the Project Company's completion of its Preliminary Services under this Agreement or performance beyond the number of days agreed to herein for completion of a Task of the Preliminary Services, will cause injury and damage to RIPTA. The Work Schedule will include maximum review periods for review by RIPTA of design submissions by the Project Company. RIPTA shall have a maximum of [30] Business Days for review of each of the three design submissions (the Basis of Design Package Submittal, the 30% and 60% Package Submittals), and a maximum of [20] Business Days for review of other submissions.

Section 3.4 Changes to the Work Schedule.

(a) Suspension and Delay. RIPTA may elect to suspend the Project Company's performance of the Preliminary Services for any reason and, in such event, (i) the Work Schedule shall be adjusted for the period of suspension as appropriate to complete the required Preliminary Services and (ii) the total time expended by the Project Company up to the time of suspension will be charged against the total allowable time in the same manner as if no suspension had occurred. If RIPTA suspends the Project Company's efforts for more than 45 days other than due to a Project Company Default or delay by a Governmental Body, the Project Company shall have the right to request an equitable adjustment to the Preliminary Services Fee. If RIPTA suspends the Project Company's efforts for more than 120 days other than due to Project Company Default or delay by a Governmental Body, the Project Company shall have the right to initiate termination as provided in Section 6.2(b) (Termination for Extended Suspension or Delay).

(b) Relief Events.

(i) Should the Project Company's performance of a critical activity be materially delayed by a Relief Event, and the delay caused by the Relief Event could not have been avoided or mitigated by the Project Company by any reasonable method or action (consistent with the Standard of Care), the Project Company shall be entitled to an extension of the time in which

to complete such activity as well as any other activities that are adversely affected by the Relief Event.

(ii) The Project Company shall not be entitled to any increase in the Preliminary Services Fee as a result of a Relief Event, except when a Relief Event causes Project conditions to change such that the Project Company's activities completed at the time of the Relief Event must be revised. In such event, RIPTA and the Project Company shall negotiate reasonable additional schedule and compensation only for activities required by the Project Company to complete the changes attributable solely due to the Relief Event. The extension of time for a Relief Event shall be a period equal to the time lost by reason of the delay, provided the Project Company has taken all reasonable steps to proceed with the performance of the Agreement and has provided RIPTA with written notice of the delay and any corrective action taken to mitigate the delay. Relief Events shall not include delay by a Governmental Body to issue a Governmental Approval if such delays are the result of late, inadequate or incomplete filings or requests of the Project Company.

(iii) Within 30 days from the occurrence of any Relief Event, should the Project Company seek a modification to the Work Schedule, the Project Company shall give written notice thereof to RIPTA stating the reason for such extension and the actual time necessitated thereby or such claim shall be deemed to have been conclusively waived.

(c) Payment for Hindrance or Delay. Except as provided in subsection (a) (Suspension and Delay) and subsection (b) (Relief Events) of this Section, the Project Company shall not be entitled to any payment, compensation or damages in any manner whatsoever for any hindrance or delay from any cause in the commencement or progress of the Preliminary Services, whether such hindrance or delay be avoidable or unavoidable.

Section 3.5 Responsibility for Performance.

(a) Reliance. The Project Company acknowledges and agrees that RIPTA is entering into this Agreement in reliance on the Project Company's expertise with respect to the Preliminary Services.

(b) Responsibility for Employees, Agents and Subcontractors. All obligations of the Project Company under this Agreement shall be performed by employees, agents or Subcontractors (subject to the limitations set forth in Section 3.10 (Subcontractors)) of the Project Company who are experienced and skilled in their business or profession and in accordance with the standards of their business or profession and the requirements of this Agreement. The Project Company shall be fully responsible, in accordance with the terms and conditions of this Agreement, for all Preliminary Services performed by its employees, agents or Subcontractors to the Standard of Care.

(c) Completeness and Accuracy of Deliverable Material. Notwithstanding anything in this Agreement to the contrary, the Project Company shall be fully responsible for the completeness and accuracy of all Deliverable Material. In no event shall RIPTA be responsible for discovering deficiencies in any Deliverable Material. The Project Company shall correct any deficiencies in the Deliverable Material at its sole cost and expense and without any changes to the Preliminary Services Fee or Work Schedule. All design and engineering Deliverable Material

submitted for final acceptance and approval by RIPTA or for issuance of a Governmental Approval shall be dated, signed and sealed by the Architect-of-Record. Any partial submittal of Deliverable Material shall bear an appropriate notice that such submittal is a partial submittal only.

Section 3.6 Standard of Care.

(a) Standard of Care. In performing the Preliminary Services, the Project Company shall use the degree of skill, care and diligence applicable to project developers, design-builders, professional architects and engineers, constructors, financial advisors, and operation and maintenance experts, as applicable, having experience with mixed-use transit center projects similar in scope, function, schedule, budget, quality and complexity to the Project (regardless of location) and having responsibilities similar to those of the Project Company under this Agreement (the “**Standard of Care**”).

(b) Failure to Perform in Accordance with the Standard of Care. The Project Company shall be responsible for all actual and direct damages incurred by RIPTA as a result of the failure of the Project Company to properly perform, or cause to be performed, its obligations under this Agreement in accordance with the Standard of Care. The Project Company shall not be entitled to any compensation for Preliminary Services not performed in accordance with the Standard of Care.

Section 3.7 Compliance with Applicable Law. The Project Company shall (as required as part of the Preliminary Services) design the Project to meet all requirements of Applicable Law, and shall comply (and cause its Subcontractors to comply) with Applicable Law in the performance of the Preliminary Services. Without limiting the generality of the foregoing, the Project Company shall ensure that all persons performing Preliminary Services, including all employees, agents and Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body.

Section 3.8 Project Company Representatives and Personnel.

(a) Project Company Representatives. The Project Company has designated: (i) an individual who shall serve as the Project Company’s principal representative with respect to its obligations under this Agreement (the “**Project Company Project Representative**”), (ii) an individual who shall have primary responsibility for the performance of the Project Company with respect to its overall obligations under this Agreement (the “**Project Company Project Manager**”), (iii) a representative of the Design-Build Subcontractor who shall be responsible for that firm’s design-build related obligations, (iv) a representative of the Operations Subcontractor who shall be responsible for that firm’s operation and maintenance related obligations, and (v) an Architect-of-Record). Such individuals are identified in Appendix 5 (Key Personnel and Approved Subcontractors). The Project Company Project Manager shall attend all meetings concerning the performance of the Preliminary Services, and shall be responsible for providing executive or management expertise and oversight with respect to the performance of the Preliminary Services. Any replacement individual shall be subject to the advance written approval of RIPTA given in its sole discretion.

(b) Key Personnel. The Project Company acknowledges that the identity of the key management and supervisory personnel identified by the Project Company and its Subcontractors in its Proposal submitted in response to the RFP (including the Project Company Project Representative and the Project Company Project Manager) was a material factor in the selection of the Project Company to perform the Preliminary Services. Such personnel, their affiliations and anticipated roles in the performance of the Preliminary Services are set forth in Appendix 5 (Key Personnel and Approved Subcontractors). The Project Company shall utilize such personnel to perform the services indicated in Appendix 5 unless such personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects or in other capacities for the Project Company or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement or resignation. In the event of any such permissible unavailability, the Project Company shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any personnel change shall be proposed to RIPTA for its review, consideration and determination of compliance with this subsection with reasonable advance notice. The Project Company shall replace any individual at the request of RIPTA, after notice and a reasonable opportunity for corrective action, in the event that RIPTA determines in its discretion that an unworkable relationship has developed between RIPTA and the individual.

Section 3.9 RIPTA Project Representative. RIPTA has designated _____ to administer this Agreement and act as RIPTA’s representative in connection with the Preliminary Services (the “**RIPTA Project Representative**”). The RIPTA Project Representative shall have the authority to transmit instructions, receive information and interpret and define RIPTA’s policies and decisions pertinent to the performance of the Preliminary Services. The Project Company understands and agrees that RIPTA Project Representative has only limited authority with respect to the implementation of this Agreement, and cannot bind RIPTA with respect to matters within the purview of RIPTA Board of Directors. Within such limitations, the Project Company shall be entitled to rely on the written directions of the RIPTA Project Representative.

Section 3.10 Subcontractors.

(a) Generally. The Project Company may use Subcontractors for the performance of the Preliminary Services, subject to the restrictions set forth in this Section. The Project Company shall be fully responsible to RIPTA for the performance of all work under this Agreement performed by any Subcontractor.

(b) Approval Required. The Subcontractors identified in Appendix 5 (Key Personnel and Approved Subcontractors) are approved by RIPTA for the performance of the specific services identified in Appendix 5, subject to the rights of RIPTA under this Section. The Project Company shall retain such Subcontractors to perform such services, unless otherwise agreed to in writing by RIPTA. All other Subcontractors shall be subject to the written approval of RIPTA, which approval shall not be unreasonably withheld. The Project Company shall replace any Subcontractor at the request of RIPTA, after notice and a reasonable opportunity for corrective action, in the event that RIPTA determines, in its reasonable discretion, that an unworkable relationship has developed between RIPTA and the Subcontractor.

Section 3.11 Coordination with RIPTA.

(a) Meetings and Reports Generally. The Project Company shall hold periodic meetings and conferences with RIPTA, at least weekly, to verify and confirm that the Preliminary Services are being performed in a manner (i) consistent with RIPTA's current policies and standards, and (ii) that reflects RIPTA's requirements and preferences. The Project Company shall keep RIPTA regularly informed as to the progress of the Preliminary Services through the submittal of periodic reports in accordance with the requirements set forth in this Section and Appendix 1 (Scope of Basic Services).

(b) Monthly Project Reports. The Project Company shall provide RIPTA with monthly written reports, which shall:

(i) address work performed during the past month, percentage of work completion and compliance with the Work Schedule;

(ii) describe Project issues, problems or concerns that RIPTA should be made aware of and how the Project Company proposes to address them;

(iii) provide an update of the work planned for the next three months (including a list of necessary RIPTA actions and dates for actions in order to maintain the Project Company's Work Schedule);

(iv) present project budget information and indicate amounts incurred by Task by the Project Company for the past month and cumulatively to date, as further described in Section 4.3(c) (Monthly Statements);

(v) for conditions or issues that the Project Company believes may create a requirement for additional work outside the Preliminary Services, provide information to RIPTA so that the Parties may discuss them and make a determination as to whether or not Additional Services are to be provided;

(vi) include a section on work progress on the design and list any concerns, actions, changes, and reviews and approvals from RIPTA that the Project Company requires;

(vii) indicate any agency or utility requirements and issues that RIPTA should be aware of, and request if there are RIPTA requirements for interacting with outside agencies and utilities or other groups; and

(viii) address any other matter set forth in Section 1.7 (Schedule Management) of Appendix 1 (Scope of Basic Services).

(c) Site Information Etc.

(i) RIPTA shall make available for the Project Company's use in the performance of the Preliminary Services all data in RIPTA's possession relative to the Project Site, if any. All such RIPTA-provided information is provided to the Project Company for the sole

purpose of the Project Company's convenience and for use in relation to the performance of the Preliminary Services, may not be relied upon by the Project Company and must be verified by the Project Company as provided in subsection (d) of this Section if it is relied upon by the Project Company in any manner. The Project Company shall access all publicly available information with respect to the Project Site. In accordance with Task 2 in Appendix 1 (Scope of Basic Services), the Project Company shall (among other things) undertake a Phase 1 Environmental Site Assessment in accordance with ASTM E1527-13.

(ii) The Project Company shall be responsible for obtaining and verifying all publicly available Project Site information, and for performing the services required in Appendix 1 (Scope of Basic Services), in order to properly design the Project Improvements so that it performs in accordance with Applicable Law, and so that the Project Improvements are designed in accordance with Applicable Law and all applicable industry codes and standards.

(iii) Nothing in this Section 3.11(c) shall impact the rights of the Project Company with respect to a Project Site-related Relief Event.

(iv) The Project Site shall be acquired by RIPTA prior to the execution of the Infrastructure Facility Project Agreement.

(d) Revisions to Drawings and Specifications. Notwithstanding anything in this Agreement to the contrary, the Project Company shall, at no additional expense to RIPTA, provide reasonable minor revisions to any and all drawings and specifications provided to RIPTA hereunder, whether or not previously reviewed and accepted by RIPTA, as may be required to satisfy the Preliminary Services established by this Agreement. It is agreed and understood that the scope of each of the Tasks in Appendix 1 (Scope of Basic Services) may require some reasonable minor revisions to drawings and specifications provided to RIPTA, as the scope of the Project is refined, and that such reasonable minor revisions are included within the existing Basic Services under this Agreement. The Project Company shall make, without additional expense to RIPTA, such reasonable minor revisions or corrections to the Deliverable Material as may be required.

Section 3.12 Intent of the Parties with Respect to Project Agreement(s).

(a) Purpose of this Agreement. The primary purpose of RIPTA in entering into this Agreement is to develop the design, operations and maintenance plans, financing plan and other aspects of the proposed Project, on a collaborative basis with the Project Company, to a level sufficient to allow the Parties to establish and confirm all information, terms and conditions necessary for the Parties to complete negotiate, finalize and execute one or more Project Agreements (based on the term sheet set forth as Appendix 6 (Project Agreement Term Sheet)) providing for the actual consummation of the Project. Such information, terms and conditions shall be developed through the performance of the Basic Services by the Project Company, in conjunction with input from RIPTA, and shall include, but not be limited to, the following:

(i) the Project Schedule for completing the Project Improvements, including the scheduled acceptance date on which the Project is expected to be operational;

(ii) the Technical Specifications of the Project Improvements;

- (iii) the acceptance standards for the Project Improvements;
- (iv) the operations period performance guarantees for the Project;
- (v) the required Governmental Approvals for the Project (including Governmental Approval application submittal dates and assumed Governmental approval issuance dates);
- (vi) a draft maintenance plan for the Infrastructure Facility, including a major maintenance, repair and replacement plan;
- (vii) a final plan (or plans) of finance for the Project;
- (viii) the annual Project Agreement Services Fee for the Infrastructure Facility (and the components thereof, including the Capital Charge Component (based upon a committed financing) and Operations Charge Component, less any revenue off-set from the TOD) for each year of the Project Agreement;
- (ix) the approach to the allocation of the capital costs of the Common Infrastructure and the financing thereof; and
- (x) all other information necessary to finalize any Project Agreement.

(b) Cost of Negotiations and Committed Private Financing. RIPTA shall compensate the Project Company in the manner set forth in Article 4 (Compensation) for the performance of the Tasks constituting the Basic Services. The Basic Services do not include (and the Preliminary Services Fee does not include) negotiating the Project Agreement or the costs and expenses of obtaining private financing. The Project Company shall bear all of its own costs and expenses of negotiating any Project Agreement and securing committed financing, whether concurrently with or upon completion of the performance of the Basic Services. Such costs may be included within the Capital Charge Component of the Project Agreement Services Fee, but shall NOT be compensated under this Agreement.

(c) Assumption of Risk of Design Liability Under the Project Agreements. The Project Company acknowledges and agrees that under a Project Agreement, if and when executed by the Parties, the Project Company will have the sole and exclusive responsibility and liability for the design, construction and performance of the Project Improvements. Accordingly, the Project Company shall have the right and the responsibility to perform the Preliminary Services under this Agreement in a manner that would permit a Design-Build contractor, acting reasonably and having the experience and qualifications required to successfully undertake the design and construction of a project similar in scale and complexity to the Project, to assume such responsibility and liability. In particular, the Project Company shall not propose or agree to any element of the Minimum Design and Construction Requirements, Technical Specifications or Technical Deliverable Material or other work product to be incorporated in the relevant Project Agreement that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

(d) Assumption of Risk of Differing Site Conditions. The Project Company acknowledges and agrees that under a Project Agreement, if and when executed by the Parties, the Project Company will have the exclusive responsibility and liability for any physical conditions or subsurface conditions at the Project Site. Accordingly, the Project Company is being compensated hereunder for performing, as part of the Basic Services, a comprehensive review of the Project Site in accordance with Task 2 (Initial Due Diligence and Conceptual Options Report) as set forth in Appendix 1 (Scope of Basic Services), and the Project Company acknowledges and agrees that such Basic Services will be performed by the Project Company with a view towards assuming the liability for such risks, and that the Project Company shall assume all such risks if and when the Project Agreement is executed by the Parties in accordance with this Section.

Section 3.13 Definitive Project Submittal.

(a) Basic Services and Definitive Project Submittal. As part of the Basic Services, the Project Company is obligated to develop the Project design, plan of finance, and Operations Plan to a level sufficient to make the Definitive Project Submittal, as further described in Task 6 (Definitive Project Submittal) of Appendix 1 (Scope of Basic Services), and obtain committed private financing to the extent required for the Project. The Definitive Project Submittal shall include and be based upon the Technical Specifications and other Technical Deliverable Material, the Minimum Design and Construction Requirements, acceptance standards, performance guarantees, Operations Plan, plan of finance and all other information, analysis, findings and reports developed by the Project Company during the performance of the Preliminary Services.

(b) Definitive Project Submittal Pricing. The proposed Capital Charge Component and proposed Operations Charge Component included in the Definitive Project Submittal for the Infrastructure Facility and the other elements of the Definitive Project Submittal shall be based upon the risk allocation established by a Project Agreement.

(c) Preliminary Services Fee, Design-Build Subcontractor Fee, Return-on-Equity and Operations Subcontractor Fee. The Parties acknowledge and agree that with respect to the development of the Capital Charge Component and the Operations Charge Component, the Preliminary Services Fee, Design-Build Subcontractor Fee, Return-on-Equity and Operations Subcontractor Fee were proposed by the Project Company as part of the Proposal and negotiated by the Parties prior to the Agreement Date, shall be incorporated into the Definitive Project Submittal as finalized prior to the Agreement Date, and shall not be increased through Project Agreement negotiations.

(d) Formal Offer. The Definitive Project Submittal shall constitute a formal offer by the Project Company to RIPTA, with a validity period of not less than one hundred and eighty (180) days. Such validity period may only be extended with the written consent of the Project Company. Such Definitive Project Submittal may not (absent the written consent of RIPTA) be withdrawn or modified by the Project Company during such validity period.

Section 3.14 Definitive Project Agreements.

(a) Negotiation and Execution of Project Agreements.

(i) It is the intention of RIPTA to distribute a draft of two (2) Project Agreements to the Project Company in advance of the delivery of the Project Company's Definitive Project Submittal. The Parties contemplate that there will be a Project Agreement with respect to the Infrastructure Facility and a separate a Project Agreement with respect to the Transit-Oriented Development. It is anticipated that the Parties will fully negotiate and finalize the terms of each Project Agreement (subject to agreement on final pricing) prior the submission of the Definitive Project Submittal. Such negotiations shall reflect and incorporate the work product produced under the Preliminary Services (including the Definitive Project Submittal) and Appendix 6 (Project Agreement Term Sheet)) hereto.

(ii) The Parties acknowledge and agree that a Project Agreement shall not be effective except upon approval by RIPTA Board of Directors and due execution and delivery by each of RIPTA and the Project Company.

(b) Capital Charge Component and Operations Charge Component Establishment Principles. Each party acknowledges that the proposed Capital Charge Component and the Operations Charge Component of the annual Project Agreement Services Fee to be included in the Definitive Project Submittal (and to be reflected in the relevant Project Agreement) must take into account the following:

(i) Capital Charge Component. The reasonably estimated costs of completing the Design-Build Work for the Infrastructure Facility, including achieving operational readiness/final completion in accordance with the terms of such Project Agreement, based in part on the proposed Design-Build Subcontractor Fee, the requirements set forth in Appendix 1 (Scope of Basic Services) with respect to the development of such estimated costs, and the reasonably assumed levels of inflation in the cost of commodities, materials, equipment, labor and services. The Capital Charge shall also be based upon any withheld Preliminary Services Fee amounts, the Design-Build Work for the Infrastructure Facility, and the financing associated therewith. Considerations of risk shall be taken into account separately, pursuant to item (4) below;

(ii) Operations Charge Component. The reasonably estimated cost of performing the Infrastructure Facilities Maintenance in accordance with the terms of the draft Project Agreement, taking into consideration the proposed Operations Subcontractor Fee. The Operations Charge Component will escalate in accordance with an agreed upon index or basket of indices from the date of the execution of the Project Agreement and will be reduced for any payments or revenue sharing deriving from the TOD. Considerations of risk shall be taken into account, pursuant to item (4) below;

(iii) Contingency Considerations. An amount reasonably attributable to indeterminable costs that, considered individually and valued in the aggregate based on agreed-upon probability-of-occurrence models adapted specifically to the Project, may be incurred should the risks assumed by the Project Company in performing the Project Services occur. Such costs shall be the basis of establishing the Design-Build Subcontractor contingency and the Operations Subcontractor contingency in the development of the Capital Charge Component and the Operations Charge Component. The risks assumed by the Project Company shall be identified in the risk register prepared as part of the Preliminary Services, and include:

(1) the risks identified as excluded from the definitions of “Project Agreement Relief Events” as such term is to be defined in the relevant Project Agreement;

(2) the risk of Subcontractor delay or non-performance;

(3) changes in the scope or cost of Design-Build Work that may occur as the design is advanced from the level set forth in the Technical Specifications to a fully complete level;

(4) the risk that inflation in the cost of commodities, materials, equipment, labor and services necessary for the completion of the Design-Build Work will exceed the levels assumed by the Parties in establishing the Project Agreement Services Fee under item (1) above;

(5) the risk that it may be necessary to incur additional capital and operating expenses in connection with and following commissioning and performance of the acceptance tests in order to meet the acceptance standards and achieve operational readiness/final completion;

(6) any other risk specifically referred to herein as a risk to be borne by the Project Company in performing the Design-Build Work; and

(7) the risk that the costs to maintain, repair and replace the Infrastructure Facility following substantial completion may be greater than assumed by the Project Company.

(iv) Project Agreement Relief Events. As costs associated with Project Agreement Relief Events (as such concept will be defined in the applicable Project Agreement) are separately compensable, no consideration shall be given to any potential Project Agreement Relief Event costs or expense in negotiating and establishing the annual Project Agreement Services Fee.

(c) Obligations of the Project Company Relating to a Project Agreement. In connection with a potential Project Agreement, the Project Company shall be obligated (i) to make a complete bona-fide Definitive Project Submittal in accordance with this Section and Section 3.13 (Definitive Project Submittal), and (ii) to negotiate in good faith to finalize such Project Agreement (based on the draft Project Agreement to be provided by RIPTA), if and to the extent RIPTA elects (pursuant to subsection (e) (No Obligation of RIPTA to Enter into a Project Agreement) of this Section) to enter into and continue such negotiations.

(d) Non-Compliant Definitive Project Submittal. In the event RIPTA believes that the Definitive Project Submittal does not comply with the requirements of this Agreement, RIPTA shall provide written notice to the Project Company of any additions, corrections or revisions required to achieve such compliance. The Project Company, at its cost and expense, and without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of the Project Company to furnish the Preliminary Services and provide the Definitive Project Submittal in accordance with the

Contract Standards shall be a material breach of this Agreement. The inability of the Parties, acting reasonably, to agree on the Project Agreement Services Fee or other cost or price aspect of the Project will not in and of itself constitute a breach of this Agreement by either Party.

(e) No Obligation of RIPTA to Enter into any Project Agreement.

Notwithstanding any other provision of this Agreement to the Contrary (including pursuant to subsection (a) (Negotiation and Execution of the Project Agreement) of this Section), **RIPTA has no obligation whatsoever to negotiate with the Project Company to enter into any Project Agreement, nor to enter into or execute any Project Agreement. RIPTA, in its discretion, may elect not to commence or continue negotiations, and not to enter into and execute a Project Agreement, for any reason and any time. The Project Company acknowledges and agrees that no failure by RIPTA to negotiate, or to enter into or execute, any Project Agreement shall entitle the Project Company to make any claim for damages or compensation (other than the Termination Fee, as further described in Section 4.2 (Compensation to the Project Company for Preliminary Services)) as a result of any such failure, and all such claims are hereby waived and released by the Project Company.** The Project Company acknowledges and agrees that neither the intent of the Parties to negotiate and enter into and execute the Project Agreement, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect RIPTA's right to terminate this Agreement for its convenience at any time as provided in Section 6.1 (RIPTA Convenience Termination Rights). Without limiting the foregoing, RIPTA may exercise its rights under Section 6.1(a) (Termination for Convenience), and Section 6.1(c) (RIPTA Off-Ramp Right) in its sole and absolute discretion, and it shall not constitute bad faith for RIPTA, or a breach by RIPTA, to exercise such rights.

(f) Elective Continuance of the Project by the Parties on Other Bases.

If a Project Agreement is not entered into by the Parties, RIPTA may request from the Project Company's design Subcontractor or Design-Build Subcontractor a bona fide proposal to provide professional engineering and other services necessary to advance the design of the Project Improvements to a fully complete level so that the Project Improvements may be procured and constructed outside of the RFP procurement. The Project Company shall not restrict or limit (by contract or otherwise) any Subcontractor from negotiating in good faith to enter into a separate agreement with RIPTA to provide services.

(g) Elective Continuance of the Project by RIPTA with Other Contractors;

Project Documents. RIPTA shall have the right at any time in its discretion to proceed to develop and implement the Project (or a variation of the Project, or any element thereof) with other contractors and service providers, whether during the performance of the Preliminary Services, upon termination of this Agreement, or upon any failure of the Parties to execute a Project Agreement. RIPTA shall have the further right in connection therewith, and with any RIPTA self-performed activities with respect to the Project, based on its ownership of the Deliverable Material as provided in 8.2 (Ownership and Use of Deliverable Material), to use any Deliverable Material in any manner it chooses to complete the design and construction of the Project Improvements. In such event, the Project Company shall be liable for the Deliverable Material solely to the extent of errors or omissions in the Deliverable Material, as determined based on (i) the developmental stage of the Deliverable Material at the time of transfer to RIPTA, and (ii) the Standard of Care. [and subject to a liability cap based upon the dollar amount of professional liability insurance coverage]. This limitation as to the Project Company's liability for the Deliverable Material is applicable only

to the extent RIPTA determines not to enter into the Project Agreement, or otherwise terminates this Agreement, and is intended to recognize RIPTA's investment in the Deliverable Material and to provide RIPTA with a meaningful alternative for the design and construction of the Project in such circumstances, while recognizing that the Project Company will not have control over the use of the Deliverable Material in such circumstances. The Project Company acknowledges and agrees that such limitation will have no applicability if the Parties enter into a Project Agreement. In addition, upon the termination of this Agreement, and at the request of RIPTA, the Project Company will assign the Subcontract(s) with the designer/ Architect-of-Record (relating to the performance of the relevant Preliminary Services) to RIPTA.

ARTICLE 4

COMPENSATION

Section 4.1 Payment by Project Company for Preliminary Services. The Project Company shall incur and pay for the cost and expenses of performing all Preliminary Services, and shall be compensated for such Preliminary Services only to the extent (and in accordance with) Section 4.2 (Compensation to the Project Company for Preliminary Services) and Article 6.

Section 4.2 Compensation to the Project Company for Preliminary Services.

(a) The Project Company shall be entitled (subject to the terms of this Agreement) to (i) a Basic Services fee in the amount of \$[_____] (the “**Basic Services Fee**”) in consideration for its performance in full of the Basic Services, and (ii) a fee for the performance of any Additional Services (calculated in accordance with Section 3.2 above (the aggregate of such Basic Services Fee and Additional Services fee being the “**Preliminary Services Fee**”).

(b) The Preliminary Services Fee shall (subject to the terms of this Agreement) be payable to the Project Company as follows:

(i) eighty-five percent (85%) shall be paid following completion in full of relevant Task, as demonstrated to RIPTA's satisfaction (in accordance with Section 4.3 below); and

(ii) the remaining fifteen percent (15%) (the “**Holdback**”) shall (x) be paid by RIPTA as part of a Termination Fee in accordance with Section 6 below, or (y) if the Parties execute a Project Agreement, be included as part of the Capital Charge Component of the annual Project Agreement Services Fee (following operational readiness/final completion of the Infrastructure Facility).

Section 4.3 General Compensation Provisions.

(a) Changes to Preliminary Services Fee. The Preliminary Services Fee shall be subject to adjustment solely in accordance with Section 3.2 (Changes to the Scope of Services).

(b) No Reimbursable Costs. The Project Company shall not be entitled to any additional compensation for any meals, lodging, transportation, or other incidental expenses. Consideration for such costs has been included in the Preliminary Services Fee.

(c) Monthly Statements. The Project Company shall provide RIPTA with a statement of the performance and cost of the Preliminary Services on a monthly basis, stating the portion of the Preliminary Services Fee earned with respect to each Task (net of the 15% Holdback described in Section 4.2 above). The statement shall be in a form acceptable to RIPTA and shall indicate the percent of each Task completed and contain evidence substantiating such level of completion. RIPTA's receipt of such monthly statements shall not constitute a waiver of any right of RIPTA to dispute such performance and/or cost. RIPTA shall have the right to review and dispute any monthly statements, and to request further supporting documentation and/or information from the Project Company.

(d) RIPTA's Termination Fee Payment Offset Right. In the event that a Termination Fee becomes payable pursuant to the terms of this Agreement, RIPTA may offset the Termination Fee otherwise payable to the Project Company by an amount equal to the sum of any credits, payments (including indemnification payments), reimbursements or liquidated damages due to RIPTA pursuant to this Agreement.

(e) Non-Compliant Preliminary Services. Nothing contained in this Agreement shall require RIPTA to pay for any unsatisfactory or duplicative work or for work that is not in compliance with the terms and conditions of this Agreement. Other than as set forth in Section 6.1 (RIPTA Termination Rights), RIPTA shall not be required to make any payments to the Project Company at any time the Project Company is in breach or default under this Agreement.

ARTICLE 5

DEFAULTS AND REMEDIES

Section 5.1 Project Company Defaults.

(a) Default by Project Company. The occurrence of any one or more of the following shall constitute a default by Project Company under this Agreement (a "**Project Company Default**"): [Note: the following are subject to revision depending on the nature of the Project Company (i.e. corporation, LLC, JV etc.)]

(i) the Project Company fails to observe or perform any material covenant, agreement, obligation, duty, or provision of this Agreement, including compliance with the Work Schedule, and such failure continues for thirty (30) Days;

(ii) any representation or warranty made by the Project Company in this Agreement or any certificate, schedule, report, instrument, or other document delivered to RIPTA under this Agreement or the RFP is false or materially misleading or inaccurate when made, or omits material information when made (except with respect to any financial projections made by the Project Company in any such certificate, schedule, report, instrument or other document);

(iii) the Project Company (i) becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due, or (ii) makes a general assignment for the benefit of its creditors;

(iv) the Project Company shall commence or consent to any case, proceeding or other action (i) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Project Company or of its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or (ii) seeking appointment of a receiver, trustee or similar official for the Project Company or for all or any part of the Project Company's property; and

(v) any case, proceeding or other action against the Project Company shall be commenced (i) seeking to have an order for relief entered against the Project Company as debtor, (ii) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Project Company or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (iii) seeking appointment of a receiver, trustee, or similar official for the Project Company or for all or any part of the Project Company's property.

(b) RIPTA's Remedies. Upon the occurrence of a Project Company Default, RIPTA may, without prejudice to any other right or remedy RIPTA may have under this Agreement or at law and/or in equity, (i) terminate this Agreement (in accordance with Article 6), (ii) finish the Preliminary Services by whatever method RIPTA may deem expedient, (iii) receive assignment of subcontracts and warranties as set forth in this Agreement, and (iv) apply the Holdback or withhold amounts due to the Project Company to make payments therefor.

Section 5.2 RIPTA Defaults.

(a) Default by RIPTA. It shall be a default by RIPTA under this Agreement (a "**RIPTA Default**") if RIPTA fails to make any payments to the Project Company under this Agreement when due, following (i) the Project Company's satisfaction of all submission and application requirements under this Agreement with respect to such payment, and (ii) the expiration of the period for payment provided for under this Agreement (and provided such payment is not subject to a good faith dispute), and such failure continues for thirty (30) Days after RIPTA's receipt of written notice thereof from the Project Company.

(b) Project Company's Remedies. Upon the occurrence of a RIPTA Default, the Project Company may, without prejudice to any other right or remedy the Project Company may have under this Agreement or at law and/or in equity, (i) suspend its performance of the Preliminary Services, or (ii) terminate this Agreement (in accordance with Article 6).

ARTICLE 6

TERMINATION AND TERMINATION FEE

Section 6.1 RIPTA Termination and Off-Ramp Rights.

(a) Termination for Convenience. RIPTA may terminate this Agreement at any time prior to the completion of the Preliminary Services, for any reason and without cause, by giving written notice to the Project Company of such termination and specifying the termination date. Upon such termination (i) all finished or unfinished documents and other Deliverable Material shall become the property of RIPTA (to the extent title had not previously passed to RIPTA), and (ii) the Project Company shall be paid a Termination Fee equal to the portion of the

Preliminary Services Fee corresponding to the individual Tasks (or portion thereof) completed at the time of such Termination, plus the amount of the Holdback to such date.

(b) Termination for Cause. If a Project Company Default has occurred and is continuing, RIPTA may terminate this Agreement by giving written notice to the Project Company. Upon such termination, (i) all finished or unfinished documents and other Deliverable Material shall become the property of RIPTA (to the extent title had not previously passed to RIPTA, [(ii) the Project Company shall be paid a Termination Fee equal to the portion of the Preliminary Services Fee corresponding to the individual Tasks (but not portions thereof) fully completed at the date of such termination, plus the amount of the Holdback to such date, subject to any deduction or set-off available to RIPTA under this Agreement and/or Applicable Law.] RIPTA shall have the right to pursue a cause of action for actual damages, and to exercise all other remedies, which are available to it under this Agreement and under Applicable Law.

(c) RIPTA Off-Ramp Right. RIPTA shall have the right to exercise an “off-ramp” at any time during the Terms of this Agreement (including after the completion of the Preliminary Services), in which event RIPTA (i) shall have no obligation to negotiate or enter into any Project Agreement, and (ii) the terms of Section 6.1(a) above shall apply.

(d) Limit on Payment upon Termination. The payment set forth in this Section 6.1 (RIPTA Termination Rights) shall (i) constitute the only payment to which the Project Company shall be entitled in the event of a termination or off-ramp set forth in this Section 6.1. In no event shall the Project Company be entitled to any compensation for termination expenses, ramp-down costs, loss of profit, or any other losses, costs or expenses associated with the termination of this Agreement under this Section 6.1, and (ii) in no event (when aggregated with all past payments of the Preliminary Services Fee hereunder) shall such payments exceed the Preliminary Services Fee.

Section 6.2 Project Company Termination Rights.

(a) Termination for Cause. If a RIPTA Default has occurred and is continuing, the Project Company may terminate this Agreement by giving written at least ten (10) Business Days’ notice to RIPTA. Any such termination shall have the same effect with respect to property rights and payment (including limitation on payment) as if RIPTA had terminated this Agreement for convenience under Section 6.1(a) (Termination for Convenience) above.

(b) Termination for Extended Suspension or Delay.

(i) In the event RIPTA exercises its right under Section 3.4(a) (Suspension and Delay) to suspend or delay the Preliminary Services (for reasons other than Project Company Default or regulatory delay), and as a result thereof performance of the Preliminary Services are suspended for a contiguous period exceeding one-hundred and twenty (120) days, the Project Company shall have the right (after negotiating in good faith with RIPTA as to appropriate relief to take account of continuing delays) to terminate this Agreement by giving at least ten (10) Business Days’ written notice to RIPTA, with the same effect as if RIPTA had terminated this Agreement for its convenience under Section 6.1(a) (Termination for Convenience).

(ii) Furthermore, if the Project Company completes the Preliminary Services in accordance with the terms of this Agreement (including delivery of the Definitive Project Submittal), and a Project Agreement is not executed within one-hundred and twenty (120) days of the final form being agreed by the Parties (unless an extension is agreed upon by the Parties), the Project Company shall have the right (after negotiating in good faith with RIPTA as to appropriate relief to take account of continuing delays) to terminate this Agreement by giving at least twenty (20) Business Days' written notice to RIPTA, with the same effect as if RIPTA had terminated this Agreement for its convenience under Section 6.1(a) (Termination for Convenience).

(c) Limit on Payment upon Termination. The payment set forth in this Section 6.2 (Project Company Termination Rights), shall (i) constitute the only payment to which the Project Company shall be entitled in the event of a termination or off-ramp set forth in this Section 6.2 (Project Company Termination Rights). In no event shall the Project Company be entitled to any compensation for termination expenses, ramp-down costs, loss of profit, or any other losses, costs or expenses associated with the termination of this Agreement under this Section 6.2, and (ii) in no event (when aggregated with all past payments of the Preliminary Services Fee hereunder) shall such payments exceed the Preliminary Services Fee.

Section 6.3 Obligations of the Project Company Upon Termination.

(a) Obligations of the Project Company Upon Termination. Upon a termination of the Project Company's right to perform this Agreement under Section 6.1 (RIPTA Termination Rights) or Section 6.2 (Project Company Termination Rights), or upon expiration of this Agreement, the Project Company shall, as applicable:

(i) unless a notice of termination otherwise directs, immediately discontinue the Preliminary Services and shall proceed to promptly cancel all existing orders and contracts with respect to the Preliminary Services;

(ii) within 30 days after receipt of any notice of termination submit to RIPTA an updated invoice showing in detail the Preliminary Services performed under this Agreement prior to the effective date of termination or suspension; provided, however, that RIPTA shall have the option to grant a written extension to the time period for submittal of such statement;

(iii) simultaneously with payment by RIPTA in accordance with Section 6.1 (RIPTA Termination Rights) or Section 6.2 (Project Company Termination Rights), as applicable, deliver to RIPTA all completed or partially completed designs, plans, specifications and other Deliverable Material prepared under this Agreement (along with such documents of transfer as RIPTA may reasonably request); and

(iv) at RIPTA's request, assign any Subcontracts to RIPTA, on terms and conditions acceptable to RIPTA.

(b) Failure of the Project Company to Comply. Failure of the Project Company to comply with this Section shall constitute a waiver by the Project Company of any and all rights or claims to collect monies that the Project Company may rightfully be entitled to for services performed under this Agreement (including under Section 6.1 and Section 6.2).

Section 6.4 Survival of Certain Provisions Upon Termination. Notwithstanding any other provision of this Agreement, the following provisions hereof shall survive the expiration or earlier termination of this Agreement:

- (a) all representations and warranties of the Project Company contained in Article 2 (Representations and Warranties);
- (b) Section 6.3(a) (Obligations of the Project Company Upon Termination);
- (c) all the rights of the Project Company to receive payment following a termination or off-ramp as set forth in Section 6.1 (RIPTA Termination and Off-Ramp Rights) or Section 6.2 (Project Company Termination Rights);
- (d) Section 6.6 (No Special, Consequential or Punitive Damages);
- (e) Section 7.1 (Insurance) and Appendix 3 (Required Insurance);
- (f) the Project Company's indemnity obligations in this Agreement pursuant to Section 7.2 (Indemnification by the Project Company);
- (g) Section 8.2 (Ownership and Use of Deliverable Material);
- (h) Section 8.3 (Protection of Proprietary Rights)
- (i) Section 8.4 (Copyright)
- (j) Section 8.5 (Infringements)
- (k) Section 8.6 (Intellectual Property)
- (l) Section 9.5 (Audit; Books and Records);
- (m) Section 9.6 (Confidentiality); and
- (n) all other provisions of this Agreement that so provide shall survive the termination of this Agreement.

No termination of this Agreement shall (i) limit, expand or otherwise affect the respective rights and obligations of the Parties hereto accrued prior to the date of such termination, or (ii) preclude RIPTA from impleading the Project Company in any Legal Proceeding originated by a third party as to any matter occurring during the Term.

Section 6.5 No Acceptance, Waiver or Release. Unless other provisions of this Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as acceptance by RIPTA of any Preliminary Services which are defective, deficient, improper, or otherwise not in compliance with this Agreement, as release by RIPTA of the Project Company from any responsibility, obligation, or liability under this Agreement, as an extension by RIPTA of the Work Schedule, as an estoppel against RIPTA, or as RIPTA's acceptance of any claim by the Project Company:

(a) Payment by RIPTA to the Project Company of all or any portion of the costs of the Preliminary Services;

(b) review or acceptance by RIPTA or the RIPTA Project Representative of any working drawings, submissions, designs, specifications, other documents, certifications, or Preliminary Services of the Project Company or any Subcontractor; or

(c) the failure of RIPTA, the RIPTA Project Representative or any other person to respond in writing to any notice or other communication of the Project Company; or any other exercise of rights or failure to exercise rights by RIPTA hereunder.

Section 6.6 No Special, Consequential or Punitive Damages. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material falsity or inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory, except for such damages that relate to misrepresentation, fraud, gross negligence or criminal conduct.

ARTICLE 7

INSURANCE AND INDEMNIFICATION

Section 7.1 Insurance.

(a) Required Insurance. At all times during the Term and thereafter as more fully set forth in Appendix 3 (Required Insurance), the Project Company shall obtain, maintain and comply with the terms and conditions of the Required Insurance pertaining to the Preliminary Services, and shall pay all premiums with respect thereto as the same become due and payable. Such insurances may be program, corporate, or project-specific placements.

(b) Subcontractors. The Project Company shall ensure that all Subcontractors secure and maintain all insurance coverage and other financial security as more fully set forth in Appendix 3 (Required Insurance) and as required by Applicable Law in connection with their presence and the performance of their duties concerning the Preliminary Services.

(c) Compliance with Insurer Requirements. The Project Company shall comply promptly with the requirements of all insurers pertaining to the Preliminary Services. The Project Company shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(d) Failure to Provide Insurance Coverage. The failure of the Project Company to obtain and maintain any Required Insurance pertaining to the Preliminary Services, or any denial of coverage by its insurance carriers, shall not relieve the Project Company of its liability for any losses intended to be insured thereby, be a satisfaction of any Project Company liability under this Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

Section 7.2 Indemnification by the Project Company.

(a) **Indemnity.** The Project Company shall indemnify, defend and hold harmless RIPTA, and its respective agents, directors, officers, attorneys, employees, representatives, independent contractors, insurers, assigns and successors (each, a “**RIPTA Indemnatee**”), from the time a claim is made, to the fullest extent permitted by Applicable Law, from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a RIPTA Indemnatee to third Parties (or otherwise) the extent arising from or in connection with (or to the extent alleged to arise from or in connection with) (i) any failure by the Project Company to perform its obligations under this Agreement, or (ii) the negligence or willful misconduct of the Project Company or any of its officers, directors, employees, agents, representatives or Subcontractors. The Project Company shall also indemnify, defend and hold harmless the RIPTA Indemnitees as and to the extent provided elsewhere in this Agreement. The Project Company’s indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Project Company which is intended to respond to such events. The Project Company shall not, however, be required to reimburse or indemnify any RIPTA Indemnatee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any RIPTA Indemnatee. These indemnification provisions shall extend to Loss-and-Expense for damage or injuries occurring after the termination of this Agreement relating to the performance of the Preliminary Services. These indemnification provisions are for the protection of the RIPTA Indemnitees only and shall not establish, of themselves, any liability to third Parties.

(b) **Notification.** A RIPTA Indemnatee shall promptly notify the Project Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Project Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. The Project Company and its Subcontractors shall notify RIPTA of any claim made against it for money or damages relating to any services performed under this Agreement.

Section 7.3 Indemnification Procedures.

(a) **Notice.** If a RIPTA Indemnatee receives any notice, demand, letter or other document concerning any claim for which it appears that the RIPTA Indemnatee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the RIPTA Indemnatee shall give notice in writing to the Project Company as soon as reasonably practicable.

(b) **Project Company Right to Dispute Claim.** If notice is given as provided in Section 9.7 (Notices), the Project Company shall pay the portion of the amount of the claim that the Project Company is alleged to be liable for or shall dispute the claim in the name of the RIPTA Indemnatee at the Project Company’s own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The RIPTA Indemnatee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(c) Conflicts of Interest. In defending any claim as described in subsection (b) of this Section in which there is a conflict of interest between the Project Company and the RIPTA Indemnatee, the RIPTA Indemnatee may appoint independent legal counsel in respect of such claim and, if it is determined that the RIPTA Indemnatee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the RIPTA Indemnatee in so doing will be included in the indemnity or compensation from the Project Company.

(d) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to subsection (b) of this Section:

(i) the Project Company shall keep the RIPTA Indemnatee fully informed and consult with it about material elements of the conduct of such defense;

(ii) the Project Company shall demonstrate to the RIPTA Indemnatee, at the reasonable request of the RIPTA Indemnatee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(iii) the Project Company shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of RIPTA and the other RIPTA Indemnitees, or otherwise having a direct effect upon RIPTA's continuing operations, shall (i) contain a full release of RIPTA and the other RIPTA Indemnitees, and (ii) be subject to the consent of RIPTA, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Project Company, RIPTA shall, at the sole cost and expense of the Project Company, cooperate with the Project Company and its counsel in contesting any claim which the Project Company elects to contest, including, without limitation, the making of any related counterclaim against the person asserting the claim or any cross-complaint against any person.

(e) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the intellectual property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that the replacement: (i) is performed without additional cost to RIPTA, and (ii) has at least equal quality performance capabilities when used in conjunction with the Project.

Section 7.4 Releases. The Project Company and its Subcontractors shall include the RIPTA in any release obtained by Project Company or its Subcontractors in connection with the Preliminary Services or this Agreement, and shall provide such release to RIPTA within 10 days following receipt.

ARTICLE 8

DELIVERY, OWNERSHIP AND USE OF DOCUMENTS

Section 8.1 Form of Documents. All Deliverable Material, including drawings and construction documents, shall be hard copy and as electronic files in a format specified by RIPTA, acting reasonably. All digital drawings provided to RIPTA must conform to RIPTA's CADD

standards, as in effect from time to time. All digital utility layouts must be ready to electronically integrate into RIPTA's utility mapping system.

Section 8.2 Ownership and Use of Deliverable Material. The Project Company acknowledges and agrees that, except as set forth in Section 8.6 (Intellectual Property), RIPTA shall own exclusively any and all Deliverable Material (in whatsoever form and character produced or maintained in accordance with, pursuant to, or as a result of this Agreement) upon RIPTA paying the Project Company the applicable Preliminary Services Fee, or, if applicable, the Termination Fee under Article 6. In the event RIPTA and Project Company enter into a Project Agreement, the Project Company shall not use any such Deliverable Material, whether prepared by the Project Company, or any Subcontractor, for marketing presentations, or any other promotional, professional, or industry purpose without prior written permission from RIPTA. RIPTA shall have the right, notwithstanding any termination of this Agreement, to use (or permit use of) and rely upon any Deliverable Material owned by RIPTA in connection with future work related to the Project (or any variation thereof) without further verification or authorization by (or additional compensation to) the Project Company, and the Project Company shall be responsible for the accuracy and correctness of such Deliverable Material, and all ideas or methods represented by such Deliverable Material, without additional compensation. RIPTA's use of any such Deliverable Material for any purpose other than in connection with the continued development, or implementation of the Project Improvements shall be at its own risk and the Project Company shall have no liability therefor.

Section 8.3 Protection of Proprietary Rights. The Project Company agrees and covenants to protect any and all proprietary rights of RIPTA in any material provided to the Project Company. Such protection of proprietary rights by the Project Company shall include, but not be limited to, the inclusion in any copy intended for publication a copyright mark reserving all rights to RIPTA in any such material provided by RIPTA to the Project Company. Additionally, any materials provided to the Project Company by RIPTA shall not be released to any third party without the written consent of RIPTA and shall be returned intact to RIPTA upon completion or termination of this Agreement. The provisions of this subsection shall not apply to material in the public domain on the Agreement Date or material that subsequently comes into the public domain by other than an unauthorized disclosure.

Section 8.4 Copyright. The Project Company hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to RIPTA, including all moral rights and, to the extent such assignment is deemed ineffective, grants a fully paid up license in such documents to RIPTA, as provided in Section 8.6. No reports, maps, documents or other copyrightable works produced in whole or in part by this Agreement shall be the subject of any application for copyright by the Project Company. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of RIPTA.

Section 8.5 Infringements. The Project Company shall, at its own expense, indemnify, defend and hold harmless RIPTA Indemnitees, in the manner provided in Section 7.2 (Indemnification by the Project Company), all suits or proceedings instituted against RIPTA, its officers, directors, agents and employees, to the extent based on any claim that the Deliverable Material, or any part thereof, or the process performed thereby constitutes the infringement of

either any patent or copyright or any trademark or trade secret protected by either federal or State law. If, in any such suit, a restraining order or temporary injunction is granted, the Project Company shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of any such restraining order or temporary injunction. If, in any such suit, the Deliverable Material or any part thereof or the process performed thereby is held to constitute an infringement and its use is permanently enjoined, the Project Company shall immediately make every reasonable effort to secure for RIPTA a license at the Project Company's expense authorizing the continued use of the alleged infringing portion of the Deliverable Material. If the Project Company is unable to secure the license within a reasonable time, the Project Company shall at its own expense and without impairing the performance requirements, either provide non-infringing replacements or modify the Deliverable Material to eliminate the infringements.

Section 8.6 Intellectual Property. For any intellectual property relating to the Deliverable Material that the Parties agree cannot be transferred to RIPTA, upon RIPTA paying the Project Company the applicable Preliminary Services Fee, or, if applicable, the termination Fee under Article 6, or in the event RIPTA and Project Company enter into a Project Agreement, the Project Company shall automatically be deemed to have granted a license to RIPTA (with respect to such intellectual property), on a non-exclusive, cost free, perpetual basis for use by RIPTA and any successor designer, builder or operator of the Project or any variation thereof (but, with respect to any successor designer, builder or operator, only in connection with the design, construction or operation of the Project or any variation thereof). Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. RIPTA shall (upon making the relevant payment) have an irrevocable, perpetual, royalty-free and unrestricted right to use, reuse, reproduce, publish, display, broadcast and distribute such intellectual property, and to prepare derivative and additional documents based on such intellectual property, for any RIPTA purpose, whether before or following the termination of this Agreement. Neither RIPTA nor the Project Company shall license, transfer or otherwise make available such intellectual property to any third-party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration. The use by RIPTA of any such intellectual property for purposes other than in connection with the Project shall be at RIPTA's own risk and the Project Company shall have no liability therefor. In particular, neither the Project Company nor any of its Subcontractors shall be liable in any manner for claims or causes of action asserted by RIPTA, or any third party, to the extent arising from or relating to RIPTA's preparation or use of derivative or additional documents based upon such intellectual property if such preparation or use was undertaken without the approval or involvement of the Project Company or its Subcontractors. The preceding sentence does not constitute a guaranty or representation that no third party would bring a claim against the Project Company, and further, such sentence is not intended to constitute an indemnity by RIPTA for any such claim.

Section 8.7 Copies and Changes. The Project Company may make copies of any and all items of Deliverable Materials for its files. The Project Company shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, other than its Subcontractors. RIPTA shall require that any such changes or other use shall be appropriately marked to reflect what was changed or modified. The Project Company shall endeavor to assure that Deliverable Material provided in electronic media form shall not have inaccuracies and anomalies including errors due to electronic translation, formatting or

interpretation. In the event of any inconsistency between the electronic media and hard copies provided by the Project Company, the hard copy shall govern.

ARTICLE 9

MISCELLANEOUS

Section 9.1 Effective Date and Term. This Agreement shall commence on the Agreement Date and shall remain in effect until the end of the Term. All rights, obligations and liabilities of the Parties hereto shall commence on the Agreement Date, subject to the terms and conditions hereof. At the end of the Term, all obligations of the Parties hereunder shall terminate, except as provided in Section 6.4 (Survival of Certain Provisions Upon Termination).

Section 9.2 Relationship of the Parties. The Project Company is an independent contractor of RIPTA and the relationship between the Parties shall be limited to performance of this Agreement in accordance with its terms. Neither Party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other Party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Agreement or the performance thereof. The Project Company may not act for or have any power or authority assume any obligation or responsibility on behalf of RIPTA.

Section 9.3 Approvals Not to Relieve Project Company/No Waiver. No review, approval, consent or failure to disapprove, inspect or failure to inspect, or comment on, any matter by or the submission of any drawing or document to, or acquiescence on the part of, RIPTA will relieve Project Company of any liability for any of its obligations under this Agreement or otherwise. No course of dealing or failure of RIPTA and/or Project Company to enforce strictly any term, right or condition of this Agreement may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement will operate as a waiver of any other term, right or condition.

Section 9.4 Entire Agreement; Amendments. This Agreement represents the entire agreement between RIPTA and Project Company with respect to the subject matter hereof, and shall supersede all prior negotiations, binding documents, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by RIPTA and Project Company.

Section 9.5 Audit; Books and Records.

(a) **Audit.** All payments whatsoever by RIPTA to the Project Company with respect to all Preliminary Services of the Project Company shall be subject to audit at any time by RIPTA. The Project Company will provide the evidence necessary to substantiate charges related to the Preliminary Services and allow RIPTA full access to the Project Company's books and records. The Project Company shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Project

Company and the Subcontractor. The Project Company shall also require all Subcontractors to include the requirements of this Section in any Subcontracts relating to the Project.

(b) Books and Records. The Project Company shall prepare and maintain proper, accurate and complete books and records regarding the Preliminary Services, and all other transactions related to the Preliminary Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Preliminary Services, any Subcontract or any operations or transactions in which RIPTA has or may have a financial or other material interest hereunder. The Project Company and its Subcontractors shall produce such books and records for inspection, audit and reproduction for all such purposes within three (3) Business Days after request by RIPTA. All financial records of the Project Company and its Subcontractors regarding the Preliminary Services shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Project Company and its Subcontractors shall maintain such books and records for at least seven years after termination of the Agreement, or such longer period during which any Legal Proceeding with respect to the Preliminary Services commenced within four years after the Agreement Date may be pending.

Section 9.6 Confidentiality.

(a) Confidential Nature of Information. The Project Company shall treat all nonpublic information obtained from RIPTA in the performance of this Agreement as confidential and proprietary to RIPTA (to the extent permitted by Applicable Law).

(b) Limitation on Use and Disclosure. The Project Company shall not use any information obtained as a consequence of the performance of the Preliminary Services for any purpose other than the performance of the Preliminary Services in accordance with this Agreement. The Project Company shall not disclose any nonpublic information obtained from RIPTA or obtained as a consequence of the performance of the Preliminary Services to any person other than its own employees, agents or Subcontractors who have a need for the information for the performance of work under this Agreement and such employees, agents or Subcontractors must agree to keep the information confidential.

Section 9.7 Notices.

(a) Procedure. All notices and other communications pertaining to this Agreement must be in writing, signed by a duly authorized representative of the Party giving such notice and will be deemed given when received by personal delivery, recognized express courier or facsimile (followed by recognized express courier) to the other Party at the address designated below, or to such different addresses as the Parties may from time-to-time designate in writing transmitted as set forth above. Any such notice/ communications shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt; provided that any delivery that is not during business hours (and in any event, at or before 5:00 pm local time in the place of receipt)

on a Business Day, shall be deemed to have been given upon the commencement of business hours on the next Business Day.

(b) RIPTA Notice Address. Notices required to be given to RIPTA shall be addressed as follows:

RIPTA
Purchasing Department
Room 217
705 Elmwood Avenue
Providence, RI 02907

with a copy to:

RIPTA
705 Elmwood Avenue
Providence, RI 02907
Attn: General Counsel

(c) Project Company Notice Address. Notices required to be given to the Project Company shall be addressed as follows:

[INSERT]

Section 9.8 Assignment. This Agreement may not be assigned by the Project Company without the prior written consent of RIPTA, which consent may be withheld at RIPTA's sole discretion. RIPTA may assign this Agreement to any agency, authority, commission, or similar administration of RIPTA in its discretion. RIPTA may otherwise assign this Agreement to any other party with the Project Company's prior written consent, which shall not be unreasonably withheld. Any permitted assignee must assume all obligations under this Agreement or otherwise agree to be subject to the terms of this Agreement, and if an event of default by the assigning Party has occurred and is continuing, either at the time of the request for consent or on the effective date of the proposed transfer, the assigning Party must either cure such default prior to the assignment, or, as an express condition of such transfer, the proposed transferee shall agree to cure all defaults promptly following the effective date of such transfer.

Section 9.9 Further Actions. RIPTA and the Project Company shall each take all such action as may be required to preserve the enforceability of this Agreement.

Section 9.10 Binding Effect. This Agreement shall inure to the benefit of RIPTA, the Project Company and their respective successors and permitted assigns and shall be binding upon RIPTA, the Project Company and their permitted successors and permitted assigns.

Section 9.11 Dispute Resolution Procedures.

(a) Informal Negotiations. Representatives of RIPTA and the Project Company with day-to-day involvement in the administration of this Agreement and the performance of the Preliminary Services shall initially and promptly enter into negotiations to attempt to address and

resolve any disputes that may arise concerning this Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The Parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the Parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Preliminary Services and this Agreement. At RIPTA's request, the Project Company shall involve senior representatives of any of its Subcontractors in such negotiations. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted.

(b) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party to commence judicial Legal Proceedings upon a breach of this Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

(c) Continued Performance. Notwithstanding any dispute that may arise between RIPTA and the Project Company with respect to the Project Company's performance or compensation or otherwise under this Agreement, the Project Company shall (unless instructed in writing to the contrary by RIPTA) continue to perform its responsibilities hereunder if RIPTA pays all undisputed amounts of compensation on a timely basis.

Section 9.12 Rights Cumulative. Except as otherwise expressly provided or limited in this Agreement, (a) rights and remedies available to RIPTA and/or the Project Company as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law and/or in equity, and (b) any specific right or remedy conferred upon or reserved to RIPTA and/or Project Company in any provision of this Agreement will not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

Section 9.13 Governing Law and Jurisdiction and Venue.

(a) This Agreement is governed by, and construed in accordance with, the laws of the State, without reference to the conflict of laws rules thereof.

(b) The Parties hereby agree that any Legal Proceeding related to this Agreement or to any rights or relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in the State or federal courts located in Providence, Rhode Island. Accordingly, each of the Parties hereby submits to the jurisdiction of such courts for purposes of all Legal Proceedings that may arise out of or relate to this Agreement or under any of the other documents entered into in connection therewith. Each of the Parties (a) irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may have or hereafter have to the personal jurisdiction of such court or the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum; (b) agrees, to the fullest extent permitted by law, not to raise any objection (other than in respect of subject matter jurisdiction) to the removal or transfer

to such courts of any such proceeding that is initially brought in any other court; and (c) agrees that it will not file any motion or assert any defense in any such proceeding that is inconsistent with the foregoing waivers and consent. **EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION HEREWITH.**

Section 9.14 No Third-Party Beneficiaries. The provisions of this Agreement are intended for the sole benefit of RIPTA and the Project Company and, except to the extent specifically identified herein, there are no third-party beneficiaries other than assignees contemplated by the terms herein.

Section 9.15 Provisions Required by Law. Any term or condition required to be contained in this Agreement as a matter of law which is not so contained herein is deemed to be incorporated in this Agreement as though originally set forth herein.

Section 9.16 Severability. If any provision of this Agreement, or the application thereof to any Person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction as provided herein, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable, shall not be affected thereby, and each and every remaining provision of this Agreement will be valid and binding to the fullest extent permitted by Applicable Law; provided, however, the Parties agree to negotiate in good faith and shall reform this Agreement to as closely as possible resemble the original intent and allocation of risks and benefits.

Section 9.17 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion thereof) is not to be construed more severely against one of the Parties than against the other.

Section 9.18 Counterparts. This Agreement may be executed in two (2) counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, RIPTA and the Project Company have caused this Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[PROJECT COMPANY]

**RHODE ISLAND PUBLIC TRANSIT
AUTHORITY**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____, 2023

Date: _____, 2023

Schedule 3

Project Agreement Term Sheet

**APPENDIX 6 TO PSA
PROJECT AGREEMENTS TERM SHEET**

Capitalized terms used in this Appendix and not defined herein have the meanings set forth in the RFP.

General	
Project Overview	<p>The “Project”, collectively, includes: (1) the Infrastructure Facility (being the Transit Center and Common Infrastructure) that meets the Minimum Design and Construction Requirements, and (2) integrated mix-use Transit-Oriented Development (the “TOD”).</p> <p>The Project Company will (i) plan, design, build, finance and provide life-cycle facilities maintenance for the Infrastructure Facility and (ii) plan, design, build, finance, manage and provide property management services for the TOD, pursuant to the terms and conditions of one or more Project Agreement(s).</p>
Project Agreement Parties	Rhode Island Public Transit Authority (the “ RIPTA ”) and the design-build-finance-operate-maintain contractor/JV (the “ Project Company ”).
Project Agreement(s)	There will be two Project Agreements (one covering the Infrastructure Facility and the other the TOD). It is anticipated that the Parties will fully negotiate and finalize the terms of the Project Agreements (subject to agreement on final pricing and commercial terms) prior to, or concurrently with, the submission of the Definitive Project Submittal. Such negotiations shall reflect and incorporate the work product produced under the Preliminary Services Agreement (including the Definitive Project Submittal) and this Term Sheet. It is contemplated that all Project Agreements will be executed on the same date.
Terms	<p>The term for the services regarding the Infrastructure Facility (Transit Center and Common Infrastructure) will be 30 years after the date of beneficial occupation/substantial completion.</p> <p>The term of the ground lease for the TOD will be 75 years.</p>
Project Ownership and Ground Lease	<p>The Transit Center Infrastructure Facility (Transit Center and Common Infrastructure), shall be owned by RIPTA.</p> <p>The Project Company will be granted a ground lease with respect to the TOD location.</p>

Project Company Financing	
Private Financing	<p>The Project Company shall be responsible for obtaining and repaying all private financing necessary for the Project at its own cost and risk and without recourse to RIPTA. Separate financing solutions will likely be developed for the Infrastructure Facility and the TOD.</p> <p>All debt or other obligations issued or incurred by the Project Company in connection with any Project Agreement shall be issued or incurred only in the name of the Project Company (or through a conduit financing entity). RIPTA has no obligation to pay debt service on any such debt or other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company (or a conduit financing entity used by the Project Company).</p> <p>The amortization term of any Infrastructure Facility debt financing or refinancing undertaken by the Project Company shall not exceed the Term of the Infrastructure Facility Project Agreement, unless otherwise agreed to by RIPTA in its discretion.</p>
RIPTA’s Role in Developing Financing Structures	<p>The financing structure for the Infrastructure Facility will be developed collaboratively during the Preliminary Services period. RIPTA may, at its discretion, reject or alter any proposed Project Company financing structure for the Infrastructure Facility prior to executing the relevant Project Agreement.</p> <p>The financing structure for the Infrastructure Facility will be developed by the Project Company prior to executing the relevant Project Agreement. The financing structure for the TOD shall not be subject to RIPTA approval. However, it will be reviewed by RIPTA prior to executing any Project Agreement to ensure the commercial viability of the Project.</p>
Concurrent Commercial Close and Financial Close	<p>Due to the nature of the Preliminary Services, it is expected that commercial close and financial close, with respect to the Infrastructure Facility Project Agreement and TOD Project Agreement, will occur concurrently. Either or both Project Agreements may, however, contain provisions to allow for a financial close occurring after commercial close within specified limitations.</p>
Refinancing	<p>The Project Company will have the right, with RIPTA’s prior written consent, to refinance Project debt for the Infrastructure Facility and/or TOD.</p> <p>RIPTA will share in any refinancing gains with respect to the Infrastructure Facility.</p>

	Potential sharing of refinancing gains with respect to the TOD will be discussed during the PSA term.
Lender Rights	The Infrastructure Facility Project Agreement and related agreements will include appropriate lender rights provisions with regard to the Infrastructure Facility, including the right of the lenders to receive notice of Project Company default and the opportunity to step in and cure a Project Company default. These provisions shall be limited to the Infrastructure Facility only. In no instance will RIPTA be party to a direct agreement or other lender’s rights arrangements with regard to the any financing of the TOD. If requested, RIPTA will provide customary estoppel certificates with respect to the Infrastructure Facility and/or TOD.
Potential RIPTA Financing and Prepayment	<p>During the Preliminary Services period, the parties will explore the value in RIPTA financing a portion of the Infrastructure Facility (either up front or through milestone payments). Such decision shall be made by RIPTA at its discretion. In addition, RIPTA will reserve the right to prepay any Project Company financing associated with the Infrastructure Facility during the Term, with appropriate make whole provisions.</p> <p>If RIPTA elects to finance a portion of the Infrastructure Facility after the Project Company has committed financing in place, RIPTA will, consistent with market precedent, be responsible for payment of any termination fee incurred by the Project Company with respect to that committed financing.</p> <p>RIPTA will not finance or pre-pay any financing associated with the TOD.</p>
Design and Construction	
Design-Build Work	<p>The Project Company shall, with respect to the Infrastructure Facility and TOD: (1) apply for, obtain and maintain governmental approvals in accordance with the Project Agreement(s); (2) comply with all reporting obligations; (3) prepare, fill and excavate the construction site; (4) remove and dispose of any demolition or construction debris and any unused excavated soil; (5) perform the final design of the Project; (6) construct the Project; (7) complete any punchlist and/or closeout work required to achieve commercial occupancy and permit operations (the “Design-Build Work”).</p> <p>The Project Company shall have full responsibility for quality assurance and quality control for the Design-Build Work and exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary for the correct, prompt, and orderly completion of the Design-Build Work.</p>

<p>Design and Construction Requirements</p>	<p>The Project Company shall have the sole responsibility and liability for the design and construction of the Project, notwithstanding the inclusion of certain minimum conceptual design criteria in the RFP and RIPTA’s review and comments offered during the Preliminary Services period. The Project Company shall perform the Design-Build Work in accordance with the design and construction requirements to be specified in the Project Agreements, which shall be developed based on the Project Company’s proposal and Definitive Project Submittal and shall include all requirements of applicable law and industry standards.</p> <p>RIPTA shall have the right to review and comment on all design documents prepared by the Project Company and to monitor the performance of the construction work in order to confirm compliance and consistency with the design and construction requirements. Neither compliance by the Project Company with the design and construction requirements, nor any RIPTA review, comment or monitoring of the Design-Build Work, nor any failure or delay by RIPTA (except as may be expressly set forth in the relevant Project Agreement) to review, comment on or monitor the Design-Build Work, shall in any way relieve the Project Company of full responsibility for the design, construction, and completion of the Project in accordance with such Project Agreement.</p>
<p>Infrastructure Facility: Design and Construction Requirement Changes</p>	<p>Once the Infrastructure Facility Project Agreement is executed, RIPTA shall have the right to accept, reject or modify any design and construction requirement changes proposed by the Project Company with respect to the Infrastructure Facility.</p> <p>In addition, RIPTA shall have the right to make design and construction requirement changes with respect to the Infrastructure Facility at any time prior to occupational readiness, as long as RIPTA provides the Project Company with appropriate price, schedule and performance relief in accordance with the terms and conditions to be specified in the relevant Project Agreement. Such Project Agreement will also address design and construction requirement changes necessitated by relief events (as described in such Project Agreement) or required in connection with a governmental approval.</p>
<p>Construction Monitoring</p>	<p>RIPTA retains the right to monitor construction through regular updates and inspections.</p>
<p>Permitting and Governmental Approvals</p>	<p>The Project Company shall obtain and maintain all governmental approvals required for the construction and maintenance of the Project. RIPTA does not expect to retain responsibility for acquiring any such governmental approvals.</p>

	Customary relief event relief will be provided for regulatory agency-caused delays, non-issuances and the imposition of more stringent and new terms and conditions not caused by Project Company fault.
Beneficial Occupation/Substantial Completion	
Beneficial Occupation/ Substantial Completion Standards and Requirements	The beneficial occupation/substantial completion standards and requirements for the Infrastructure Facility will be determined prior to the execution of the relevant Project Agreement. Such beneficial occupation/substantial completion procedures will be developed during the Design-Build Work period.
Scheduled Beneficial Occupation/ Substantial Completion Date, Punchlist and Occupancy Readiness	<p>The Project Company shall achieve beneficial occupation/substantial completion of the Infrastructure Facility within a specified number of days following financial close. Final completion of the Design-Build Work for the Infrastructure Facility, including punch-list items, shall be achieved within 60 days following beneficial occupation/substantial completion. In addition, the Project Company shall have a material obligation to prepare and maintain a critical path schedule for the performance of the Infrastructure Facility Design-Build Work.</p> <p>TOD substantial completion, final completion and related schedule issue will be agreed by the Parties prior to the execution of the TOD Project Agreement.</p>
Infrastructure Facility Liquidated Damages	Liquidated damages will be payable in connection with the Project Company's failure to meet certain milestones with respect to the Infrastructure Facility, as agreed between the Parties and set forth in the relevant Project Agreement.
O&M and Property Management Services	
Operation, Maintenance and Management in General	Upon beneficial occupation/substantial completion, the Project Company shall provide (i) facilities maintenance for the Infrastructure Facility, and (ii) Property Management Services for TOD on a 24-hour per day, 7-day per week basis, in accordance with the terms and conditions of a Project Agreement, including, in particular, any performance standards/KPIs and all requirements imposed by Applicable Law.
Infrastructure Facility Performance Standards/KPIs	The Project Company shall be required to meet performance standards/KPIs relating to the Infrastructure Facility to be specified in the relevant Project Agreement. Failure to comply with any of the Infrastructure Facility performance standards/KPIs may subject the Project Company to liquidated damages in the form of deductions from the Service Fee.

<p>Infrastructure Facility Management</p>	<p>With respect to the Infrastructure Facility, except for any RIPTA O&M, the Project Company shall: (1) perform all facility management, engineering, repairs and maintenance; (2) perform all capital repair and replacement of the equipment, structures, improvements and all other property constituting the Infrastructure Facility; (3) keep the Infrastructure Facility in good working order, condition and repair; and (4) maintain the aesthetic quality of the Infrastructure Facility as originally constructed.</p> <p>The relevant Project Agreement will include mechanisms to assure Project Company compliance with the maintenance, repair and replacement obligations and will specify the required condition of the Infrastructure Facility and associated equipment at the end of the term.</p>
<p>TOD Property Management</p>	<p>With respect to the TOD, the Project Company shall provide all facility management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and other activities that are customary in the real estate industry for the mixed-use real estate Commercial Component of the Project.</p> <p>The relevant Project Agreement will include standards around space allocation and usage, as well as general operating requirements (i.e., limitations on “going dark”, etc.).</p>
<p>Infrastructure Facility Capital Modifications</p>	<p>The relevant Project Agreement shall include mechanisms to address capital modifications to the Infrastructure Facility during the operations period. Capital modifications requested by the Project Company with respect to the Infrastructure Facility shall be subject to RIPTA’s approval in its sole discretion. Infrastructure Facility capital modifications required due to Project Company fault shall be for the account and expense of the Project Company. Infrastructure Facility capital modifications directed by RIPTA or required due to the occurrence of a relief event shall be for the account and expense of RIPTA.</p> <p>All capital modifications shall be implemented in accordance with applicable law.</p>
<p>End of Term and Infrastructure Facility Handback</p>	<p>Prior to the end of the term of the Infrastructure Facility services, the Project Company shall deliver a report to RIPTA evidencing that all handback standards and conditions have been achieved. Handback standards and conditions shall include (1) concurrence by the parties that all necessary Project maintenance, repairs and replacements have been undertaken as required pursuant to the relevant Project Agreement and (2) other standards and conditions (including remaining useful life requirements) to be contained in the exit standards and conditions appendix to such Project Agreement.</p>

	<p>Prior to handback of the Infrastructure Facility, RIPTA will withhold an agreed portion of the Service Fee payment, to be held in escrow and released upon satisfaction of the foregoing handback requirements. Failure to comply with the handback requirements will result in some or all of the escrowed Service Fee being returned to RIPTA for its account.</p>
<p>Infrastructure Facility Compensation Terms</p>	
<p>RIPTA Payment Obligations Prior to Beneficial Occupation/ Substantial Completion</p>	<p>During the Preliminary Services period, the parties will explore the value in RIPTA financing a portion of the Infrastructure Facility (either up front or through milestone payments). Such decision shall be made by RIPTA at its sole discretion. In addition, RIPTA will reserve the right to prepay any Project Company financing associated with the Infrastructure Facility during the Term, with appropriate make whole provisions.</p> <p>It is expected that RIPTA will likely offer some level of milestone payment(s) prior to substantial completion, but such payments are dependent on budget approvals and available funding. The Project Company will be expected to finance all costs incurred for the Project prior to the achievement of beneficial occupation/substantial completion (subject to any agreed milestone payments).</p>
<p>Service Fee for Infrastructure Facility</p>	<p>Following beneficial occupation/substantial completion of the Infrastructure Facility, the Project Company shall be paid an annual “Service Fee” with respect to the Infrastructure Facility comprised of (1) the privately financed capital cost of the Infrastructure Facility, including the cost of any Holdback amounts of the Preliminary Services Fee and the Infrastructure Facility Design-Build Work; (2) the performance of the facilities maintenance services with respect to the Infrastructure Facility throughout the term, <u>less</u> (3) any rent or revenue participation deriving from the TOD.</p> <p>The Service Fee (and any potential construction milestone payment) shall be the sole compensation to the Project Company for the performance. The Service Fee shall be calculated as follows:</p> $SF = CC + OC - CR - DC +/- EI$ <p>Where,</p> <ul style="list-style-type: none"> SF is the Service Fee for a given payment period; CC is the capital charge component in a given payment period, reflecting the amortization of the Holdback portion of the Preliminary Services Fee, a fixed lump sum design-build price for the Infrastructure Facility; and the private financing of all of the foregoing;

	<p>OC is the operation charge component for all Infrastructure Facilities Maintenance Costs;</p> <p>CR is RIPTA’s participation component of any rent or revenue deriving from the TOD, as set forth in the Project Agreement or in any subsequent reset agreements;</p> <p>DC is the deductions credit owed to RIPTA by the Project Company in the event that the Project Company fails to meet any performance standards or requirements established in the Project Agreement; and</p> <p>EI is any extraordinary items charge or credit that may be applicable from time to time by the terms of the Project Agreement.</p> <p>The Infrastructure Facility Service Fee shall be paid in monthly installments, and any estimates shall be reconciled through an annual settlement statement.</p> <p>The operation charge component shall be subject to annual adjustment for inflation based upon changes to a pre-agreed index or basket of indices.</p> <p>Except as may be otherwise provided in the relevant Project Agreement, the Project Company shall be responsible for all applicable Federal, State, and Local taxes and duties with respect to the Service Fee.</p>
<p>TOD Rent, Revenue Participation, and Resets</p>	<p>The Project Company shall retain the right to receive rental and commercial income over the TOD lease term. The Project Company shall be required to make regular payments to RIPTA (or to provide such amounts as an offset to the Service Fee) for the use of the Project Site (base rent) and Common Infrastructure. Additionally, it is anticipated that RIPTA will participate with a negotiated portion of gross revenue deriving from the TOD, the terms of which shall be negotiated and included in the relevant Project Agreement (subject to resets).</p>
<p>Minimum Infrastructure Facility Service Fee</p>	<p>The Infrastructure Facility Project Agreement will provide that the Service Fee shall not be less than the amount necessary for the Project Company to service its debt payments on the Infrastructure Facility. Any applicable excess deductions, setoffs or retainage will roll forward to future Service Fee payment periods until they can be applied.</p>
<p>Infrastructure Facility Relief Events</p>	
<p>Infrastructure Facility Relief Events Generally</p>	<p>With respect to the Infrastructure Facility, the relevant Project Agreement will include provisions granting the Project Company certain relief upon the occurrence of events beyond the reasonable control of the Project Company and which materially expand the scope, interfere with, delay or increase the cost of performing the Design-Build Work and other Project</p>

	<p>Agreement Services. Such “relief events” will be specifically defined in such Project Agreement. They are expected to include, among others, changes in law (other than income, corporate activity or similar taxes imposed on the Project Company); force majeure events; regulated site conditions; RIPTA fault, changes by RIPTA to the Infrastructure Facility design and construction requirements or performance standards/KPIs.</p> <p>Based on the Preliminary Services expected to be performed by the Project Company, the Project Company will bear the risk of all differing site conditions at the Project Site.</p> <p>The Project Company will bear the risk related to the introduction of non-influent based hazardous substances to the Project Site and the acquisition of governmental approvals for which it is responsible.</p> <p>The occurrence of relief events is the sole grounds for excuse from performance under and in accordance with the relevant Project Agreement.</p>
<p>Schedule, Performance and Cost Relief for the Infrastructure Facility</p>	<p>In the event of the occurrence of an Infrastructure Facility relief event, including RIPTA-directed change orders and failures of performance by RIPTA, the Project Company may be entitled to performance relief, schedule relief, additional compensation, or any appropriate combination thereof.</p> <p>In the event a relief event raises the cost of the Infrastructure Facility, RIPTA will have the right to elect to pay such cost directly or have the Project Company finance the cost and adjust the Service Fee as appropriate.</p>
<p>Notice and Mitigation re Infrastructure Facility</p>	<p>The Project Agreement will require the Project Company to provide notice of the occurrence of any relief event, demonstrate the impact of the relief event on the performance of the Design-Build Work and/or Infrastructure Facility services, and take all measures reasonably necessary to mitigate the impact of the relief event. Any pricing impact will require cost substantiation. Any schedule adjustment will require the Project Company to demonstrate the impact of the relief event on the critical path of the Project schedule. The Project Company’s entitlement to relief will be conditioned upon compliance with the notice, demonstration and mitigation requirements to be set forth in the Infrastructure Facility Project Agreement.</p> <p>Relief event relief shall be limited as and to the extent any act, event, condition or circumstance results from breach of the Infrastructure Facility Project Agreement by the Project Company or any failure of performance by any subcontractor of the Project Company.</p>

Contracting and Labor Practices	
Subcontracting	The Project Company shall be entitled to enter into subcontracts for the performance of the Design-Build Work and the other Project Agreement Services but shall remain responsible and liable to RIPTA for the performance of all subcontracted services. RIPTA will have approval rights in the Project Agreements with respect to the use of material subcontractors. The Project Company shall not substitute or terminate any such approved subcontractor without the prior written consent of RIPTA. Without limiting the foregoing, the Project Agreements shall contain RIPTA’s standard terms and conditions with respect to subcontracting.
Diversity and Disadvantaged Business Entities (DBE)	<p>The Project Company shall comply with the final equity, inclusion and diversity subcontracting plan it develops during the Preliminary Services, which will be set forth in the final Project Agreement. See also Section 2.8 of the RFP.</p> <p>In addition, any final Project Agreement will (i) include RIPTA’s customary provisions relating to DBE planning, utilization and reporting (a specimen of which is attached in Exhibit 1 (DBE Matters) to this Term Sheet, and (ii) require the Project Company to execute and submit certain forms relating to DBE matters (specimens of which are attached as Exhibit 1 (DBE Matters)).</p>
Equal Employment Opportunity (EEO) and Non-Discrimination	Any final Project Agreement shall include RIPTA’s customary language with respect to equal employment opportunity (EEO) and other non-discrimination matters. Specifically, the Project Company will be prohibited, among other things, from discriminating against any employee or applicant for employment because of race, color, religion, sex, or natural origin. Any final Project Agreement shall also (i) address discrimination based on age and physical/mental disabilities, and (ii) require the Project Company to prepare and submit, among other things, a General Contract Compliance Certificate & Agreement Form.
Prevailing Wages	<p>The Project Company shall comply with federal Davis Bacon wage rates, and any State of Rhode Island prevailing wage requirements, in effect during the Term.</p> <p>For current Davis Bacon wage rates see:</p> <p>https://sam.gov/search/?index=wd&page=1&pageSize=25&sort=-modifiedDate&sfm%5Bstatus%5D%5Bis_active%5D=true&sfm%5Bwdol_id%5D%5B0%5D%5Bkey%5D=Rhode%20Island&sfm%5Bkey%5D=Rhode%20Island</p>
Labor Relations	The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the work and has exclusive responsibility for disputes or jurisdictional issues among unions or trade

	organizations representing employees of the Project Company or its subcontractors, whether pertaining to organization or subdivision of the work, employee hiring, or any other matters.
General Organizational Requirements	The Project Company shall comply with, and be solely responsible for, all Rhode Island organizational requirements, including corporate registration and taxation requirements.
Insurance, Indemnity and Security for Performance	
Insurance Requirements	The Project Agreement will specify minimum insurance requirements for the Project Company and all subcontractors. Compliance with the minimum insurance requirements will not serve to limit the Project Company’s liability to RIPTA in respect of indemnification or otherwise under the Project Agreements.
Indemnity	The Project Company will be required to indemnify, defend and hold harmless RIPTA (and related indemnitees) from and against any and all claims or losses resulting from subcontractor claims, intellectual property claims, breach of either Project Agreement (including breach of Applicable Law), negligence or willful misconduct.
Liability Limitations	The possibility of stated dollar limitations on damages for non-performance under the Project Agreements (which may vary by Project Agreement) will be discussed during the PSA stage. Special, consequential and punitive damages will be mutually waived, subject to customary commercial exceptions.
Security for Performance re Infrastructure Facility	<p>The primary Infrastructure Facility security for performance will be (1) the Project Company’s “at-risk” private financing (equity and debt) of the Infrastructure Facility; and (2) the deductions from the Service Fee imposed by RIPTA related to any failure to meet the Performance Guarantees.</p> <p>In addition the Project Company shall be responsible for securing (i) a performance and payment bond to secure the Design-Build Subcontractor’s payment and performance obligations associated with the Infrastructure Facility Design-Build Work, and (ii) an operations and maintenance performance bond from the Operator Subcontractor to secure the performance of the Project Company’s Infrastructure Facility Maintenance Services.</p>
Default and Remedies	
Project Company Default	Project Company defaults will include failure to timely commence or diligently pursue the Infrastructure Facility Design-Build Work necessary to achieve beneficial occupation/substantial completion within [360] days of the scheduled date therefor (the “ Longstop Date ”), abandonment of the Project, failure to maintain security for performance, bankruptcy and

	<p>insolvency events, failure to make payments when due, misrepresentations, persistent and/or material failure of compliance with the performance requirements, and other material breaches of the relevant Project Agreement.</p> <p>Project Company defaults under the TOD Project Agreement will be negotiated and finalized during the PSA term.</p>
Cure Rights	<p>The Project Company shall be entitled to notice and an opportunity to cure certain Infrastructure Facility defaults. The Project Company, however, will not have any further opportunity to cure Infrastructure Facility defaults in respect of a failure to achieve beneficial occupation/substantial completion by the Longstop Date, bankruptcy and insolvency events, or breaches of provisions relating to changes in control or refinancings.</p> <p>Project Company default cures under the TOD Project Agreement will be negotiated and finalized during the PSA term.</p>
RIPTA Remedies	<p>RIPTA shall be entitled to exercise remedies in respect of Project Company defaults under either Project Agreement, including rights to step in and cure, recover actual damages, make demands upon security for performance, termination, and other remedies under law.</p>
RIPTA Default	<p>RIPTA defaults under the Infrastructure Facility Project Agreement will include failure to make payments when due (subject to a notice and cure opportunity) and extended suspension of the Project Company’s performance of the Design-Build Work and other Project Agreement Services absent Project Company default.</p> <p>The Project Company shall be entitled to exercise remedies in respect of an Infrastructure Facility RIPTA default, including termination of the applicable Project Agreement and recovery of actual damages. Damages recoverable by the Project Company under the Infrastructure Facility Project Agreement, however, shall not exceed the lesser of (1) the amount payable in respect of compensable relief events; or (2) the amount payable in the event of convenience termination of the Infrastructure Facility Project Agreement by RIPTA.</p> <p>RIPTA defaults and cure periods under the TOD Project Agreement, and the Project Company related remedies, will be negotiated and finalized during the PSA term.</p>
Early Termination and Compensation for Early Termination re Infrastructure Facility	
RIPTA Termination for Convenience	<p>RIPTA will have the right to terminate the Infrastructure Facility Project Agreement for its convenience and without cause at any time. In such event, RIPTA shall pay the Project Company the amount of termination compensation to be specified in the Infrastructure Facility Project Agreement.</p>

<p>RIPTA Termination for Project Company Default</p>	<p>RIPTA will have the right to terminate the Infrastructure Facility Project Agreement for an event of default by the Project Company (subject to any applicable cure period, if any). In such event, any termination compensation payable to the Project Company shall be limited to termination compensation specified in such Project Agreement in respect of Project Company default, and RIPTA has the right to recover actual damages.</p>
<p>Project Company Termination for RIPTA Default</p>	<p>The Project Company will have the right to terminate the Infrastructure Facility Project Agreement for an event of default by RIPTA (subject to any applicable cure period, if any). Termination compensation payable by RIPTA in such event shall be no greater than the termination compensation in respect of RIPTA termination for convenience, and the Project Company has no right to recover additional damages or compensation.</p>
<p>Assignment and Change in Control</p>	
<p>Generally</p>	<p>The Project Company may not assign or transfer, or otherwise permit the assignment or transfer of, any of its rights or obligations under either Project Agreement without RIPTA’s prior written consent, which consent shall not be unreasonably withheld, provided that the Project Agreements shall include market provisions with respect to change of control arising from mergers, acquisition and other corporate reorganizations.</p> <p>It will not be unreasonable for RIPTA to withhold its consent to any assignment by the Project Company in which: (1) the tangible net worth of the proposed transferee is not equal to or greater than the tangible net worth of the Project Company as of the date to be set forth in the Project Agreements; (2) the proposed transferee does not possess adequate business experience for the obligations it is assuming under the Project Agreements as determined by RIPTA in its commercially reasonable discretion; or (3) other conditions set forth in the final Project Agreements are met. RIPTA may assign either Project Agreement to any agency, authority, commission, or similar instrumentality of the State of Rhode Island in its discretion. RIPTA may otherwise assign the Project Agreements to any other party with the Project Company’s prior written consent, which shall not be unreasonably withheld. It will not be unreasonable for the Project Company to withhold its consent to any assignment by RIPTA where the assignee does not have a similar or better credit rating as RIPTA and/or such assignment will negatively impact the financing for the Project. Any assignee must assume all obligations under the Project Agreements or otherwise agree to be subject to the terms of the Project Agreements; and if an event of default by the assigning party has occurred and is continuing, either at the time of the request for consent or on the effective date of the proposed transfer, the assigning party must either cure such default prior to the assignment, or, as an express condition of such transfer, the proposed transferee shall agree to cure all defaults promptly following the effective date of such transfer.</p>

Request for Proposals No. 23-22

Governing Law and Dispute Resolution	
Governing Law	Rhode Island
Forum for Dispute Resolution	All legal proceedings, with respect to which the parties do not agree to any alternative dispute resolution (to be specified in the Project Agreements), relating to the Project, the Project Agreements or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the state court in Providence, Rhode Island or in the U.S. District Court for the District of Rhode Island.
RIPTA Standard Terms	
Standard Terms	<p>The Project Agreements shall include RIPTA’s standard terms and conditions (consistent with this Term Sheet), including, without limitation, with respect to the following matters</p> <ul style="list-style-type: none"> • Order of Precedence of Documents • Officials Not to Benefit • Covenant against Contingent Fees • Rights in Technical Data • Apprentices and Trainees • Audit and Inspection Rights/Records Retention • Public Records/Confidentiality • Withholding Payments/Setoff • Rights in Data and Copyrights • Licenses and Certifications • Use of New Materials • Correction of Deficiencies/Warranties • Federal and State False Claim Laws • Covid 19 Safety Procedures
Federal Requirements	

Request for Proposals No. 23-22

<p>Federal Regulations, Policies, Procedures, and Directives</p>	<p>Federal funding (from the FTA or other federal agencies) may be used in the Project. If such funding is made available, the applicable Project Agreement will require that the Project Company, during the Term, comply with all applicable US DOT / FTA (and other applicable federal) laws, regulations, policies, procedures, and directives (collectively, “Federal Regulations”) (including, without limitation, FTA Circular 4220.1F, dated November 1, 2008, and those listed directly or by reference in the Agreement (Form FTA MA (9) dated October 2002) between RIPTA and FTA)) relating to the work under such Project Agreement, as such Federal Regulations may be amended or promulgated from time to time during the Term of such Project Agreement.</p> <p>Exhibit 2 (Applicable FTA/Federal Regulations, Policies, Procedures, and Directives) to this Term Sheet sets forth certain applicable Federal Regulations (if Federal funding is used).</p> <p>Exhibit 3 to this Term Sheet includes certain certifications and forms which the Project Company will be required to deliver in connection with the execution of the Project Agreements (if Federal funding is used).</p>
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Schedule 5

RFP Proposal Forms

SCHEDULE 5 - RFP PROPOSAL FORMS

Technical Proposal Forms

Proposal Form 1	Proposal Transmittal Letter
Proposal Form 2	Major Participants
Proposal Form 3	Proposer Team Member List
Proposal Form 4	Confirmation of Minimum Qualifications
Proposal Form 5	Experience Summary
Proposal Form 6	Key Personnel List
Proposal Form 7	Relationship Disclosure Form
Proposal Form 8	Statement of Ownership
Proposal Form 9	Affidavit of Non-Collusion
Proposal Form 10	Certification of Restrictions on Lobbying
Proposal Form 11	EEO Compliance Certification
Proposal Form 12	Form of Proposal Security
Proposal Form 13	Schedule for Preliminary Services
Proposal Form 14	Financial Information – Financial Officer Certificate

Price Proposal Forms

Proposal Form P-1	Preliminary Services Fee
Proposal Form P-2	Design-Build Subcontractor Fee
Proposal Form P-3	Operations Subcontractor Fee
Proposal Form P-4	Return-on-Equity

PROPOSAL FORM 1

RIPTA

Dorrance Street Transit Center Joint Development Project

Proposal Transmittal Letter

(To be typed on Proposer's Letterhead)

Date: _____

Re: Proposal for the Dorrence Street Transit Center Joint Development

_____ (the "Proposer") hereby submits its Proposal in response to the Request for Proposals for a Public-Private-Partnership to Design-Build-Finance-Operate-Maintain the Dorrence Street Transit Center Joint Development Project ("RFP") issued by the Rhode Island Public Transit Authority ("RIPTA") on [date], as amended. Capitalized terms used and not defined herein have the meanings set forth in the RFP.

As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer Team and not in my personal capacity, as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following addenda:

<u>No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer. Attachment 1 to this transmittal letter is a Certificate of Authorization which evidences my authority to submit the Proposal and bind the Proposer.

3. All Major Participant Information is provided in Proposal Form 2.

4. All firms currently included as part of the Proposer Team are identified in Proposal Form 3.

5. Evidence that the Proposer meets the Minimum Qualifications set forth in Section 5.4.1.2 of the RFP is provided in Proposal Form 4.
6. All Key Personnel which are currently included as part of the Proposer Team are identified in Proposal Form 6.
7. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that RIPTA will rely on such information and statements in selecting the selected Proposer and executing the Preliminary Services Agreement and the Project Agreement.
8. No member of the Proposer Team is currently suspended, debarred or proposed for debarment from doing business with any governmental entity.
9. No member of the Proposer Team is currently suspended, debarred or proposed for debarment, declared ineligible or voluntarily excluded, from covered transactions by any Federal Department or Agency.
10. Proposer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323 (j) (1) and the Applicable regulations on 49 CFR Part 661.12 (**Buy America**).
11. The Proposer has reviewed all of the engagements and pending engagements of the members of the Proposer Team and no potential exists for any conflict of interest or unfair advantage.
12. No person or broker has been employed or retained to solicit the award of the Preliminary Services Agreement or the Project Agreement under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the members of the Proposer Team.
13. Proposer is not included on the Comptroller General's Lists of Persons or Firms Currently Barred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.
14. Proposer Team members have not engaged in any practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration in connection with the submittal of this Proposal.
15. The Proposer, or applicable Proposer Team member, has all current and valid licenses, registrations and certificates required by applicable law to submit this Proposal and for provision of the services described in the RFP.
16. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
17. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
18. Have not within a three-year period preceding this application/Proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

19. The principal contact person who will serve as the interface between RIPTA and the Proposer for all communications is:

NAME:

TITLE:

ADDRESS:

PHONE

FAX:

E-MAIL:

20. Subject to the Proposer's right to provide non-material comments in its Proposal to the Preliminary Services Agreement and the Project Agreement Term Sheet, the Proposer agrees to the form of the Preliminary Services Agreement and the Project Agreement Term Sheet issued with the RFP, as amended, and has based its Proposal and all pricing thereto on such Preliminary Services Agreement and Project Agreement Term Sheet.
21. If selected, the Proposer agrees to negotiate in good faith to enter into a Preliminary Services Agreement, within the time period stipulated in Section 5.11 of the RFP, that reflects the substantive terms and conditions of the RFP and the Proposal.
22. The Proposer has submitted all Proposal Forms required to be submitted by the RFP and such Proposal Forms are a part of this Proposal.
23. The Proposer has carefully examined all documents constituting the RFP and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFP and such addenda, offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP and the Proposal, all for the prices set forth in the Proposal Forms.
24. The Proposer understands that all costs and expenses incurred by it in preparing the Proposal and participating in the RFP process will be borne solely by the Proposer.

Name of Proposer

Name of Designated Signatory

Signature

Title

ACKNOWLEDGMENT BY NOTARY PUBLIC

(Notary Public)

State of _____

County of _____

On this ____ day of _____, 2023, before me appeared _____, personally known to me to be the person described in and who executed this Proposal Transmittal Letter and acknowledged that (she/he) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

Notary Public in and for the state of _____

(SEAL)

(Name printed)

Residing at _____

My commission expires _____

Attachment 1

CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of _____ in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of _____; that I have custody of the records of the corporation; and that as of the date of this certification, _____ holds the title of _____ the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Proposal submitted by the corporation in response to the Request for Proposals for the Dorrance Street Transit Center Joint Development Project, issued on January 17, 2023, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this _____ day of _____ 2023.

(Affix Seal Here)

Clerk/Secretary

* Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.

PROPOSAL FORM 2

MAJOR PARTICIPANT INFORMATION

Name of Proposer Team: _____

[For each Major Participant, please complete tables MP1, MP2 and MP3. If information requested in relation to an entity is not relevant to such entity, state "Not Applicable".]

Table MP1. Team Member and Role

(1) Name of Team Member:	<i>[please provide]</i>
(2) Role:	<ul style="list-style-type: none">• Financing Member• Lead Design-Builder• Lead Design-Builder Member• Lead Affordable Housing Developer• Lead Affordable Housing Developer Member• Lead Commercial Developer• Lead Commercial Developer Member• Guarantor for <i>[provide entity name]</i>

Table MP2. Legal Information

(1) Type of Legal Entity:	<ul style="list-style-type: none">• Corporation• Limited liability company• Joint venture• Partnership• Other: <i>[Proposer to provide]</i> <p>If the entity is a limited liability company, joint venture or partnership, indicate the name of each member firm in the space below. Complete a separate <u>Form 3 (Major Participant Information)</u> for each member firm and include it with the Proposal.</p> <p>Names of member firms:</p> <ol style="list-style-type: none">1. _____2. _____
(2) Year Established:	<i>[Proposer to provide]</i>
(3) Country (and where applicable State) of Organization or Formation:	<i>[Proposer to provide]</i>
(4) Dun and Bradstreet Number (DUNS #):	<i>[Proposer to provide]</i>

Table MP3. Corporate Information

(1) Business Address:

(2) Headquarters:

(3) Office Performing Work:

(4) Contact Telephone Number:

(5) Contact Person:

CERTIFICATION:

The undersigned certifies, by submission of this certification, that neither _____ nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal Department or agency.

AUTHORIZED REPRESENTATIVE:

Under penalty of perjury, I certify that the foregoing is true and correct, that I understand that the provisions of 31 U.S.C. Sections 3801 **ET SEQ.** are applicable thereto, and am the authorized representative of the entity to which this form relates:

By: _____

Print Name: _____

Title: _____

Date: _____

[End of Form 2]

PROPOSAL FORM 3

PROPOSER TEAM MEMBER LIST

(Provide the information requested on this form for each member of the Proposer Team. Add additional rows, as necessary.)

Proposer Name: _____

Major Participant	Firm/Entity	Guarantor (if any)
Lead Member		

Major Participant	Firm/Entity	Guarantor (if any)
Financing Member		
Financing Member		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Design-Builder		
Lead Design Firm (if any)		
Lead Construction Firm (if any)		
Other Lead Design-Build Members (if any)		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Affordable Housing Developer		
Lead Affordable Housing Developer Member (if any)		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Commercial Developer		
Lead Commercial Developer Member (if any)		

Key Non-Major Participant	Firm/Entity
Lead Architect	
Public Outreach	
Others (key subcontractor)	

PROPOSAL FORM 4

CONFIRMATION OF MINIMUM QUALIFICATIONS

Proposer to provide summary information to demonstrate that it complies with the Minimum Qualifications set out in Section 5.4.1.2 of this RFP. For each Project, please indicate the project name, location, responsible Major Participant, and role of Major Participant. RIPTA reserves the right to independently verify the information provided.

Financing Capacity and Experience	<i>[Confirm compliance of Lead Member or Financing Members with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP.]</i>	<ul style="list-style-type: none"> A. Project Experience <ul style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3 4. Project 4 5. Project 5
Design-Build	<i>[Confirm compliance of Lead Design-Builder, or the Lead Design-Build Members collectively, with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<ul style="list-style-type: none"> A. Project Experience <ul style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3 B. Identify Key Personnel possessing experience of a minimum of three qualifying projects (and please list projects) C. Confirm Capacity to meet al local design-build licensing requirements.
Affordable Housing Development	<i>[Confirm compliance of Lead Affordable Housing Developer, or the Lead Affordable Housing Developer Members collectively, with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<ul style="list-style-type: none"> A. Project Experience <ul style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3
Commercial Development	<i>[Confirm compliance of Lead Commercial Developer with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<ul style="list-style-type: none"> A. Project Experience <ul style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3
Progressive Services	<i>[Confirm compliance of Lead Member and/or and/or Lead Design-Builder (or a Lead Design-Build Member) with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<ul style="list-style-type: none"> 1.

PROPOSAL FORM 5

EXPERIENCE SUMMARY

Please provide information for a minimum of five (5) projects on which the Major Participant has worked over the past 10 years in each category. Only include projects on which the Major Participant was at least 50% responsible for delivery of the project in each category.

Please try to limit the information to that requested in the Form itself. Additional information on reference projects for each category may be provided in the Technical Narrative Attachment to this Form.

The description should, at a minimum, give an overview of the project, and explain why the experience that the Major Participant gained on the project is relevant to the Project. Please also indicate on which projects multiple Major Participants have worked together.

Form 5.A. – Project Finance & Management Experience

Form 5.B. – Design-Build Experience

Form 5.B.(i) – Safety Performance Questionnaire

Form 5.C. – Affordable Housing Development Experience

Form 5.D. – Commercial Development Experience

Form 5.A. Project Finance and Management Experience

[Using the format below, please provide detailed information on each project for which the Team Leader (or a Financing Member) was legally contracted either individually as a corporate entity or as one of the major companies within an association, for leading and securing financing for a project with characteristics similar to that contemplated under this Project, with an emphasis on transit centers, TOD and other public infrastructure. Each project table should be limited to two pages. Proposers are also encouraged to submit a summary table highlighting relevant P3 project management and financing experience. The summary table may include any relevant projects in which financial close has occurred within the past 10 years]:

Lead Member:	
Project Name & Location	Project Capital Cost
Project Owner	Date of Financial Close
Capital Structure	Debt amount and source(s)
	Equity amount (and sources)
Construction Start Date / Completion date (or % of works completed as of March 1, 2023)	Level of Lead Member's / Financing Member's Participation in Financing
Name of associated companies, if any:	Contractual arrangement (design-build-finance, DBFOM, etc.) and compensation structure (availability payment, milestone payment, demand-risk, pay-go, etc.)
<p>Narrative description of Project:</p> <p>[Please provide an overview of the Project, indicating why this is relevant to the scope of services envisioned in the RFP, and how the role the Financing Member held in the Project. Please highlight outcome of work performed, including key project metrics, awards or accolades, etc.]</p>	
<p>Description of role and services provided on the Project by any proposed Key Personnel</p>	
<p>Owner Reference: (please include name, title, email and phone)</p>	

Form 5.B. Design-Build Experience

[Using the format below, please provide detailed information on each project for which the Lead Design-Builder (or Lead Design-Builder Member) was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out design, engineering, and construction services similar to that contemplated under this Project, with an emphasis on transit centers, TOD and other public infrastructure. Each project table should be limited to two pages. Proposers are also encouraged to submit a summary table highlighting relevant design-build experience. The summary table may include any relevant projects undertaken in the past 10 years (even if not detailed in this form 5.B.)]

Major Participant name:	
Project name:	Project Cost: [including original Contract Amount, Final Contract Amount and % Change]
Project Location:	Project Duration: [start and completion dates] ¹
Client or Owner Information: ²	Description of Specific Roles and Responsibilities:
Level of Major Participant’s Participation: ³	Current Project Status
Name of associated companies, if any:	Contractual arrangement (design-bid-build, design-build, design-build-finance, DBFOM, etc.) and compensation structure (availability payment, milestone payment, pay-go, etc.)
Narrative description of Project: [Please provide an overview of the Project, indicating why this is relevant to the scope of services envisioned in the RFP. Please highlight outcome of work performed, including key project metrics, awards or accolades, etc.]	
Description of role and actual services provided on the Project by any proposed Key Personnel:	
Owner Reference: (please include name, title, email and phone)	

¹ Dates should only reflect period of time in which the Major Participant was involved in the project.

² Include client contact information for reference checks. It is the responsibility of the Proposer to ensure that contact information is accurate.

³ Quantify the Major Participant’s participation in monetary terms and as percentage of total work performed.

FORM 5.B.(i) – DESIGN-BUILDER SAFETY PERFORMANCE QUESTIONNAIRE

Please note that this Form 5.B.(i) must be completed for the Lead Design-Builder and for each Lead Design-Builder Member. If Information requested in relation to an entity is not relevant to such entity, state "Not Applicable".

SAFETY PERFORMANCE QUESTIONNAIRE			
Proposer Name:			
(1) Name of Team Member:			
(2) Role:		<input type="checkbox"/> Lead Design-Builder <input type="checkbox"/> Lead Design-Builder Member	
Provide the number of injuries and illnesses for the last three years.			
YEAR	2020	2021	2022
a. Number of Fatalities	_____	_____	_____
b. Lost Work Day Incident Rate ¹	_____	_____	_____
c. OSHA Recordable Incident Rate ²	_____	_____	_____
d. Number of Hours Worked	_____	_____	_____
e. Total Number of Employees on Payroll	_____	_____	_____
¹ Use the following formula for calculating the Lost Work Day Incident Rate:	=	$\frac{\text{Number of Lost Work Day Cases} \times 200,000}{\text{Number of Hours Worked}}$	
² Use the following formula for calculating the OSHA Recordable Incident Rate:	=	$\frac{\text{Number of OSHA Recordable Cases} \times 200,000}{\text{Number of Hours Worked}}$	
2. List your company's Worker's Compensation ("WC") Experience Modification Rate ("EMR") for the last three years:			
	Year	EMR	
a.	2022	_____	
b.	2021	_____	
c.	2020	_____	
d. Provide a letter from your WC insurance carrier certifying the above EMRs.			
3. Has your company received an OSHA (or State OSHA) citation within the last five years? Yes ___ No ___			
If yes, provide the following information below:			
a. The number and type of violations: _____			
b. The penalties assessed by OSHA: _____			
c. Were the citations contested/vacated? _____			

Form 5.C. Affordable Housing Developer Experience

[Using the format below, please provide detailed information on each project for which the Lead Affordable Housing Developer (or Affordable Housing Developer Member) was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out the planning, development, financing, and management of affordable housing projects involving the federal Low Income Housing Tax Credit program (or similar). Each project table should be limited to two pages. Proposers are also encouraged to submit a summary table highlighting relevant affordable housing developer experience. The summary table may include other relevant projects undertaken in the past 10 years.]

Major Participant name:	
Project name & Location	Project Capital Cost:
Project Location:	Project Duration: [start and completion dates] ⁴
Description of Specific Roles and Responsibilities	Project Financing Structure
Name of associated companies, if any:	Current Project Status
Narrative description of Project: [Please provide an overview of the Project, indicating why this is relevant to the scope of services envisioned in the RFP. Please highlight outcome of work performed, including key project metrics, awards or accolades, etc.]	
Description of role and actual services provided on the Project by any proposed Key Personnel:	
Owner Reference: (please include name, title, email and phone)	

⁴ Dates should only reflect period of time in which the Major Participant was involved in the project.

Form 5.D. Commercial Developer Experience

[Using the format below, please provide detailed information on each project for which the Lead Commercial Developer (or Commercial Developer Member) was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out the planning, development, financing, and property management of projects combining housing and mixed-use real estate development with public infrastructure. Each project table should be limited to two pages. Proposers are also encouraged to submit a summary table highlighting relevant commercial developer experience. The summary table may include other relevant projects undertaken in the past 10 years.]

Major Participant name:	
Project name & Location	Project Capital Cost:
Project Location:	Project Duration: [start and completion dates] ⁵
Description of Specific Roles and Responsibilities	Project Financing Structure
Name of associated companies, if any:	Current Project Status
Narrative description of Project: [Please provide an overview of the Project, indicating why this is relevant to the scope of services envisioned in the RFP. Please highlight outcome of work performed, including key project metrics, awards or accolades, etc.]	
Description of role and actual services provided on the Project by any proposed Key Personnel:	
Owner Reference: (please include name, title, email and phone)	

⁵ Dates should only reflect period of time in which the Major Participant was involved in the project.

PROPOSAL FORM 6

KEY PERSONNEL LIST

Please provide the names of all Key Personnel, as well as any other significant personnel the Proposer wishes to propose as Key Personnel, along with their relationships within the Proposer's Project Company organization. At a minimum,

Key Position	Proposed Person	Major Participant Affiliation / Employer
(i) Lead Member Principal-in-Charge		
(ii) Lead Member's Project Manager		
(iii) Financing Member's Project Principal		
(iv) Affordable Housing Developer's Project Executive		
(v) Commercial Developer's Project Executive		
(vi) Design-Builder's Principal-in-Charge		
(vii) Design-Builder's Design Manager		
(viii) Design Builder's Design Architect		
(ix) Design-Builder's Construction Manager		
(x) Design-Builder's Safety Manager		
(xi) Public Outreach Principal-in-Charge		

All Key Personnel should have a minimum of 10 years of relevant experience.

PROPOSAL FORM 7

RELATIONSHIP DISCLOSURE

This must be completed by each Proposer Team Member and Key Personnel (including firms and individuals).

The Proposer declares that:

1. The Proposer has reviewed the list of members of the Consultant Support Team.
2. The following is a full disclosure of all relationships that the Proposer has with:
 - a. any member of the Consultant Support Team or their current or former employees, shareholders, directors or officers; or
 - b. employees (both current or former) of RIPTA or individuals of firms who have been involved in the Project (including developing specifications, the RFP, evaluation factors or similar documents), that could constitute a conflict of interest or unfair advantage.

Name of Party / Person	Details of the Nature of the Proposer’s relationship with the listed Party/Person <i>(e.g. Proposer was an employee to the member of the Consultant Support Team from 2021-2022)</i>

PROPOSAL FORM 8

STATEMENT OF OWNERSHIP

The Proposer is (check one):

Individual Partnership P.A. P.C. L.L.C. L.L.P.

Corporation Joint Venture Other (specify): _____

I certify that:

No individual person or entity owns a 10% or greater interest in the Proposer.

OR

The names and addresses of all persons and entities who own a 10% or greater interest in the Proposer are as follows:

NAME⁽¹⁾

ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Check here if additional sheets are attached.

Check here to certify that no person or entity, **except for those already listed above or on any attached sheets**, owns a 10% or greater interest in the Proposer.

Name of Proposer

Designated Signatory

Signature

Title

(1): If an entity owns (or anticipates owning) a 10 percent or greater interest in the Proposer, list all owners of 10 percent or greater interest for each such entity. Repeat the process of disclosure as necessary for each tier or level of ownership until the name and address of each individual person who owns a 10 percent or greater interest in each listed entity has been disclosed.

PROPOSAL FORM 9

AFFIDAVIT OF NON-COLLUSION

(To be typed on Proposer's Letterhead)

I hereby swear (or affirm) under penalty for perjury:

1. that I am the Proposers (if the Proposers is an individual), a partner of the Proposers (if the Proposers is partnership), or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Proposers is a corporation).
2. that the attached Proposal has been arrived at by the Proposers independently, and has been submitted without collusion with, and without agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, services described in Request for Proposals, designed to limit independent Proposals or competition.
3. that the contents of the Proposal has not been communicated by the Proposers or its employees or agents, to any person not an employee or agent of the Proposers or its surety on any bond furnished with the Proposal, and will not be communicated to any such person prior to the official opening of the Proposal; and
4. that I have fully informed myself regarding the accuracy of the statement made on this affidavit.

Name

Address

City, State, Zip

Signature of Authorized Official

Date Authorized

Subscribed and sworn before me this _____ day of _____, 2023

Notary Public

My commission expires _____

PROPOSAL FORM 10

CERTIFICATION OF RESTRICTIONS ON LOBBYING

(To be typed on Proposer's Letterhead)

I, _____, hereby certify on
(Name/title of Proposer's Authorized Official)

behalf of: _____ that:
(Name of Proposer)

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a member of Congress in connection with this Federal contract, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclosure accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2023.

By _____
(Signature of Authorized Official)

PROPOSAL FORM 11

EEO GENERAL COMPLIANCE CERTIFICATE

(To be typed on Proposer's Letterhead)

- (i) The undersigned Proposer agrees and certifies, unless otherwise exempt, that it is in compliance with the applicable requirements of Federal Executive order No. 11246, as amended, Rhode Island General Law 28-5.1-10, and other regulations as issued by the Rhode Island Public Transit Authority, as set forth below, or will take steps to comply with such requirements in the execution of any contract resulting from this procurement. The understand also hereby confirms that any failure to comply will be considered a substantial breach of the contract.
- (ii) The undersigned Proposer hereby confirms that it understands a Certificate of Nonsegregated Facilities must be submitted prior to the award of a sub-contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each sub-contractor for all subcontracts during a period (i.e. quarterly, semi-annually, or annually).
- (iii) If awarded the contract as a result of this procurement, the undersigned Proposer acknowledges its obligation to develop a written Affirmative Action Compliance Program for each of its establishments as required by Section 60-1.40 of Title 41 of the Code of Federal Regulations.
- (iv) If awarded the contract as a result of this procurement, the undersigned Proposer acknowledges its obligation to file in duplicate, Standard Form 100, entitled, **"Equal Employment Opportunity Employer Information Report EEO-1"** as required by Section 60-1.7 of Title 41 of the Code of Federal Regulations.
- (v) The Proposer hereby acknowledges that if it should be determined by the State Equal Opportunity Office that any company doing business with the State is guilty of non-compliance with the provisions of this document, said company will be given two (2) written warnings. If the said company does not comply immediately after the second written notice, then the State Equal Opportunity Office will notify the Rhode Island Public Transit Authority, who shall have the authority to have the contract **revoked** and all contractual obligations of the State dealing with the contract in question will be **null and void**.
- (vi) The undersigned Proposer understands and acknowledges that it will participate in a Post Award Conference for the Implementation of Affirmative Action prior to the execution of any contract resulting from this procurement.

AUTHORIZED REPRESENTATIVE:

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the authorized representative of the entity to which this form relates:

By: _____

Print Name: _____

Title: _____

Date: _____

Proposer: _____

Proposal: RFP No. 23-22 Dorrance Street Transit Center

PROPOSAL FORM 12

FORM OF PROPOSAL SECURITY

PROPOSAL LETTER OF CREDIT

[Issuing Financial Institution's Letterhead with Name and Address]

IRREVOCABLE LETTER OF CREDIT

Date

Purchasing Department
Rhode Island Transit Authority
[address]

Attn: Mr. John Chadwick, Executive Director of Procurement

Re: Proposal Security Letter of Credit (RFP No. 23-22)

Ladies and Gentlemen,

At the request and for the account of _____ [the "Proposer"], we hereby establish in your favor, our irrevocable Letter of Credit No. [____] (the "Letter of Credit") in the amount of U.S. \$150,000 (one hundred and fifty thousand dollars),⁶ (as such amount may be reduced as stated herein, the "Stated Amount"), effective immediately and expiring at the close of business (Eastern time) on [____, 2023 (the "Stated Termination Date").⁷ All drawing under this Letter of Credit shall be paid with our own funds.

We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions set forth herein, in one or more drawings in substantially the form of Annex A attached hereto, completed and signed by one purporting to be your duly authorized representative (any such certificate being your "Drawing Certificate"), an aggregate amount not exceeding the Stated Amount, representing amounts payable to you by the Proposer under RIPTA Dorrance Street Transit Center Joint Development Project Request for Proposals No. 23-22, as amended (the "RFP").

⁶ Note to Proposers. All letters of credit must be in an aggregate amount equal to \$150,000. Individual letters of credit may be edited to reflect their actual credit coverage, but failure to provide a proposal security in the amount stipulated in Section 4.9.1. of the RFP will result in a non-responsive Proposal.

⁷ Note to Proposers: The Stated Termination Date must be at least 180 days (which is the Proposal Validity Period) after the Proposal Submission Deadline.

Each Drawing Certificate drawn under his Letter of Credit must be dated as of the date of presentation on a Business Day and bear on its face the clause "Drawn under [*insert name of Bank*] Irrevocable Letter of Credit No [____]". As used herein, the term "Business Day" means any day, other than a Saturday or Sunday or other day on which we at our designated office are authorized or required by law or executive order to close.

Funds under this Letter of Credit shall be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by one purporting to be your duly authorized representative shall be made via mail or courier delivery to our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department

Telephone: _____

Email: _____

Facsimile: _____

Demand for payment hereunder may also be made by facsimile transmission of the Drawing Certificate, at the facsimile number state above, to [_____], Attention: Letter of Credit Department. If presentation is made by facsimile transmission, original documents are not required, and the facsimile transmission will constitute the operative Drawing Certificate. You may contact us at the number shown above or by email to confirm receipt of the transmission. Your failure to seek such a confirmation does not affect our obligation to honor such a presentation.

A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder by 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 3:00 p.m. Eastern time) on the second Business Day thereafter or such later Business Day as you may specify. A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder after 11:00 a.m. (Eastern time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 1:00 p.m. (Eastern time), on the third Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you maintain with us.

Upon honoring a Drawing Certificate presented by you hereunder, the Stated Amount shall be automatically and permanently decreased by the amount stated in such Drawing Certificate.

Only you may make a drawing under this Letter of Credit. Upon any payment to you of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

Except as set forth in the next paragraph and the certificate referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the RFP); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificate referred to herein.

To the extent not inconsistent with the express terms hereof, this Letter of Credit is governed by and is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 ("ISP98"), as interpreted by the laws of the State of New York. As to matters not governed by ISP98, this Letter of Credit is governed by and construed in accordance with the law of the State of New York, including without limitation Article 5 of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

Sincerely,

Name of Bank

Signature

Name of Signatory

Title (*authorized officer*)

PROPOSAL FORM 13

SCHEDULE FOR PRELIMINARY SERVICES

The Preliminary Services will be completed by the following date: _____

Each of the Preliminary Services tasks are expected to commence and be completed by the following dates:

Preliminary Services Task	Commencement Date	Completion Date
Task 1 - Project Kick-Off & Visioning	_____	_____
Task 2 - Initial Due Diligence & Conceptual Options Package	_____	_____
Task 3 - Basis of Design Package Submittal	_____	_____
Task 4 - 30% Package Submittal	_____	_____
Task 5 - 60% Package Submittal	_____	_____
Task 6 – Definitive Project Submittal	_____	_____

The Proposer shall attach a narrative that includes the job description, nature of the task, and the basis for the completion date of each task above, including hours and all other assumptions for each task made to prepare the Preliminary Services schedule.

Proposers may also provide additional optional tasks or subtasks to this Proposal Form. Such additional optional tasks or subtasks should reflect additional diligence during the Preliminary Services period that the Proposer believes will result in Project savings for RIPTA.

Name of Proposer

Name of Designated Signatory

Signature

Title

PROPOSAL FORM 14

PROPOSER FINANCIAL INFORMATION – FINANCIAL OFFICER CERTIFICATE

Instructions

Proposers must complete a separate Form 14 (Financial Information – Financial Officer Certificate) for each of the following:

- (a) each Financing Member;
- (b) the Lead Design-Builder;
- (c) each Lead Design-Builder Member (if applicable); and
- (d) each Guarantor of a Financing Member, the Lead Design-Builder or Lead Design-Builder Member (if applicable).

Form of the Financial Officer's Certificate

I, [Name], the [Title]⁸ of [Name of Financing Member, Lead Design-Builder or Lead Design-Builder Member] (the "Company") [and the [Title] of [Name of Guarantor Entity] (the "Guarantor")]⁹, do hereby certify as of [Date] that:

- (a) This Certificate is being executed and delivered in connection with the Request for Proposals submitted by [Proposer] (the "Proposal") in response to the Request for Proposals No. 23-22 (the "RFP") issued by RIPTA for the Dorrance Street Transit Center Joint Development Project.
- (b) As to the matters herein set forth below, I either have personal knowledge or have obtained information from officers or employees of the Company [and the Guarantor] in whom I have confidence and whose duties require them to have personal knowledge thereof. I make the certifications herein to RIPTA pursuant to the requirements of the RFP with the intent and understanding that they will be relied upon by RIPTA as a basis for the evaluation of the Proposal as contemplated by the RFP.
- (c) **Guarantor Support:** It is the intention of the Guarantor to support the Company with the financial, human resources and other support needed by the Company to successfully satisfy its obligations in respect of the RIPTA Dorrance Street Transit Center Joint Development P3 if the Proposer were to become the Project Company.]
- (d) **Audited Financial Statements:** The audited financial statements provided by [the Company] [the Guarantor] pursuant to Package B (Submittal Requirements) in the RFP for the fiscal years ended [●], [●] and [●] are complete and correct copies thereof. Where [the Company] [the Guarantor] has provided unaudited financial results, such financial results present fairly, in all material respects, the financial position and results of operations and cash flows of [the Company] [the Guarantor and its consolidated subsidiaries, including the Company,] as of such dates and for such periods. [The Company] [The

⁸ This Certificate should be provided by the Company's Chief Financial Officer, treasurer, or other similar financial officer. If the Company does not have this type of corporate officer internally and will rely on the financial officer of an Affiliated or unaffiliated entity, such as an investment advisor or financial manager, both the financial officer delivering this certificate and a duly authorized signatory of the Company must sign this certificate.

⁹ Each Major Participant of the Proposer should provide its own separate Certificate. However, if any such company is proposing a Guarantor, only one consolidated Certificate is required for the Guarantor and its guaranteed entity. If a company has no Guarantor, all references to "Guarantor" should be deleted from this Certificate.

Guarantor] has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.

- (e) **Off-Balance Sheet Liabilities:** The [Company][Guarantor] does not have any material off-balance sheet liabilities [other than the following: [●]].
- (f) **Financial Information Summary:** Attached hereto as Annex A is a completed financial information summary relating to [the Company] [the Guarantor and its consolidated subsidiaries, including the Company], which has been prepared based on the information from its audited financial statements and other sources, if not included in its audited financial statements. All the information provided in the attached Annex A is complete and correct to the best of my knowledge.
- (g) **Bankruptcy/insolvency proceedings:** [There has been no Insolvency Event relating to the Company [or Guarantor] or any of its Affiliates which has occurred within the most recent three fiscal years (whether or not such proceeding was ultimately dismissed).] [Attached hereto as Annex B is a detailed description of an Insolvency Event relating to [Entity Name].]¹⁰ For the purposes of this certification, "**Insolvency Event**" means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction.
- (h) **Material Changes in Financial Condition:** [No material change in the financial condition of the Company [or Guarantor] has occurred or is projected to occur, as applicable:
 - (i) within the most recently completed three fiscal years that is not reflected in its audited financial statements; or
 - (ii) since the date of its audited financial statements for its most recently completed fiscal year; or

[Attached hereto as Annex C is a detailed description of material changes in the financial condition of [the Company] [the Guarantor].]¹¹

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate as of the date first written above.

Name:

Title:

¹⁰ Complete the appropriate certification and delete the sentence that is not applicable. Do not provide an Annex B if there is no Insolvency Event to disclose.

¹¹ Complete the appropriate certification and delete the sentence that is not applicable. Do not provide an Annex C if there is no material change in financial condition to disclose. Further instructions regarding material changes are provided in Annex C.

Annex A to Financial Officer’s Certificate: Financial Information Summary¹²

Entity: _____

Proposer Role: _____

FY End	Total Revenues	Pre-Tax Profit	Fixed Assets	Total Assets ¹³	Contingent Liabilities	Long-Term Liabilities	Short-Term Liabilities	Net Assets	Tangible Net Worth	Long Term Leverage ¹⁴

Rating Agency	Rating ¹⁵
[Rating agency name]	
[Debt of the [Company][Guarantor] is not rated by any major credit rating agency.]	
[[Company][Guarantor] has no debt]	

¹² Specify amounts in units of 100,000 US Dollars.

¹³ Exclude goodwill and intangibles.

¹⁴ Calculate Long Term Leverage as Long-Term Liabilities / Net Assets.

¹⁵ If applicable, Major Participants should provide a copy of their most recent credit report.

Annex B to Financial Officer's Certificate: Insolvency Event

[Relevant Proposer entity to provide details, as relevant]

Annex C to Financial Officer's Certificate: Material Change in Financial Condition

[Major Participants to provide details]

Instructions

If applicable, this Annex C shall include the following details regarding material changes in the Company or Guarantor's financial condition:

- (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 what RIPTA considers to be a material change in financial condition:

- (a) a change in the tangible net worth of 10% or more of net assets;
- (b) a sale, merger or acquisition exceeding 10% of the value of net assets prior to the sale, merger or acquisition which in any way involves the affected entity or its parent company or Guarantor;
- (c) a change in credit rating for the affected entity or its parent company or Guarantor;
- (d) 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;
- (e) in the current and three most recent completed fiscal years, the affected entity or its parent company or Guarantor either:
 - i. incurred a net operating loss;
 - ii. sustained charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs or business restructuring; or
 - iii. implemented a restructuring/reduction in labor force exceeding 5% of employees or involved the disposition of assets exceeding 10% of the then-net assets); and
 - iv. other events known to the affected entity which represents a material change in financial condition over the past three years or may be pending for the next reporting period.

RIPTA may, in its sole discretion, disqualify any Proposer who fails to disclose a prior or pending material change.

PROPOSAL FORM P-1

PRELIMINARY SERVICES FEE

The Preliminary Services Fee, in US dollars, for the Preliminary Services (identified in Appendix 1 of the Preliminary Services Agreement), is:

_____ Dollars (\$_____)

The breakdown of the Preliminary Services Fee is:

Preliminary Services Task	Percent of the Preliminary Services Fee	Amount
Task 1 - Project Kick-Off & Visioning	____%	\$_____
Task 2 - Initial Due Diligence & Conceptual Options Package	____%	\$_____
Task 3 - Basis of Design Package Submittal	____%	\$_____
Task 4 - 30% Package Submittal	____%	\$_____
Task 5 - 60% Package Submittal	____%	\$_____
Task 6 – Definitive Project Submittal	____%	\$_____
TOTAL	100%	

The Preliminary Services Fee set forth herein is inclusive of all direct and indirect costs.

Name of Proposer

Name of Designated Signatory

Signature

Title

PROPOSAL FORM P-2

DESIGN-BUILD SUBCONTRACTOR FEE

The Proposer shall provide its proposal for the Design-Build Subcontractor Fee on this Proposal Form. The Design-Build Subcontractor Fee is the Design-Build Subcontractor's proposed mark-up to be applied to the actual expected open-book design-build costs established in the Definitive Project Submittal in order to develop the compensation payable for the Design-Build Work. The Design-Build Subcontractor Fee that will be inserted into the financial model developed as part of the Definitive Project Submittal and more specifically represents the amount attributable to profit, risk, mark-up and general or indirect overhead that the Design-Builder may incur in connection with or related to the Design-Build Work.

Design-Build Subcontractor Fee _____%

Name of Proposer

Name of Designated Signatory

Signature

Title

PROPOSAL FORM P-3

OPERATIONS SUBCONTRACTOR FEE

The Proposer shall provide its proposal for the Operations Subcontractor Fee on this Proposal Form. The Operations Subcontractor Fee is the Operations Subcontractor’s proposed mark-up to be applied to the actual expected open-book costs established in the Definitive Project Submittal in order to develop the compensation payable for the Operation Services during the Project’s Term. The Operations Subcontractor Fee that will be inserted into the financial model developed as part of the Definitive Project Submittal and more specifically represents the amount attributable to profit, risk, mark-up and general or indirect overhead that the Operations Subcontractor may incur in connection with or related to the Operation Services.

Operations Subcontractor Fee _____%

Name of Proposer

Name of Designated Signatory

Signature

Title

PROPOSAL FORM p-4

RETURN-ON-EQUITY

The Proposer shall provide its proposed Return-on-Equity on this Proposal Form. The Return-on-Equity is the Project Company's required average rate of return on shareholder equity invested in the Project which will be calculated as an output in the financial model developed as part of the Definitive Project Submittal. The Return-on-Equity shall reflect the blended equity internal rate of return, calculated on an after-tax basis at the level of the Project Company.

Return-on-Equity _____%

Name of Proposer

Name of Designated Signatory

Signature

Title

Exhibit A

Request for Proposals

(changed pages showing changes to made by Addendum 3)



DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT

REQUEST FOR PROPOSALS

RFP No. 23-22

~~Dated~~Issued: January 17, 2023

As modified by:

Addendum No.1 dated January 25, 2023

Addendum No.2 dated February 1, 2023

Addendum No.3 dated April 4, 2023

Table of Contents

1. INTRODUCTION AND OVERVIEW.....	5
1.1. INTRODUCTION.....	5
1.2. ELIGIBILITY.....	5
1.3. PROGRESSIVE PROJECT DELIVERY.....	5
1.4. PROCUREMENT PROCESS.....	6
1.5. STRUCTURE OF RFP.....	7
1.6. DEFINITIONS.....	7
1.7. ABBREVIATIONS.....	13
1.8. INTERPRETATION.....	13 <u>14</u>
2. PROJECT OVERVIEW.....	15
2.1. BACKGROUND.....	15
2.2. GENERAL PROJECT DESCRIPTION.....	15
History and Context.....	15
Project Site.....	17
2.3. PROJECT OBJECTIVES.....	19
2.3.1. Transit and Transportation Objectives.....	19
2.3.2. TOD / Housing and Mixed-Use Development Objectives.....	19
2.3.3. Urban Design and Placemaking Objectives.....	20
2.3.4. Sustainability, Equity and Economic Development Objectives.....	20
2.3.5. Procurement Objectives.....	21
2.4. PROJECT SCHEDULE.....	21
2.5. GENERAL SCOPE OF SERVICES.....	21
2.5.1. Phase 1 – Preliminary Services.....	22
2.5.2. Phase 2 – Project Services.....	24
2.5.3. Off-Ramp Rights.....	26
2.6. COMPENSATION.....	26
2.6.1 Compensation to the Project Company for Preliminary Services.....	26
2.6.1 Compensation to the Project Company under the Project Agreement.....	27
2.7. OWNERSHIP AND TITLE.....	27
2.8. SUBCONTRACTING OF LOCAL & DISADVANTAGED BUSINESS ENTITIES.....	27

Request for Proposals No. 23-22

4.2.	LEADER DESIGNATION.....	42
4.3.	PROPOSAL SUBMISSION DATE & LOCATION.....	42
4.3.1.	Proposal Due Date.....	42
4.3.2.	Proposal Submission Location.....	42
4.4.	PROPOSAL ORGANIZATION AND MARKINGS.....	43
4.5.	PROPOSAL CONTENT.....	43
4.1.1.	Proposal Packages.....	43
4.1.2.	Required Forms.....	43
4.2.	PROPOSAL FORMAT.....	43
4.7.	MODIFICATIONS, WITHDRAWALS AND LATE SUBMITTALS.....	45
4.7.1.	Modifications of a Proposal.....	45
4.7.2.	Withdrawal of Proposals.....	45
4.7.3.	Late Proposals.....	45
4.8.	Proposal Validity Period.....	45
4.9.	PROPOSAL SECURITY.....	45
4.9.1	Proposal Security.....	45
4.9.2	Forfeiture of Proposal Security.....	46
4.9.3	Return of the Proposal Security.....	47
4.10.	PROPOSER'S COSTS.....	47
5.	EVALUATION PROCESS.....	48
5.1.	EVALUATION PROCESS AND CRITERIA.....	48
5.2.	BASIS OF AWARD.....	48
5.3.	SELECTION COMMITTEE AND APPROVALS.....	48
5.4.	EVALUATION PROCEDURE.....	48
5.4.1.	Phase 1: Proposal Responsiveness Review.....	48
5.4.2.	Phase 2: Proposal Evaluation.....	50
5.4.3.	Evaluation Categories and Relative Weighting.....	<u>5857</u>
5.4.4.	Total Score and Award.....	<u>5857</u>
5.5.	CLARIFICATIONS AND ADDITIONAL INFORMATION.....	<u>5958</u>
5.6.	WAIVER OF NON-CONFORMITIES.....	<u>5958</u>
5.7.	NO OBLIGATION TO AWARD.....	<u>5958</u>
5.8.	AWARD NOTICE.....	<u>5958</u>

Request for Proposals No. 23-22

5.9. DEBRIEFINGS & PROTESTS.....	<u>5958</u>
5.9.1. Debriefings.....	<u>5958</u>
5.9.2. Protests.....	<u>6059</u>
5.10. Definitive Award Date.....	<u>6160</u>
5.11. PRELIMINARY SERVICES AGREEMENT NEGOTIATIONS & EXECUTION.....	<u>6160</u>
5.12. CONDITIONS PRECEDENT TO EXECUTION OF THE PSA.....	<u>6261</u>
5.13. FAILURE TO SATISFY SUCCESSFUL PROPOSER REQUIREMENTS.....	<u>6261</u>
5.14. WITHDRAWAL OF SUCCESSFUL PROPOSER STATUS.....	<u>6261</u>
6. RIPTA RESERVED RIGHTS & DISCLAIMERS.....	<u>6463</u>
6.1. RESERVED RIGHTS.....	<u>6463</u>
6.2. SPECIFIC REQUIREMENTS – RHODE ISLAND BUSINESS LICENSE.....	<u>6564</u>
6.3. RIPTA DISCLAIMERS.....	<u>6564</u>
6.4. GOVERNING LAW.....	<u>6665</u>
RFP Schedules Table of Contents.....	<u>6766</u>
Schedule 1 – Proposal Submission Requirements.....	<u>6867</u>
Package A – Transmittal Letter and Executive Summary.....	<u>6867</u>
Package B – Organization & Management.....	<u>6968</u>
Package C – Project Approach.....	<u>7574</u>
Package D – Price Proposal.....	<u>8079</u>
Package E – Comments to Draft Preliminary Services Agreement and Term Sheet.....	<u>8180</u>
Schedule 2 – Draft Preliminary Services Agreement.....	82
Schedule 3 – Draft Term Sheet.....	83
Schedule 4 – Proposal Forms.....	84
Schedule 5 – Scope of Basic Services (Appendix 1 to Preliminary Services Agreement).....	85

[intentionally left blank]

Appendix 1 (Scope of Basic Services) of the PSA.
“ Design-Build-Finance Services ” means the Design-Build Work and any private financing associated therewith.
“ Design-Build Subcontract ” means the agreement to be entered into between the Project Company and its Design-Build Subcontractor, including the Appendices and the Transaction Forms, to perform Design-Build services for the Project.
“ Design-Build Subcontractor ” means the Lead Design-Build entity with whom the Project Company enters into the Design-Build Subcontract.
“ Design-Build Subcontractor Fee ” means the fee proposed on Proposal Form P-2.
“ Design-Build Work ” means the work relating to the design, permitting, construction, commissioning and acceptance testing of the Project (including the Demolition Work) to be performed by the Project Company pursuant to the terms of the Project Agreement.
“ Draft Preliminary Services Agreement ” means the draft agreement for the Preliminary Services, as set forth in Schedule 2.
“ Draft Project Agreement Agreements ” means the draft <u>drafts</u> of the Project Agreement <u>Agreements</u> to be prepared by RIPTA and provided to the Project Company prior to the submission of the Definitive Project Submittal.
<p>“Eligible Security” means a reputable financial institution authorized to issue bonds, letters of credit, or sureties in the State having either:</p> <ul style="list-style-type: none"> (a) a long-term unsecured debt rating of at least (i) “A” by Standard & Poor’s Rating Services; (ii) “A” by Fitch, Inc., (iii) “A2” by Moody’s Investor Service, Inc., or (iv) “A” by DBRS, Inc.; or (b) a rating of at least “A-” and “Class VIII” from A.M. Best Company, Inc.
“ Facility ” or “ Facilities ” mean collectively or individually, the (i) Transit Center, (ii) the Transit-Oriented-Development, and (iii) Common Infrastructure.
“ Financial Advisor ” means the <u>future</u> member of the Proposer <u>Project Company</u> ’s team that will be <u>selected in consultation with RIPTA during the first 90 days of Preliminary Services period and</u> responsible for providing advisory services to RIPTA under the Preliminary Services Agreement with regard to funding and financing issues, as well as responsible for structuring financing on behalf of the Project Company.
“ Financing Member ” means each member of a Proposer’s team that will contribute equity or at-risk private capital to the Project Company for the purposes of performing the Project obligations.
“ Governmental Body ” means any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.
“ Guarantor ” means each parent company or other entity (in either case, if any) that is nominated by the Proposer in its Proposal that would support and guarantee the obligations of a Financing Member, Lead Design-Builder (or Lead Design-Builder Member), Lead Operator (or Lead Operator Member), or Lead Affordable Housing Developer (or Lead Affordable Housing Developer Member).
“ Individual Commercially Confidential Meeting ” means the Proposer’s confidential one-on-one meeting(s) with RIPTA and members of its Consultant Support Team, as further described in Section 3.4.6. of this RFP.
“ Infrastructure Facility ” means, collectively, the Transit Center and Common Infrastructure.
“ Infrastructure Facility Maintenance ” means the customary collection of facility management, engineering, repairs and maintenance, renewals and replacement, and other activities necessary to ensure that the Infrastructure Facility provides an adequate level of service, excluding the activities expressly retained by RIPTA (RIPTA O&M).

wage determinations for journeymen can be obtained at:
https://sam.gov/search/?index=wd&page=1&pageSize=25&sort=-modifiedDate&sfm%5Bstatus%5D%5Bis_active%5D=true&sfm%5Bwdol_id%5D%5B0%5D%5Bkey%5D=Rhode%20Island&sfm%5B

Proposers should also be aware that the Davis-Bacon Act ("DBA"), 40 U.S.C. Chapter 31, Subchapter IV, provides well-established standards for the payment of prevailing wages and fringe benefits for laborers and mechanics who work in construction, alteration and repair (including painting and decorating). Under the DBA, covered workers must be paid no less than the wages and fringe benefits that prevail for their classification (or occupation) in their locality.

These DBA requirements generally apply to projects financed using federal dollars, including projects financed using federal grants, loan guarantees, and loans, such as [Transportation Infrastructure Finance and Innovation Act \("TIFIA"\)](#).

2.10. EQUAL OPPORTUNITY EMPLOYER

- (a) RIPTA is an equal opportunity employer and shall require the Project Company to have and adhere to a policy of equal opportunity and to comply with all applicable federal, State, and local laws and regulations, and to not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship); or against any other person on the basis of sex which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding); race, religion, color, national origin (including language-use restrictions); ancestry, religious creed (including religious dress and grooming practices); political affiliation, disability (mental and physical, including HIV or AIDS); medical condition (cancer and genetic characteristics) and genetic information; marital status, parental status, gender, age (40 and over); pregnancy, military, and veteran status; sexual orientation, gender identity and gender expression; the exercise of family and medical care leave; the exercise of pregnancy disability leave; or the request, exercise, or need for reasonable accommodation.
- (b) The Project Company's policy must conform with applicable State and federal guidelines, including, without limitation, the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations"; Title VI of the Civil Rights Act of 1964, as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (§503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); the Rhode Island Rules and Regulations Relating to Equal Employment Opportunity (220-RICR-80-05-03); and the Rhode Island General Laws related to Equal Opportunity and Affirmative Action (including, without limitation, RIGL §28-5).

Only written requests to the above addressee will be considered. No requests for additional information or clarification to any other RIPTA office, consultant, or employee will be considered. If RIPTA determines that a change or clarification to the RFP is needed, all responses will be in writing and will be made available as an Addendum to all Proposers.

3.2.3. Rules of Conduct

3.2.3.1. No Improper Influence

Proposers are expected to conduct themselves with professional integrity, and shall refrain from all activities aimed at influencing decisions related to the Project, the RFP or the RFP Process. Any substantiated allegation that a Proposer or any employee, member, agent, consultant, advisor, representative, promoter, or advocate of the Proposer or any of its team members has engaged in prohibited communications or attempted to unduly influence the selection process may be cause for RIPTA to disqualify the Proposer, or to disqualify the Proposer, its team members and/or any employee, member, agent, consultant, advisor, representative, promoter or advocate of such Proposer or team member, from participating with the Proposer, in each case, in the absolute discretion of RIPTA.

3.2.3.2. Rules of Contact

Beginning with the issuance of this RFP and through the later of either the (i) execution of the Preliminary Services Agreement, or (ii) notification by RIPTA of the formal termination of this procurement, the following rules of contact will apply. Contact includes, without limitation, mail, face-to-face communication, telephone calls, text messaging, facsimile, email or other written communications. The RIPTA Representative for this RFP is identified in Section 3.1.2. of this RFP.

The rules of contact are designed to promote a fair, unbiased, and legally defensible procurement process. RIPTA is the single source of information regarding the Project procurement.

- (i) Communication with other Proposers. No Proposer, nor any of its members, may communicate with another Proposer or members of another Proper Team with regard to this procurement or the Project, except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer Team provided that such subcontractor is not a Major Participant, so long as those Proposers establish a protocol (satisfactory to RIPTA) prior to such communication to ensure that the subcontractor will not act as a conduit of information between the Proposers. This prohibition does not apply to public discussions regarding the RFP at RIPTA-sponsored informational meetings (if any) that are attended by more than one Proposer.
- (ii) Proposer Representatives. Contact between the Proposers and RIPTA (questions and responses to questions) will only be through the RIPTA Representative and the Proposer's designated representatives.
- (iii) Ex-Parte Communications. No Proposer, or representative of a Proposer, through their employees, agents, consultants, advisors or other representatives, shall have any *ex parte* communications regarding the RFP or the Project with RIPTA or any RIPTA officials, employees, staff, advisors, contractors or consultants involved with the RFP or the Project, except for communications expressly permitted by the RFP or approved in advance by the RIPTA Representative, in such person's absolute discretion. The foregoing restriction does

Facilities Maintenance	1. Lead Operator, or the Lead Operator Members collectively, must evidence its/their ability to deliver performance based life cycle infrastructure facility maintenance programs by having served as a lead facilities management entity on at least 3 public infrastructure facilities in the past 5 years, such as, but not limited to, transit and transportation facilities.
Financial Advisor	1. The Financial Advisor must evidence that it has prior experience (within the past 5 years) advising public transportation and transit agencies on funding and financing options for infrastructure projects, including structures involving public private partnerships and federal grants and loans.
Progressive Services	1. The Proposer must demonstrate that its Lead Member and/or Lead Design-Builder (or a Lead Design-Build Member) have prior successful experience managing and performing services under a preliminary services agreement, exclusive negotiation agreement, predevelopment agreement, or similar, which led to executing a Project Agreement and reaching commercial and financial close on a project involving public infrastructure.

5.4.2. Phase 2: Proposal Evaluation

Following the Proposal responsiveness review described above, responsive Proposals meeting the Minimum Qualifications threshold will be evaluated by the Selection Committee in accordance with the evaluation criteria set forth in this Section 5.4.2 of the RFP.

5.4.2.1. Organization & Management

The Selection Committee will award points to each Proposal for the evaluation criteria described herein based on the Selection Committee's judgment as to the merit, practicality, quality, strength and value of each Proposal, taking into account RIPTA's Project objectives.

The Selection Committee will evaluate each Proposer's organization and management based on the extent to which the proposed organization and management structure of the Proposer demonstrates the ability to successfully coordinate and deliver all components of the Project, taking into account Project size and complexity. RIPTA will verify and evaluate that Proposer organization addresses all key project technical and financial capability requirements as set forth in the RFP. Higher scores will be merited where there is a clear and logical management structure, with an alignment of interests amongst Major Participants and key subcontractors across multiple project elements (such as design, construction, financing, operations and maintenance). Higher scores will also be merited where there is demonstrated experience of the Major Participants working together as part of an integrated team in relation to successfully delivering comparable projects.

The suitability of the organization structure of the Proposer will take into consideration the following, among other, factors:

(a) **Team Structure**

2. Experience with multi-family and mixed-use market-rate and mixed-income housing projects of similar size and a track record of community engagement that delivers successful outcomes;
3. Demonstrated ability in projects that combine housing and mixed-use real estate development with public infrastructure, such as, but not limited to, transit-oriented developments;
4. Experience meeting requirements for participation from LBE/DBE/MBE/WBE/SBE or other such disadvantaged business, as evidenced by experience in Rhode Island or in other jurisdictions with similar requirements;
5. Experience with workforce development programs, apprenticeship programs, and working in partnership with labor organizations; and
6. Experience identifying and delivering housing and commercial projects with a public benefit component.

Facilities Maintenance

~~Facility Maintenance Provider and Key Personnel's demonstrated track record in developing and delivering performance-based Infrastructure life-cycle Facility Maintenance programs for public infrastructure facilities. RIPTA will evaluate experience with the following characteristics more favorably:~~

- ~~1. Social Infrastructure projects with long term, fixed price, performance-based contracts where the public owner transfers the risk of managing and optimizing annual recurring maintenance of building, architectural, and structural systems, as well as major maintenance such as renewals and replacement of those systems;~~
- ~~2. Public transportation maintenance facility projects, including but not limited to bus transit centers;~~
- ~~3. Projects that efficiently resolve the physical and technical interfaces and interactions within a building that accommodate different program types, especially if they are similar to this Project's joint development of housing and transit programs, but not limited to those two;~~
- ~~4. Projects developed within a collaborative BIM-enabled environment that incorporated BIM deliverables into the operational start-up, operations, and maintenance phases, including activities such as, but not limited to, development of O&M manuals and training for the project owner; and~~
- ~~5. Projects involving shared operational or maintenance responsibilities with the public partner.~~

Financial Advisor

~~Financial Advisor and Key Personnel's relevant experience advising public transit agencies on funding and financing options for complex transportation infrastructure projects involving transit-oriented developments. RIPTA will evaluate experience with the following characteristics more favorably:~~

- ~~1. Relevant past experience advising public transit agencies on projects involving federal grants and loans;~~
- ~~2. Experience with project finance for public infrastructure, including diverse public private partnership structures (such as design-build-finance-maintain, design-build-finance-operate-maintain, etc.);~~
- ~~3. Experience with commercial real estate and affordable housing financing (including low-income housing tax credit financing, private activity bonds and other innovative sources of funding and financing);~~
- ~~4. Experience preparing comparative value assessments to assist in determining the optimal mix of public and private financing; and~~
- ~~5. Experience with value capture and monetization initiatives involving public~~

~~transit centers.~~

(c) **Prior Experience Working Together**

- (i) The number of Proposer Team Members that have worked together on relevant reference projects and the extent of such participation by Proposer members in such reference projects; and
- (ii) The outcome of projects where team members have worked together, including whether such reference projects were delivered on schedule and on budget.

5.4.2.2. Evaluation of Delivery Approach

The Selection Committee will award points to each Proposal for the evaluation criteria based on the Selection Committee’s judgment as to the merit, practicality, quality, strength and value of each Proposal, taking into account RIPTA’s Project objectives, including those set forth in Section 2.3. of this RFP. The delivery approach will be evaluated on the basis of the following:

<p>Project Understanding and Approach to Delivering Project Objectives</p>	<p>RIPTA will evaluate the Proposer’s understanding of the Project’s key risks and principal challenges and opportunities. This includes evaluating the Proposer’s understanding of the Project, including its technical and financial challenges and opportunities; the PSA process; current and expected market conditions for housing (affordable and market-rate) and financing of the Project’s components; and key Project drivers, such as community and stakeholder outreach, and environmental permitting and entitlements processes. RIPTA will evaluate Proposals more favorably that demonstrate how the Proposer’s approach, specifically during the PSA period, will help satisfy the objectives described in Section 2.3 of the RFP.</p>
<p>Preliminary Services (including schedule)</p>	<p>RIPTA will evaluate each Proposer’s Preliminary Services approach and schedule. The evaluation will consider the proposed approach to delivering key activities and tasks, as well as the proposed Project Schedule. Proposals that demonstrate how the Proposer would meet or exceed RIPTA’s overall schedule objectives, including Substantial Completion of the Infrastructure Facility by 2026, will be evaluated more favorably. RIPTA will also evaluate the Proposer’s understanding of key PSA risks and its proposed mitigation strategies, as well as the proposed approach and ability of the Proposer to work collaboratively and transparently with RIPTA throughout the PSA process, including obtaining approvals, to achieve and exceed the Project objectives detailed in Section 2.3.</p>
<p>Project Management Approach</p>	<p>RIPTA will evaluate the Proposer’s project management approach based on the Proposer’s ability to demonstrate an understanding of the approaches to successfully plan and execute the Project, including describing the use of the Proposer’s proven systems, processes and tools, and referencing real-world examples of project success. RIPTA will evaluate Proposals more favorably that clearly demonstrate a viable and proven approach toward project management, including budget, risk, and schedule management.</p>
<p>Cost Savings</p>	<p>RIPTA will evaluate each Proposer’s approach to how the proposed commercial</p>

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5.4.3. Evaluation Categories and Relative Weighting

Responsive Proposals will be evaluated and ranked by the Selection Committee using the criteria and weightings as set forth below.

Technical Proposal (50 points total)		
Organization and Management <ul style="list-style-type: none"> • Team Organization • Prior Experience Working Together • Key Personnel • Proposer Experience & Capabilities • 	Package A and Package B	20
Delivery Approach <ul style="list-style-type: none"> • Project Understanding • Preliminary Services, including schedule • Project Management Plan • Cost Savings • Public Outreach • Integrated Project • Design-Build Work, Cost Estimating & Risk Management • Facilities Management Services • Financing Services • Entitlements, Inclusivity and Community Benefits 	Sections C-1 to C-11 of Package C	30
Price Proposal (50 points total)		
Return-on-Equity <u>Preliminary Services Fee</u>	Section D-1 of Package D	10 <u>30</u>
Design-Build Subcontractor Fee	Section D-2 of Package D	5
Operations Subcontractor Fee	Section D-3 of Package D	5
Preliminary Services Fee <u>Return-on-Equity</u>	Section D-4 of Package D	30 <u>10</u>

5.4.4. Total Score and Award

After points have been assigned to every category, the Selection Committee will add the Proposal point scores for each Proposal. The Proposer submitting the Proposal that receives the highest total number

<p>B-6</p>	<p>Experience (Proposal Form 5)</p>	<p>Proposer shall include Proposal Forms 5.A.-5.E., as well as a brief narrative (not to exceed 3 pages), for five project examples associated with each following:</p> <ul style="list-style-type: none"> (i) Project Management & Financing Experience (ii) Design-Build Experience (iii) Infrastructure Facilities Maintenance Experience <u>(iii)</u> (iv) Affordable Housing Experience <u>(iv)</u> (v) Commercial Development (including Property management) (vi) Financial Advisor <p>Proposers should highlight experience relevant to this Project, such as that relating to (i) transit depots and/or TOD and (ii) progressive processes and alternative delivery structures, such as P3.</p> <p>Proposers may also include a summary table that includes recent relevant projects successfully delivered (or being delivered) by the Proposer and/or Major Participants in the past 10 years.</p>
<p>B-7</p>	<p>Statement of Capabilities</p>	<p>The Proposer shall provide a narrative of no more than 10 pages describing the Proposer’s relevant capabilities. Explain how the experience presented section B-6 can translate into value for RIPTA in the context of this Project. Please explain your capability to work effectively with RIPTA on diverse project elements during both the preliminary services period, as well as the services period, on issues relating to design-build, financing, public outreach, facilities maintenance, etc. for both the Infrastructure Facility and the TOD.</p>
<p>B-8</p>	<p>Key Personnel Organization Chart (Form 6)</p>	<p>The Proposer shall provide a functional Key Personnel list (Form 6) and organizational chart that provides the names of all Key Personnel and other significant personnel the Proposer wishes to qualify as Key Personnel, along with their relationships within the Proposer’s Project Company organization.</p> <p>At a minimum, Key Personnel must include:</p> <ul style="list-style-type: none"> (i) Principal-in-Charge (ii) Lead Member’s Project Manager (iii) Financing Member’s Project Principal (iv) Affordable Housing Developer’s Project Executive (v) Affordable Housing Developer’s Project Manager <u>(v)</u> (vi) Commercial Developer’s Project Executive (vii) Commercial Developer’s Project Manager <u>(vi)</u> (viii) Design-Builder’s Principal-in-Charge <u>(vii)</u> (ix) Design-Builder’s Design Manager <u>(viii)</u> (x) Design Builder’s Design Architect <u>(ix)</u> (xi) Design-Builder’s Construction Manager <u>(x)</u> (xii) Design-Builder’s Safety Manager (xiii) Infrastructure Facilities Maintenance Principal in Charge

		<p>(xiv) Infrastructure Facilities Maintenance Project Manager</p> <p>(xv) Property Manager Principal-in-Charge</p> <p>(xvi) Financial Advisor Principal-in-Charge</p> <p>(xvii) Financial Advisor Project Manager</p> <p><u>(xi)</u> (xviii) Public Outreach Principal-in-Charge</p> <p>(xix) Public Outreach Project Manager</p> <p>For purposes of clarity, the Principal-in-Charge is the executive appointed by the relevant entity who is principally responsible for its role in the Proposer and Proposer Team, whereas the Project Manager is the individual responsible for managing the day-to-day activities of the Project on a full-time basis. All Key Personnel should have a minimum of 10 years of relevant experience.</p>
<p>B-9</p>	<p>Key Personnel Narrative</p>	<p>The Proposer shall provide a narrative that:</p> <ol style="list-style-type: none"> (1) Provides a detailed staffing plan that describes which Key Personnel and other named individuals will be involved in the delivery of the Preliminary Services, as well as those anticipated for each phase from design through the completion of all design-build-finance services and operations; (2) Clearly explains each Key Person’s proposed role and how their qualifications and experience make them well suited for their assigned roles and contribute to ensuring Project budget and schedule goals; and (3) Describes relevant experience, as well as any prior experience working together with other Key Personnel or individuals identified on the organizational chart.
<p>B-10</p>	<p>Key Personnel Resumes</p>	<p>For each Key Person identified in section B-7 above, as well as any other Key Personnel that the Proposer so designates in its Proposal, the Proposer must submit a resume. Resumes shall be limited to two pages and must include the following information, at a minimum:</p> <ul style="list-style-type: none"> • Proposed position for the Project • Total number of years of relevant experience • Full name of individual • Firm for which individual works and role within that firm’s organizational structure • Individual’s current office location and proposed office location for the Project • Number of years with the individual’s current firm • Relevant education or degrees • Relevant licenses/certifications • Work history: relevant work experience on projects similar in size and scope to the Project, as well previous experience working with the members of Proposer’s team (include dates work was

		<p>performed)</p> <ul style="list-style-type: none"> References: Proposer must provide three references for each individual. Each of the three references provided must be from different projects. References must be previous owners and or project participants (partners, lenders, investors, agencies), and must include the name, position, company or agency, and contact information (including a current email address and phone number). The Proposer must verify that all contact information provided is correct. RIPTA may elect to exclude from consideration any project experience that has incorrect reference or contact information.
B-11	Relationship Disclosure (Proposal Form 7)	Proposer shall disclose all relevant relationships by submitting a completed Proposal Form 7.
B-12	Statement of Ownership (Proposal Form 8)	Proposer shall complete and submit Proposal Form 7.
B-13	Equity, Inclusion and Diversity Subcontracting Plan	Proposers shall provide a draft Equity, Inclusion and Diversity Subcontracting Plan to be utilized during the design-build phase of the Project under the Project Agreement. The draft plan should demonstrate how the Proposer will make a good faith effort to award <u>comply with and make</u> a total of 20% of the Design-Build Work that is subcontracted to entities other than the Design-Build Subcontractor to Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Emerging Small Business Enterprises (ESB), as properly certified within the State of Rhode Island Certification Office of Business Inclusion and Diversity. The minimum aspirational goal for each type of enterprise is as follows: 10% D/MBE, 5% D/WBE and 5% ESB. <u>good faith effort to comply with the Project's 5%-15% subcontracting goal for the Project Services Phase, even if the Proposer has the capability to complete the work with its own workforce.</u> ⁵ The Plan should also indicate the Proposer's approach and experience meeting <u>EEOP, prevailing wage, Davis-Bacon and similar requirements.</u> Likewise, <u>please provide an overview of your proposed approach towards community benefit and construction workforce development programs.</u>
B-15	Financial Information (Proposal Form 14)	<p>1. Financial Information – Financial Officer Certificate:</p> <p>Provide a completed <u>Form 14 (Financial Information - Financial Officer Certificate)</u> in accordance with the instructions on the Form, for each of the following:</p> <ul style="list-style-type: none"> (a) each Financing Member; (b) the Lead Design-Builder; (c) each Lead Design-Builder Member (if applicable); and (d) each Guarantor (if applicable)

⁵ The DBE goal will be further refined during the preliminary services stage, once there is better information as to the scope of the Project Services. A firm DBE goal will be established in the Project Agreement.

Package C – Project Approach

<p>C-1</p>	<p>Project Understanding and Approach to Delivering Project Objectives (3 pages maximum)</p>	<p>Provide a summary of the Proposer’s understanding of the Project’s program, key risks, and principal challenges and opportunities.</p> <p>The narrative should include the Proposer’s understanding of the Project and its technical and financial challenges and opportunities; the Preliminary Services / progressive process as envisioned by RIPTA; current and expected market conditions for housing (affordable and market-rate) and financing of the Project’s components; and, key drivers such as community and stakeholder outreach.</p>
<p>C-2</p>	<p>Preliminary Services Approach (8 pages maximum)</p>	<p>The Proposer shall submit a Preliminary Services approach narrative describing how the Project Company will manage and deliver the Preliminary Services.</p> <p>RIPTA will evaluate the Preliminary Services Approach based on the Proposer’s ability to demonstrate an understanding of the approaches to successfully plan and execute the Preliminary Services, including describing the Proposer’s processes and tools, and referencing real-world examples of project success. With reference to the requirements set forth in Appendix 1 (Scope of Basic Services) of the draft Preliminary Services Agreement, elements to address include, but are not limited to, the Proposer’s approach to:</p> <ul style="list-style-type: none"> (i) project start-up activities; (ii) approach to delivering each Task and its sub-components; (iii) coordination with RIPTA; (iv) approach to scaling the commercial and TOD component of the project; (v) schedule management; (vi) approach to Project entitlements; (vii) risk identification/management/mitigation; (viii) project management tools and methods; and (ix) other.
<p>C-3</p>	<p>Project Schedule (including Proposal Form 13) (3 pages, excluding charts)</p>	<ul style="list-style-type: none"> (i) Provide a Project schedule for the Project, including a detailed schedule for the PSA phase (summarized in Proposal Form 12<u>13</u>), and an indicative schedule for the construction phase, including both a narrative description and a Gantt chart, highlighting key milestones that demonstrate how the Proposer would meet or exceed RIPTA’s overall schedule objectives and key milestones for the Project, including Substantial Completion of the Facility by 2026; (ii) Describe the anticipated key schedule risks and explain the schedule risk mitigation strategies the Proposer proposes for consideration during the PSA phase. Include a discussion of the proposed approach to schedule management. Discuss suggestions to optimize and accelerate schedule;

Package D – Price Proposal

D-1	Design-Build Subcontractor <u>Preliminary Services</u> Fee (Proposal Form P-1)	Complete and fill in all information required by Proposal Form P-1.
D-2	Operations <u>Design-Build</u> Subcontractor Fee (Proposal Form P-2)	Complete and fill in all information required by Proposal Form P-2.
D-3	Return on Equity <u>Operations Subcontractor Fee</u> (Proposal Form P-3)	Complete and fill in all information required by Proposal Form P-3.
D-4	Preliminary Services Fee <u>Return on Equity</u> (Proposal Form P-4)	Complete and fill in all information required by Proposal Form P-4.

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Exhibit B

Draft Preliminary Services Agreement (Schedule 2)
(changed pages showing changes made by Addendum 3)

PRELIMINARY SERVICES AGREEMENT
FOR THE DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT

between

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

and

[INSERT]

Dated

| ~~[INSERT DATE]~~ Insert Date

**RHODE ISLAND PUBLIC TRANSIT AUTHORITY
PRELIMINARY SERVICES AGREEMENT**

This **PRELIMINARY SERVICES AGREEMENT** (this “**Agreement**”) is entered into as of _____, 2023, by and between the Rhode Island Public Transit Authority (“**RIPTA**”), and [_____], a [_____] [**Note: to be completed to reflect nature of Project Company**] (the “**Project Company**” and, together with RIPTA, the “**Parties**”).

RECITALS

A. RIPTA has determined to develop the Project (as defined below) using a progressive design-build-finance-operate-maintain project delivery method; the Project is contemplated to comprise the Transit Center, Common Infrastructure and Transit-Oriented Development (as such terms are defined below);

B. On January 17, 2023. RIPTA issued a Request for Proposals (No. 23-22) for the Project (as amended, the “**RFP**”) and received proposals (“**Proposals**”) in response thereto; the Project Company was determined by RIPTA to have submitted the best value Proposal in response to the RFP;

C. The Parties desire to enter into this Agreement, pursuant to which, the Project Company will work collaboratively with RIPTA to develop the Project to an advanced design stage (including by providing project management, planning, permitting, design, site investigations, constructability review, cost estimating, public outreach, financial advisory services, securing any required private financing and other professional services as described in this Agreement);

D. The culmination of such Preliminary Services (as defined below) will be Project Company’s submission of the Definitive Project Submittal (as defined below); and

E. The Parties anticipate that they will ~~consult as to whether it best serves the Project to have the entirety, prior the submission~~ of the ~~Project covered by a single~~ Definitive Project Agreement, ~~or two Project Agreements (one covering the Infrastructure Facility and the other the Transit Oriented Development); and it is further anticipated that the Parties will~~ Submittal, fully negotiate and finalize the terms of any Project Agreement(s) ~~prior the submission of the Definitive Project Submittal with respect to the Infrastructure Facility, and a separate a Project Agreement with respect to the Transit-Oriented Development~~, and that such negotiations shall reflect and incorporate the work product produced under the Preliminary Services and Appendix 6 (Project Agreement Term Sheet)) hereto;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, hereby covenant and agree as follows:

“Operations Charge Component” means the charge to be included in the Project Agreement Services Fee in any given year for Operation Services with respect to the Infrastructure Facility.

“Operations Subcontractor” means the entity which will be primarily responsible to the Project Company for performing the Operation Services for the Infrastructure Facility.

“Operations Subcontractor Fee” means the Operations Subcontractor’s mark-up of ___% for profit, risk and overhead on the Operations Services, as established in the Project Company’s Proposal and negotiated by the Parties prior to execution of the applicable Project Agreement, which will be reflected in the Definitive Project Submittal, and ultimately, the Project Agreement Services Fee pursuant to such Project Agreement.

“Parties” has the meaning set forth in the first paragraph of this Agreement.

“Preliminary Services” means, collectively, the Basic Services and any Additional Services under this Agreement.

“Preliminary Services Fee” has the meaning set forth in Section 4.2 (Compensation to the Project Company for Preliminary Services).

“Project” means the Project Improvements and the performance of the Project Agreement Services relating thereto.

“Project Agreement” means ~~the each~~ each agreement ~~or agreements~~ to be entered into between RIPTA and the Project Company following completion of the Preliminary Services and submission of the Definitive Project Submittal by the Project Company, for the performance of the relevant Project Agreement Services.

“Project Agreement Date” means, with respect to a Project Agreement, the date of execution of such Project Agreement by the Parties.

“Project Agreement Services Fee” means the fee to be paid by RIPTA to the Project Company (under the Project Agreement relating to the Infrastructure Facility) following operational readiness/final completion of the Infrastructure Facility, as compensation for the Project Agreement Services, and any Holdback amounts from the Preliminary Services Fee.

“Project Agreement Term Sheet” means the term sheet set forth in Appendix 6 (Project Agreement Term Sheet) hereto that sets forth the material terms which are anticipated to form the basis of the Project Agreement(s).

“Project Company” has the meaning set forth in the introductory paragraph to this Agreement.

“Project Company Default” has the meaning set forth in Section 5.1 (Project Company Default).

“Project Company Project Manager” has the meaning set forth in Section 3.8(a) (Project Company Representatives).

“Project Company Project Representative” has the meaning set forth in Section 3.8(a) (Project Company Representatives).

“Project Improvements” means all physical infrastructure comprising the Transit Center, Common Infrastructure and Transit-Oriented Development.

“Project Schedule” means the project schedule to be progressively prepared and updated by the Project Company and included in the Definitive Project Submittal pursuant to the requirements set forth in Appendix 1 (Scope of Basic Services).

“Project Services” means the services and work that will be required to be performed by the Project Company pursuant to a Project Agreement, including (i) the financing, design-completion, permitting completion, construction, commissioning, Infrastructure Facilities Maintenance and management services for the Infrastructure Facility, and (ii) the financing, design-completion, permitting, construction, commissioning, Property Maintenance and management of the TOD.

“Project Site” means one or more of the parcels of real property on which the above-ground and below-ground structures and equipment constituting the Facility are to be located.

“Property Management” means the collection of facility management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and other activities that are customary in the real estate industry for the TOD and Commercial Component of the Project.

“Proposal” means the proposal submitted by the Project Company in response to the RFP.

“Relief Event” means:

- (i) a Change in Law;
- (ii) a Force Majeure Event;
- (iii) required property access rights for the Project Company at the Project Site being denied;
- (iv) pre-existing Project Site conditions (including geotechnical, topographical, geological, seismic, hydrographical, hydrological, or physical conditions related to the Preliminary Services) that are not consistent with or reasonably inferable from (i) the information provided by or on behalf of RIPTA to the Project Company prior to the date hereof, or from publicly available information, (ii) the Project Company’s site

(e) No Litigation. There is no action, suit, proceeding, investigation, or litigation pending or, to the knowledge of the Project Company, threatened, that (i) could reasonably be expected to have a material adverse effect on the ability of the Project Company to perform its obligations under this Agreement; (ii) challenges or could adversely impact the Project Company's power and authority to execute this Agreement or to perform its obligations under this Agreement; (iii) challenges the validity or enforceability of this Agreement; or (iv) challenges the authority of the Project Company's representative(s) executing this Agreement.

(f) Prosecution of the Preliminary Services. The Project Company has the capacity (administrative, technical, financial and otherwise) to timely and orderly perform the Preliminary Services hereunder.

(g) Licenses, Skills, Expertise Etc. The Project Company and the major team members have (or will have by the time required) the required authority, qualifications, rights, franchises, licenses, certificates, privileges, professional ability, skills, and capacity to perform the Preliminary Services hereunder. ~~the~~The Project Company and the major team members have all Governmental Approvals that are required to begin the Preliminary Services hereunder. The Project Company has no reason to believe that any Governmental Approval required to be obtained by the Project Company will not be granted in due course and thereafter remain in effect so as to enable the Preliminary Services hereunder to proceed in accordance with this Agreement.

(h) Information Supplied by the Project Company. The information supplied and representations and warranties made by the Project Company in all submittals made to RIPTA with respect to the Project Company (and to the best of its knowledge after due inquiry, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.

(i) Conflicts of Interest. Neither the Project Company nor any of its directors, officers, members, partners, or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Preliminary Services hereunder. The Project Company further represents and warrants that, in the performance of this Agreement, no person having such interest or possible interest shall be employed by it.

(j) No Selling Agent Etc. No person or selling agency has been employed or trained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, or contingent fee. The Project Company further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the Parties.

ARTICLE 3

PERFORMANCE OF THE PRELIMINARY SERVICES

Section 3.1 Scope of Basic Services.

(a) Generally. The Project Company shall render and perform the Preliminary Services to and for RIPTA in accordance with Appendix 1 (Scope of Preliminary Services) and the terms and conditions of this Agreement. The Project Company's responsibility to perform the Preliminary Services shall include, without limitation, the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preliminary Services, and the performance of all services reasonably inferable from the Preliminary Services. The Project Company acknowledges and agrees that no Additional Services or additional compensation will be established as a result of the Project Company's inability to reasonably infer the services necessary to complete the Preliminary Services or submit a Definitive Project Submittal.

(b) Financial Advisor and Operator. In addition to the services set forth in Appendix 1 (Scope of Preliminary Services), the Project Company shall prepare and deliver to RIPTA, within thirty (30) calendar days following initiation of Task 1:

(i) a plan to competitively vet and onboard firms to serve as the Financial Advisor as defined in the RFP. The Project Company, in consultation with RIPTA, will select the Financial Advisor within sixty (60) calendar days following submission of such plan to RIPTA. The Parties acknowledge that the costs associated with the Financial Advisor are included within the Preliminary Services fee; and

(ii) a plan to competitively vet and onboard firms to serve as the Infrastructure Facilities Maintenance consultant to the Project Company, until such time that the Project Company selects its Infrastructure Facilities Maintenance Provider (the "Operator"). The Project Company, in consultation with RIPTA, will select the Infrastructure Facilities Maintenance Consultant within sixty (60) calendar days following the submission of such plan to RIPTA. The Parties acknowledge that the costs associated with the Financial Advisor are included within the Preliminary Services fee.

(c) ~~(b)~~ Order of Preliminary Services Tasks. The Project Company acknowledges that the Preliminary Services are segregated into discrete Tasks associated with the advancement of the Preliminary Services, and each Task is expected to be completed before proceeding to the next Task. Before proceeding with any Task, the Project Company shall confirm in writing, with the RIPTA Project Representative, that RIPTA agrees with the Project Company's determination that any earlier Task has been completed and that RIPTA does not wish to suspend the Preliminary Services, as further described in Section 3.4(a) (Suspension and Delay). Until the Project Company has completed a Task, as determined by RIPTA Project Representative pursuant to this subsection, the Project Company shall not be entitled to any compensation for work performed for any subsequent Task.

Section 3.2 Changes to the Scope Of Services.

(a) Generally. RIPTA shall have the right to make changes to the scope of the Preliminary Services set forth in Appendix 1 (Scope of Preliminary Services) at any time and for any reason, in its sole and absolute discretion, by written notice to the Project Company, subject

to the terms and conditions of this Section. Changes to the scope of the Preliminary Services may be made by RIPTA to account for a Relief Event or any other reason determined by RIPTA.

(b) Additional Services. The Project Company shall be entitled to a negotiated equitable adjustment to the Preliminary Services Fee and the Work Schedule in the event of any expansion of the scope of the Preliminary Services pursuant to this Section (the “**Additional Services**”). Any expansion of the scope of the Preliminary Services under this Section and the corresponding adjustment to the Preliminary Services Fee and the Work Schedule shall be reflected in a written amendment to this Agreement. The Project Company shall not be entitled to compensation for any Additional Services beyond the scope of the Preliminary Services unless, prior to the performance of any such Additional Services, the Project Company shall have received express written authorization from RIPTA to perform the Additional Services. In the absence of any change to the scope of the Preliminary Services memorialized in an amendment to this Agreement, the Project Company shall have no obligation to perform work outside the scope of the Preliminary Services.

(c) Additional Services Resulting from Delay. Extra costs resulting from delays caused solely by an expansion of the scope of Preliminary Services shall be deemed to be costs resulting from Additional Services, provided the Project Company demonstrates that the extra costs claimed (i) resulted from time or expenses actually incurred in performing the expanded scope of Preliminary Services, (ii) were incurred by Project Company as a direct result of such delay, and (iii) are documented to RIPTA’s satisfaction.

(d) Exclusions from Additional Services. Additional Services shall not include work or services necessary because of the Project Company’s errors, omissions or conflicts of any type in the Project Company’s plans, specifications, drawings and reports. All such services shall be performed at no additional cost to RIPTA, including any required corrections or revisions to reports, plans or specifications that are a result of any errors or omissions by the Project Company.

(e) Changes that Reduce the Scope of the Preliminary Services. RIPTA shall have the right to reduce the scope of the Preliminary Services at any time by written notice to the Project Company, provided, however, that RIPTA shall have no right to reduce the scope of any Preliminary Services that RIPTA has previously authorized the Project Company to commence and that the Project Company has already commenced. ~~Changes to the Preliminary Services that reduce the scope of~~ Such changes to the Preliminary Services shall be effective upon execution by the delivery parties of the written notice by RIPTA pursuant to this subsection an amendment hereto. Any reduction in the scope of the Preliminary Services shall result in an appropriate reduction in the Preliminary Services Fee, as well as adjustment to the Work Schedule, ~~which shall in each case as agreed by the Parties (acting reasonably), will~~ be reflected in an amendment hereto.

Section 3.3 Work Schedule. The Work Schedule is set forth in Appendix 2 (Work Schedule). Time is of the essence in the performance of the Project Company’s duties under this Agreement. The Project Company shall complete the Preliminary Services under this Agreement in strict accordance with the Work Schedule. The Project Company acknowledges and agrees that any delays in the Project Company’s completion of its Preliminary Services under this

Agreement or performance beyond the number of days agreed to herein for completion of a Task of the Preliminary Services, will cause injury and damage to RIPTA. The Work Schedule will include maximum review periods for review by RIPTA of design submissions by the Project Company. RIPTA shall have a maximum of [30] Business Days for review of each of the three design submissions (the Basis of Design Package Submittal, the 30% and 60% Package Submittals), and a maximum of [20] Business Days for review of other submissions.

Section 3.4 Changes to the Work Schedule.

(a) Suspension and Delay. RIPTA may elect to suspend the Project Company's performance of the Preliminary Services for any reason and, in such event, (i) the Work Schedule shall be adjusted for the period of suspension as appropriate to complete the required Preliminary Services and (ii) the total time expended by the Project Company up to the time of suspension will be charged against the total allowable time in the same manner as if no suspension had occurred. If RIPTA suspends the Project Company's efforts for more than 45 days other than due to a Project Company Default or delay by a Governmental Body, the Project Company shall have the right to request an equitable adjustment to the Preliminary Services Fee. If RIPTA suspends the Project Company's efforts for more than 120 days other than due to Project Company Default or delay by a Governmental Body, the Project Company shall have the right to initiate termination as provided in Section 6.2(b) (Termination for Extended Suspension or Delay).

(b) Relief Events.

(i) Should the Project Company's performance of a critical activity be materially delayed by a Relief Event, and the delay caused by the Relief Event could not have been avoided or mitigated by the Project Company by any reasonable method or action (consistent with the Standard of Care), the Project Company shall be entitled to an extension of the time in which to complete such activity as well as any other activities that are adversely affected by the Relief Event.

(ii) The Project Company shall not be entitled to any increase in the Preliminary Services Fee as a result of a Relief Event, except when a Relief Event causes Project conditions to change such that the Project Company's activities completed at the time of the Relief Event must be revised. In such event, RIPTA and the Project Company shall negotiate reasonable additional schedule and compensation only for activities required by the Project Company to complete the changes attributable solely due to the Relief Event. The extension of time for a Relief Event shall be a period equal to the time lost by reason of the delay, provided the Project Company has taken all reasonable steps to proceed with the performance of the Agreement and has provided RIPTA with written notice of the delay and any corrective action taken to mitigate the delay. Relief Events shall not include delay by a Governmental Body to issue a Governmental Approval if such delays are the result of late, inadequate or incomplete filings or requests of the Project Company.

(iii) Within 30 days from the occurrence of any Relief Event, should the Project Company seek a modification to the Work Schedule, the Project Company shall give

(iii) Nothing in this Section 3.11(c) shall impact the rights of the Project Company with respect to a Project Site-related Relief Event.

(iv) The Project Site shall be acquired by RIPTA prior to the execution of the Infrastructure Facility Project Agreement.

(d) Revisions to Drawings and Specifications. Notwithstanding anything in this Agreement to the contrary, the Project Company shall, at no additional expense to RIPTA, provide reasonable minor revisions to any and all drawings and specifications provided to RIPTA hereunder, whether or not previously reviewed and accepted by RIPTA, as may be required to satisfy the Preliminary Services established by this Agreement. It is agreed and understood that the scope of each of the Tasks in Appendix 1 (Scope of Basic Services) may require some reasonable minor revisions to drawings and specifications provided to RIPTA, as the scope of the Project is refined, and that such reasonable minor revisions are included within the existing Basic Services under this Agreement. The Project Company shall make, without additional expense to RIPTA, such reasonable minor revisions or corrections to the Deliverable Material as may be required.

Section 3.12 Intent of the Parties with Respect to Project Agreement(s).

(a) Purpose of this Agreement. The primary purpose of RIPTA in entering into this Agreement is to develop the design, operations and maintenance plans, financing plan and other aspects of the proposed Project, on a collaborative basis with the Project Company, to a level sufficient to allow the Parties to establish and confirm all information, terms and conditions necessary for the Parties to complete negotiate, finalize and execute one or more Project Agreements (based on the term sheet set forth as Appendix 6 (Project Agreement Term Sheet)) providing for the actual consummation of the Project. Such information, terms and conditions shall be developed through the performance of the Basic Services by the Project Company, in conjunction with input from RIPTA, and shall include, but not be limited to, the following:

- (i) the Project Schedule for completing the Project Improvements, including the scheduled acceptance date on which the Project is expected to be operational;
- (ii) the Technical Specifications of the Project Improvements;
- (iii) the acceptance standards for the Project Improvements;
- (iv) the operations period performance guarantees for the Project;
- (v) the required Governmental Approvals for the Project (including Governmental Approval application submittal dates and assumed Governmental approval issuance dates);
- (vi) a draft maintenance plan for the Infrastructure Facility, including a major maintenance, repair and replacement plan;

(vii) a final plan (or plans) of finance for the Project;

(viii) the annual Project Agreement Services Fee for the Infrastructure Facility (and the components thereof, including the Capital Charge Component (based upon a committed financing) and Operations Charge Component, less any revenue off-set from the TOD) for each year of the Project Agreement;

(ix) the approach to the allocation of the capital costs of the Common Infrastructure and the financing thereof; and

(x) all other information necessary to finalize any Project Agreement.

(b) Cost of Negotiations and Committed Private Financing. RIPTA shall compensate the Project Company in the manner set forth in Article 4 (Compensation) for the performance of the Tasks constituting the Basic Services. The Basic Services do not include (and the Preliminary Services Fee does not include) negotiating the Project Agreement or the costs and expenses of obtaining private financing. The Project Company shall bear all of its own costs and expenses of negotiating any Project Agreement and securing committed financing, whether concurrently with or upon completion of the performance of the Basic Services. Such costs may be included within the Capital Charge Component of the Project Agreement Services Fee, but shall NOT be compensated under this Agreement.

(c) Assumption of Risk of Design Liability Under the Project Agreement~~Agreements~~. The Project Company acknowledges and agrees that under a Project Agreement, if and when executed by the Parties, the Project Company will have the sole and exclusive responsibility and liability for the design, construction and performance of the Project Improvements. Accordingly, the Project Company shall have the right and the responsibility to perform the Preliminary Services under this Agreement in a manner that would permit a Design-Build contractor, acting reasonably and having the experience and qualifications required to successfully undertake the design and construction of a project similar in scale and complexity to the Project, to assume such responsibility and liability. In particular, the Project Company shall not propose or agree to any element of the Minimum Design and Construction Requirements, Technical Specifications or Technical Deliverable Material or other work product to be incorporated in the relevant Project Agreement that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

(d) Assumption of Risk of Differing Site Conditions. The Project Company acknowledges and agrees that under a Project Agreement, if and when executed by the Parties, the Project Company will have the exclusive responsibility and liability for any physical conditions or subsurface conditions at the Project Site. Accordingly, the Project Company is being compensated hereunder for performing, as part of the Basic Services, a comprehensive review of the Project Site in accordance with Task 2 (Initial Due Diligence and Conceptual Options Report) as set forth in Appendix 1 (Scope of Basic Services), and the Project Company acknowledges and agrees that such Basic Services will be performed by the Project Company with a view towards assuming the liability for such risks, and that the Project Company shall

assume all such risks if and when the Project Agreement is executed by the Parties in accordance with this Section.

Section 3.13 Definitive Project Submittal.

(a) Basic Services and Definitive Project Submittal. As part of the Basic Services, the Project Company is obligated to develop the Project design, plan of finance, and Operations Plan to a level sufficient to make the Definitive Project Submittal, as further described in Task 6 (Definitive Project Submittal) of Appendix 1 (Scope of Basic Services), and obtain committed private financing to the extent required for the Project. The Definitive Project Submittal shall include and be based upon the Technical Specifications and other Technical Deliverable Material, the Minimum Design and Construction Requirements, acceptance standards, performance guarantees, Operations Plan, plan of finance and all other information, analysis, findings and reports developed by the Project Company during the performance of the Preliminary Services.

(b) Definitive Project Submittal Pricing. The proposed Capital Charge Component and proposed Operations Charge Component included in the Definitive Project Submittal for the Infrastructure Facility and the other elements of the Definitive Project Submittal shall be based upon the risk allocation established by a Project Agreement.

(c) Preliminary Services Fee, Design-Build Subcontractor Fee, Return-on-Equity and Operations Subcontractor Fee. The Parties acknowledge and agree that with respect to the development of the Capital Charge Component and the Operations Charge Component, the Preliminary Services Fee, Design-Build Subcontractor Fee, Return-on-Equity and Operations Subcontractor Fee were proposed by the Project Company as part of the Proposal and negotiated by the Parties prior to the Agreement Date, shall be incorporated into the Definitive Project Submittal as finalized prior to the Agreement Date, and shall not be increased through Project Agreement negotiations.

(d) Formal Offer. The Definitive Project Submittal shall constitute a formal offer by the Project Company to RIPTA, with a validity period of not less than one hundred and eighty (180) days. Such validity period may only be extended with the written consent of the Project Company. Such Definitive Project Submittal may not (absent the written consent of RIPTA) be withdrawn or modified by the Project Company during such validity period.

Section 3.14 Definitive Project ~~Agreement~~Agreements.

(a) Negotiation and Execution of Project ~~Agreement(s)~~Agreements.

(i) It is the intention of RIPTA to distribute a draft of ~~one or more~~two ~~(2)~~ Project Agreements to the Project Company in advance of the ~~development~~delivery of the Project Company's Definitive Project Submittal. ~~RIPTA will consult with the Project Company as to whether it best serves the Project to have the entirety of the Project covered by~~The Parties contemplate that there will be a ~~single~~Project Agreement, or two Project Agreements (one covering with respect to the Infrastructure Facility and ~~the other the TOD)~~a separate a Project Agreement with respect to the Transit-Oriented Development. It is anticipated that the Parties will fully negotiate and finalize the terms of ~~any~~each Project Agreement (subject to agreement on

(3) changes in the scope or cost of Design-Build Work that may occur as the design is advanced from the level set forth in the Technical Specifications to a fully complete level;

(4) the risk that inflation in the cost of commodities, materials, equipment, labor and services necessary for the completion of the Design-Build Work will exceed the levels assumed by the Parties in establishing the Project Agreement Services Fee under item (1) above;

(5) the risk that it may be necessary to incur additional capital and operating expenses in connection with and following commissioning and performance of the acceptance tests in order to meet the acceptance standards and achieve operational readiness/final completion;

(6) any other risk specifically referred to herein as a risk to be borne by the Project Company in performing the Design-Build Work; and

(7) the risk that the costs to maintain, repair and replace the Infrastructure Facility following substantial completion may be greater than assumed by the Project Company.

(iv) Project Agreement Relief Events. As costs associated with Project Agreement Relief Events (as such concept will be defined in the applicable Project Agreement) are separately compensable, no consideration shall be given to any potential Project Agreement Relief Event costs or expense in negotiating and establishing the annual Project Agreement Services Fee.

(c) Obligations of the Project Company Relating to a Project Agreement. In connection with a potential Project Agreement, the Project Company shall be obligated (i) to make a complete bona-fide Definitive Project Submittal in accordance with this Section and Section 3.13 (Definitive Project Submittal), and (ii) to negotiate in good faith to finalize such Project Agreement (based on the draft Project Agreement to be provided by RIPTA), if and to the extent RIPTA elects (pursuant to subsection (e) (No Obligation of RIPTA to Enter into a Project Agreement) of this Section) to enter into and continue such negotiations.

(d) Non-Compliant Definitive Project Submittal. In the event RIPTA believes that the Definitive Project Submittal does not comply with the requirements of this Agreement, RIPTA shall provide written notice to the Project Company of any additions, corrections or revisions required to achieve such compliance. The Project Company, at its cost and expense, and without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of the Project Company to furnish the Preliminary Services and provide the Definitive Project Submittal in accordance with the Contract Standards shall be a material breach of this Agreement. [The inability of the Parties, acting reasonably, to agree on the Project Agreement Services Fee or other cost or price aspect of the Project will not in and of itself constitute a breach of this Agreement by either Party.](#)

(e) No Obligation of RIPTA to Enter into ~~any~~ Project Agreement.

Notwithstanding any other provision of this Agreement to the Contrary (including pursuant to subsection (a) (Negotiation and Execution of the Project Agreement) of this Section), **RIPTA has no obligation whatsoever to negotiate with the Project Company to enter into ~~any~~ Project Agreement, nor to enter into or execute any Project Agreement. RIPTA, in its discretion, may elect not to commence or continue negotiations, and not to enter into and execute a Project Agreement, for any reason and any time. The Project Company acknowledges and agrees that no failure by RIPTA to negotiate, or to enter into or execute, any Project Agreement shall entitle the Project Company to make any claim for damages or compensation (other than the Termination Fee, as further described in Section 4.2 (Compensation to the Project Company for Preliminary Services)) as a result of any such failure, and all such claims are hereby waived and released by the Project Company.** The Project Company acknowledges and agrees that neither the intent of the Parties to negotiate and enter into and execute the Project Agreement, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect RIPTA's right to terminate this Agreement for its convenience at any time as provided in Section 6.1 (RIPTA Convenience Termination Rights). Without limiting the foregoing, RIPTA may exercise its rights under Section 6.1(a) (Termination for Convenience), and Section 6.1(c) (RIPTA Off-Ramp Right) in its sole and absolute discretion, and it shall not constitute bad faith for RIPTA, or a breach by RIPTA, to exercise such rights.

(f) Elective Continuance of the Project by the Parties on Other Bases.

If a Project Agreement is not entered into by the Parties, RIPTA may request from the Project Company's design Subcontractor or Design-Build Subcontractor a bona fide proposal to provide professional engineering and other services necessary to advance the design of the Project Improvements to a fully complete level so that the Project Improvements may be procured and constructed outside of the RFP procurement. The Project Company shall not restrict or limit (by contract or otherwise) ~~its design Subcontractor or Design-Build~~any Subcontractor from negotiating in good faith to enter into a separate agreement with RIPTA to provide ~~such~~ services.

(g) Elective Continuance of the Project by RIPTA with Other Contractors;

Project Documents. RIPTA shall have the right at any time in its discretion to proceed to develop and implement the Project (or a variation of the Project, or any element thereof) with other contractors and service providers, whether during the performance of the Preliminary Services, upon termination of this Agreement, or upon any failure of the Parties to execute a Project Agreement. RIPTA shall have the further right in connection therewith, and with any RIPTA self-performed activities with respect to the Project, based on its ownership of the Deliverable Material as provided in 8.2 (Ownership and Use of Deliverable Material), to use any Deliverable Material in any manner it chooses to complete the design and construction of the Project Improvements. In such event, the Project Company shall be liable for the Deliverable Material solely to the extent of errors or omissions in the Deliverable Material, as determined based on (i) the developmental stage of the Deliverable Material at the time of transfer to RIPTA, and (ii) the Standard of Care. [and subject to a liability cap based upon the dollar amount of professional liability insurance coverage]. This limitation as to the Project Company's liability for the Deliverable Material is applicable only to the extent RIPTA determines not to enter into the Project Agreement, or otherwise terminates this Agreement, and is intended to recognize RIPTA's investment in the Deliverable Material and to provide RIPTA with a

meaningful alternative for the design and construction of the Project in such circumstances, while recognizing that the Project Company will not have control over the use of the Deliverable Material in such circumstances. The Project Company acknowledges and agrees that such limitation will have no applicability if the Parties enter into a Project Agreement. In addition, upon the termination of this Agreement, and at the request of RIPTA, the Project Company will assign the ~~Design-Build Subcontractor's~~ Subcontract(s) with the designer/ Architect-of-Record (relating to the performance of the relevant Preliminary Services) to RIPTA.

ARTICLE 4

COMPENSATION

Section 4.1 Payment by Project Company for Preliminary Services. The Project Company shall incur and pay for the cost and expenses of performing all Preliminary Services, and shall be compensated for such Preliminary Services only to the extent (and in accordance with) Section 4.2 (Compensation to the Project Company for Preliminary Services) and Article 6.

Section 4.2 Compensation to the Project Company for Preliminary Services.

(a) The Project Company shall be entitled (subject to the terms of this Agreement) to (i) a Basic Services fee in the amount of \$[] (the “**Basic Services Fee**”) in consideration for its performance in full of the Basic Services, and (ii) a fee for the performance of any Additional Services (calculated in accordance with Section 3.2 above (the aggregate of such Basic Services Fee and Additional Services fee being the “**Preliminary Services Fee**”).

(b) The Preliminary Services Fee shall (subject to the terms of this Agreement) be payable to the Project Company as follows:

(i) eighty-five percent (85%) shall be paid following completion in full of relevant Task, as demonstrated to RIPTA’s satisfaction (in accordance with Section 4.3 below); and

(ii) the remaining fifteen percent (15%) (the “**Holdback**”) shall (x) be paid by RIPTA as part of a Termination Fee in accordance with Section 6 below, or (y) if the Parties execute a Project Agreement, be included as part of the Capital Charge Component of the annual Project Agreement Services Fee (following operational readiness/final completion of the Infrastructure Facility).

Section 4.3 General Compensation Provisions.

(a) Changes to Preliminary Services Fee. The Preliminary Services Fee shall be subject to adjustment solely in accordance with Section 3.2 (Changes to the Scope of Services).

and comply with the terms and conditions of the Required Insurance pertaining to the Preliminary Services, and shall pay all premiums with respect thereto as the same become due and payable. [Such insurances may be program, corporate, or project-specific placements.](#)

(b) Subcontractors. The Project Company shall ensure that all Subcontractors secure and maintain all insurance coverage and other financial security as more fully set forth in Appendix 3 (Required Insurance) and as required by Applicable Law in connection with their presence and the performance of their duties concerning the Preliminary Services.

(c) Compliance with Insurer Requirements. The Project Company shall comply promptly with the requirements of all insurers pertaining to the Preliminary Services. The Project Company shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(d) Failure to Provide Insurance Coverage. The failure of the Project Company to obtain and maintain any Required Insurance pertaining to the Preliminary Services, or any denial of coverage by its insurance carriers, shall not relieve the Project Company of its liability for any losses intended to be insured thereby, be a satisfaction of any Project Company liability under this Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

Section 7.2 Indemnification by the Project Company.

(a) Indemnity. The Project Company shall indemnify, defend and hold harmless RIPTA, and its respective agents, directors, officers, attorneys, employees, representatives, independent contractors, insurers, assigns and successors (each, a "**RIPTA Indemnitee**"), from the time a claim is made, to the fullest extent permitted by Applicable Law, from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a RIPTA Indemnitee to third Parties (or otherwise) the extent arising from or in connection with (or to the extent alleged to arise from or in connection with) (i) any failure by the Project Company to perform its obligations under this Agreement, or (ii) the negligence or willful misconduct of the Project Company or any of its officers, directors, employees, agents, representatives or Subcontractors. The Project Company shall also indemnify, defend and hold harmless the RIPTA Indemnitees as and to the extent provided elsewhere in this Agreement. The Project Company's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Project Company which is intended to respond to such events. The Project Company shall not, however, be required to reimburse or indemnify any RIPTA Indemnitee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any RIPTA Indemnitee. These indemnification provisions shall extend to Loss-and-Expense for damage or injuries occurring after the termination of this Agreement relating to the performance of the Preliminary Services. These indemnification provisions are for the protection of the RIPTA Indemnitees only and shall not establish, of themselves, any liability to third Parties.

(b) Notification. A RIPTA Indemnitee shall promptly notify the Project Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Project Company shall have the right to assume the defense of the claim in

Exhibit C

Project Agreement Term Sheet (Schedule 3)
(changed pages showing changes made by Addendum 3)

APPENDIX 6 TO PSA

PROJECT ~~AGREEMENT~~AGREEMENTS TERM SHEET

Capitalized terms used in this Appendix and not defined herein have the meanings set forth in the RFP.

General	
Project Overview	<p>The “Project”, collectively, includes: (1) the Infrastructure Facility (being the Transit Center and Common Infrastructure) that meets the Minimum Design and Construction Requirements, and (2) integrated mix-use Transit-Oriented Development (the “TOD”).</p> <p>The Project Company will (i) plan, design, build, finance and provide life-cycle facilities maintenance for the Infrastructure Facility and (ii) plan, design, build, finance, manage and provide property management services for the TOD, pursuant to the terms and conditions of one or more Project Agreement(s).</p>
Project Agreement Parties	Rhode Island Public Transit Authority (the “ RIPTA ”) and the design-build-finance-operate-maintain contractor/JV (the “ Project Company ”).
Project Agreement(s)	<p>RIPTA <u>There</u> will consult with the Project Company as to whether it best serves the Project to have the entirety of the Project covered by a single Project Agreement, or <u>be</u> two Project Agreements (one covering the Infrastructure Facility and the other the TOD). It is anticipated that the Parties will fully negotiate and finalize the terms of any <u>the</u> Project Agreement <u>Agreements</u> (subject to agreement on final pricing <u>and commercial terms</u>) prior to, <u>or concurrently with</u>, the submission of the Definitive Project Submittal. Such negotiations shall reflect and incorporate the work product produced under the Preliminary Services Agreement (including the Definitive Project Submittal) and this Term Sheet. <u>It is contemplated that all Project Agreements will be executed on the same date.</u></p>
Terms	<p>The term for the services regarding the Infrastructure Facility (Transit Center and Common Infrastructure) will be 30 years after the date of beneficial occupation/substantial completion.</p> <p>The term of the ground lease for the TOD will be 75 years.</p>
Project Ownership and	The Transit Center Infrastructure Facility (Transit Center and Common Infrastructure), shall be owned by RIPTA.

<p>Ground Lease</p>	<p>The Project Company will be granted a ground lease with respect to the TOD location.</p>
<p>Project Company Financing</p>	
<p>Private Financing</p>	<p>The Project Company shall be responsible for obtaining and repaying all private financing necessary for the Project at its own cost and risk and without recourse to RIPTA. <u>Separate financing solutions will likely be developed for the Infrastructure Facility and the TOD.</u></p> <p>All debt or other obligations issued or incurred by the Project Company in connection with any Project Agreement shall be issued or incurred only in the name of the Project Company (or through a conduit financing entity). RIPTA has no obligation to pay debt service on any such debt or other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company (or a conduit financing entity used by the Project Company).</p> <p>The amortization term of any Infrastructure Facility debt financing or refinancing undertaken by the Project Company shall not exceed the Term of the Infrastructure Facility Project Agreement, unless otherwise agreed to by RIPTA in its discretion.</p>
<p>RIPTA's Role in Selecting-Developing Financing Structure for Infrastructure Facility Structures</p>	<p>The financing structure for the Infrastructure Facility will be developed collaboratively during the Preliminary Services period. RIPTA may, at its discretion, reject or alter any proposed Project Company financing structure <u>for the Infrastructure Facility</u> prior to executing the <u>relevant</u> Project Agreement.</p> <p>The financing structure for the <u>Infrastructure Facility will be developed by the Project Company prior to executing the relevant Project Agreement.</u> The financing structure for the <u>TOD</u> shall not be subject to RIPTA approval. However, it will be reviewed by RIPTA prior to executing any Project Agreement to ensure the commercial viability of the Project.</p>
<p>Concurrent Commercial Close and Financial Close</p>	<p>Due to the nature of the Preliminary Services, it is expected that commercial close and financial close, <u>with respect to the Infrastructure Facility Project Agreement and TOD Project Agreement</u>, will occur concurrently. Any <u>Either or both</u> Project Agreement will <u>Agreements may</u>, however, contain provisions to allow for a financial close occurring after commercial close within specified limitations.</p>
<p>Refinancing</p>	<p>The Project Company will have the right, with RIPTA's prior written consent, to refinance Project debt: <u>for the Infrastructure Facility and/or TOD.</u></p>

	<p>RIPTA will share in any refinancing gains with respect to the Infrastructure Facility.</p> <p>Potential sharing of refinancing gains with respect to the TOD will be discussed during the PSA term.</p>
Infrastructure Facility Lender Rights	<p>The Infrastructure Facility Project Agreement and related agreements will include appropriate lender rights provisions with regard to the Infrastructure Facility, including the right of the lenders to receive notice of Project Company default and the opportunity to step in and cure a Project Company default. These provisions shall be limited to the Infrastructure Facility only. In no instance will RIPTA be party to a direct agreement or other lender’s rights arrangements with regard to the any financing of the TOD. If requested, RIPTA will provide customary estoppel certificates with respect to the Infrastructure Facility and/or TOD.</p>
Potential RIPTA Financing and Prepayment	<p>During the Preliminary Services period, the parties will explore the value in RIPTA financing a portion of the Infrastructure Facility (either up front or through milestone payments). Such decision shall be made by RIPTA at its discretion. In addition, RIPTA will reserve the right to prepay any Project Company financing associated with the Infrastructure Facility during the Term, with appropriate make whole provisions.</p> <p>If RIPTA elects to finance a portion of the Infrastructure Facility after the Project Company has committed financing in place, RIPTA will, consistent with market precedent, be responsible for payment of any termination fee incurred by the Project Company with respect to that committed financing.</p> <p>RIPTA will not finance or pre-pay any financing associated with the TOD.</p>
Design and Construction	
Design-Build Work	<p>The Project Company shall, with respect to the Infrastructure Facility and TOD: (1) apply for, obtain and maintain governmental approvals in accordance with the Project Agreement(s); (2) comply with all reporting obligations; (3) prepare, fill and excavate the construction site; (4) remove and dispose of any demolition or construction debris and any unused excavated soil; (5) perform the final design of the Project; (6) construct the Project; (7) complete any punchlist and/or closeout work required to achieve commercial occupancy and permit operations (the “Design-Build Work”).</p> <p>The Project Company shall have full responsibility for quality assurance and quality control for the Design-Build Work and exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary for the correct, prompt, and orderly completion of the Design-Build Work.</p>

<p>Design and Construction Requirements</p>	<p>The Project Company shall have the sole responsibility and liability for the design and construction of the Project, notwithstanding the inclusion of certain minimum conceptual design criteria in the RFP and RIPTA’s review and comments offered during the Preliminary Services period. The Project Company shall perform the Design-Build Work in accordance with the design and construction requirements to be specified in the Project Agreement<u>Agreements</u>, which shall be developed based on the Project Company’s proposal and Definitive Project Submittal and shall include all requirements of applicable law and industry standards.</p> <p>RIPTA shall have the right to review and comment on all design documents prepared by the Project Company and to monitor the performance of the construction work in order to confirm compliance and consistency with the design and construction requirements. Neither compliance by the Project Company with the design and construction requirements, nor any RIPTA review, comment or monitoring of the Design-Build Work, nor any failure or delay by RIPTA <u>(except as may be expressly set forth in the relevant Project Agreement)</u> to review, comment on or monitor the Design-Build Work, shall in any way relieve the Project Company of full responsibility for the design, construction, and completion of the Project in accordance with the<u>such</u> Project Agreement.</p>
<p>Infrastructure Facility: Design and Construction Requirement Changes</p>	<p>Once the <u>Infrastructure Facility</u> Project Agreement is executed, RIPTA shall have the right to accept, reject or modify any design and construction requirement changes proposed by the Project Company with respect to the Infrastructure Facility.</p> <p>In addition, RIPTA shall have the right to make design and construction requirement changes with respect to the Infrastructure Facility at any time prior to occupational readiness, as long as RIPTA provides the Project Company with appropriate price, schedule and performance relief in accordance with the terms and conditions to be specified in the <u>relevant</u> Project Agreement. The<u>Such</u> Project Agreement will also address design and construction requirement changes necessitated by relief events (as described in the<u>such</u> Project Agreement) or required in connection with a governmental approval.</p>
<p>Construction Monitoring</p>	<p>RIPTA retains the right to monitor construction through regular updates and inspections.</p>
<p>Permitting and Governmental Approvals</p>	<p>The Project Company shall obtain and maintain all governmental approvals required for the construction and maintainance<u>maintenance</u> of the Project. RIPTA does not expect to retain responsibility for acquiring any such governmental approvals.</p>

	Customary relief event relief will be provided for regulatory agency-caused delays, non-issuances and the imposition of more stringent and new terms and conditions not caused by Project Company fault.
Beneficial Occupation/Substantial Completion	
Beneficial Occupation/ Substantial Completion Standards and Requirements	The beneficial occupation/substantial completion standards and requirements <u>for the Infrastructure Facility</u> will be determined prior to the execution of the <u>relevant</u> Project Agreement. Beneficial <u>Such beneficial</u> occupation/substantial completion procedures will be developed during the Design-Build Work period.
Scheduled Beneficial Occupation/ Substantial Completion Date, Punchlist and Occupancy Readiness	<p>The Project Company shall achieve beneficial occupation/substantial completion <u>of the Infrastructure Facility</u> within a specified number of days following financial close. Final completion of the Design-Build Work <u>for the Infrastructure Facility</u>, including punch-list items, shall be achieved within 60 days following beneficial occupation/substantial completion.</p> <p>In addition, the Project Company shall have a material obligation to prepare and maintain a critical path schedule for the performance of the <u>Infrastructure Facility</u> Design-Build Work.</p> <p><u>TOD substantial completion, final completion and related schedule issue will be agreed by the Parties prior to the execution of the TOD Project Agreement.</u></p>
<u>Infrastructure Facility</u> Liquidated Damages	Liquidated damages will be payable in connection with the Project Company’s failure to meet certain milestones with respect to the infrastructure <u>Infrastructure</u> Facility, as agreed between the Parties and set forth in the <u>relevant</u> Project Agreement.
O&M and Property Management Services	
Operation, Maintenance and Management in General	Upon beneficial occupation/substantial completion, the Project Company shall provide (i) facilities maintenance for the Infrastructure Facility, and (ii) Property Management Services for TOD on a 24-hour per day, 7-day per week basis, in accordance with the terms and conditions of a Project Agreement, including, in particular, any performance standards/KPIs and all requirements imposed by Applicable Law.
Infrastructure Facility Performance	The Project Company shall be required to meet performance standards/KPIs relating to the Infrastructure Facility to be specified in the <u>relevant</u> Project Agreement. Failure to comply with any of the Infrastructure Facility performance

Standards/KPIs	standards/KPIs may subject the Project Company to liquidated damages in the form of deductions from the Service Fee.
Infrastructure Facility Management	<p>With respect to the Infrastructure Facility, except for any RIPTA O&M, the Project Company shall: (1) perform all facility management, engineering, repairs and maintenance; (2) perform all capital repair and replacement of the equipment, structures, improvements and all other property constituting the Infrastructure Facility; (3) keep the Infrastructure Facility in good working order, condition and repair; and (4) maintain the aesthetic quality of the Infrastructure Facility as originally constructed.</p> <p>The relevant Project Agreement will include mechanisms to assure Project Company compliance with the maintenance, repair and replacement obligations and will specify the required condition of the Infrastructure Facility and associated equipment at the end of the term.</p>
TOD Property Management	<p>With respect to the TOD, the Project Company shall provide all facility management, leasing, rent collection, tenant services and relations, engineering, repairs and maintenance, renewals and replacement, and other activities that are customary in the real estate industry for the mixed-use real estate Commercial Component of the Project.</p> <p>The relevant Project Agreement will include standards around space allocation and usage, as well as general operating requirements (i.e., limitations on “going dark”, etc.).</p>
Infrastructure Facility Capital Modifications	<p>The relevant Project Agreement shall include mechanisms to address capital modifications to the Infrastructure Facility during the operations period. Capital modifications requested by the Project Company with respect to the Infrastructure Facility shall be subject to RIPTA’s approval in its sole discretion. CapitalInfrastructure Facility capital modifications required due to Project Company fault shall be for the account and expense of the Project Company.</p> <p>CapitalInfrastructure Facility capital modifications directed by RIPTA or required due to the occurrence of a relief event shall be for the account and expense of RIPTA.</p> <p>All capital modifications shall be implemented in accordance with applicable law.</p>
End of Term and Infrastructure Facility Handback	<p>Prior to the end of the term of the Infrastructure Facility services, the Project Company shall deliver a report to RIPTA evidencing that all handback standards and conditions have been achieved. Handback standards and conditions shall include (1) concurrence by the parties that all necessary Project maintenance, repairs and replacements have been undertaken as required pursuant to the relevant Project Agreement and (2) other standards and conditions (including</p>

	<p>remaining useful life requirements) to be contained in the exit standards and conditions appendix to the<u>such</u> Project Agreement.</p> <p>Prior to handback of the Infrastructure Facility, RIPTA will withhold an agreed portion of the Service Fee payment, to be held in escrow and released upon satisfaction of the foregoing handback requirements. Failure to comply with the handback requirements will result in some or all of the escrowed Service Fee being returned to RIPTA for its account.</p>
<p>Infrastructure Facility Compensation Terms</p>	
<p>No RIPTA Payment Obligations Prior to Beneficial Occupation/Substantial Completion</p>	<p>RIPTA shall not have any payment obligations to the Project Company</p> <p><u>During the Preliminary Services period, the parties will explore the value in RIPTA financing a portion of the Infrastructure Facility (either up front or through milestone payments). Such decision shall be made by RIPTA at its sole discretion. In addition, RIPTA will reserve the right to prepay any Project Company financing associated with the Infrastructure Facility during the Term, with appropriate make whole provisions.</u></p> <p><u>It is expected that RIPTA will likely offer some level of milestone payment(s) prior to</u> the achievement of beneficial occupation/substantial completion, <u>but such payments are dependent on budget approvals and available funding.</u> The Project Company will be expected to finance all costs incurred for the Project prior to the achievement of beneficial occupation/substantial completion <u>(subject to any agreed milestone payments).</u></p>
<p>Service Fee for Infrastructure Facility</p>	<p>Following beneficial occupation/substantial completion <u>of the Infrastructure Facility</u>, the Project Company shall be paid an annual “Service Fee” with respect to the Infrastructure Facility comprised of (1) the privately financed capital cost of the Infrastructure Facility, including the cost of any Holdback amounts of the Preliminary Services Fee and the Infrastructure Facility Design-Build Work; (2) the performance of the facilities maintenance services with respect to the Infrastructure Facility throughout the term, less (3) any rent or revenue participation deriving from the TOD.</p> <p>The Service Fee (and any potential construction milestone payment) shall be the sole compensation to the Project Company for the performance. The Service Fee shall be calculated as follows:</p> <p>SF = CC + OC – CR - DC +/- EI</p> <p>Where,</p>

	<p>SF is the Service Fee for a given payment period;</p> <p>CC is the capital charge component in a given payment period, reflecting the amortization of the Holdback portion of the Preliminary Services Fee, a fixed lump sum design-build price for the Infrastructure Facility; and the private financing of all of the foregoing;</p> <p>OC is the operation charge component for all Infrastructure Facilities Maintenance Costs;</p> <p>CR is RIPTA’s participation component of any rent or revenue deriving from the TOD, as set forth in the Project Agreement or in any subsequent reset agreements;</p> <p>DC is the deductions credit owed to RIPTA by the Project Company in the event that the Project Company fails to meet any performance standards or requirements established in the Project Agreement; <u>and</u></p> <p>EI is any extraordinary items charge or credit that may be applicable from time to time by the terms of the Project Agreement.</p> <p>The <u>Infrastructure Facility</u> Service Fee shall be paid in monthly installments, and any estimates shall be reconciled through an annual settlement statement.</p> <p>The operation charge component shall be subject to annual adjustment for inflation based upon changes to a pre-agreed index or basket of indices.</p> <p>Except as may be otherwise provided in this<u>the relevant</u> Project Agreement, the Project Company shall be responsible for all applicable Federal, State, and Local taxes and duties with respect to the Service Fee.</p>
<p>TOD Rent, Revenue Participation, and Resets</p>	<p>The Project Company shall retain the right to receive rental and commercial income over the TOD lease term. The Project Company shall be required to make regular payments to RIPTA (or to provide such amounts as an offset to the Service Fee) for the use of the Project Site (base rent) and Common Infrastructure. Additionally, it is anticipated that RIPTA will participate with a negotiated portion of gross revenue deriving from the TOD, the terms of which shall be negotiated and included in the <u>relevant</u> Project Agreement (subject to resets).</p>
<p>Minimum Infrastructure Facility</p>	<p>The <u>Infrastructure Facility</u> Project Agreement will provide that the Service Fee shall not be less than the amount necessary for the Project Company to service its debt payments on the Infrastructure Facility. Any applicable excess deductions,</p>

<p>Service Fee</p>	<p>setoffs or retainage will roll forward to future Service Fee payment periods until they can be applied.</p>
<p>Infrastructure Facility Relief Events</p>	
<p>Infrastructure Facility Relief Events Generally</p>	<p>With respect to the Infrastructure Facility , the relevant Project Agreement will include provisions granting the Project Company certain relief upon the occurrence of events beyond the reasonable control of the Project Company and which materially expand the scope, interfere with, delay or increase the cost of performing the Design-Build Work and other Project Agreement Services. Such “relief events” will be specifically defined in thesuch Project Agreement. They are expected to include, among others, changes in law (other than income, corporate activity or similar taxes imposed on the Project Company); force majeure events; regulated site conditions; RIPTA fault, changes by RIPTA to the Infrastructure Facility design and construction requirements or performance standards/KPIs.</p> <p>Based on the Preliminary Services expected to be performed by the Project Company, the Project Company will bear the risk of all differing site conditions at the Project Site.</p> <p>The Project Company will bear the risk related to the introduction of non-influent based hazardous substances to the Project Site and the acquisition of governmental approvals for which it is responsible.</p> <p>The occurrence of relief events is the sole grounds for excuse from performance under and in accordance with the relevant Project Agreement.</p>
<p>Schedule, Performance and Cost Relief for the Infrastructure Facility</p>	<p>In the event of the occurrence of an Infrastructure Facility relief event, including RIPTA-directed change orders and failures of performance by RIPTA, the Project Company may be entitled to performance relief, schedule relief, additional compensation, or any appropriate combination thereof.</p> <p>In the event ana relief event raises the cost of the Infrastructure Facility, RIPTA will have the right to elect to pay such cost directly or have the Project Company finance the cost and adjust the Service Fee as appropriate.</p>
<p>Notice and Mitigation re Infrastructure Facility</p>	<p>The Project Agreement will require the Project Company to provide notice of the occurrence of any relief event, demonstrate the impact of the relief event on the performance of the Design-Build Work and/or Infrastructure Facility services, and take all measures reasonably necessary to mitigate the impact of the relief event. Any pricing impact will require cost substantiation. Any schedule adjustment will require the Project Company to demonstrate the impact of the relief event on the critical path of the Project schedule. The Project Company’s entitlement to relief will be conditioned</p>

	<p>upon compliance with the notice, demonstration and mitigation requirements to be set forth in the Infrastructure Facility Project Agreement.</p> <p>Relief event relief shall be limited as and to the extent any act, event, condition or circumstance results from breach of the Infrastructure Facility Project Agreement by the Project Company or any failure of performance by any subcontractor of the Project Company.</p>
Contracting and Labor Practices	
Subcontracting	<p>The Project Company shall be entitled to enter into subcontracts for the performance of the Design-Build Work and the other Project Agreement Services but shall remain responsible and liable to RIPTA for the performance of all subcontracted services. RIPTA will have approval rights in the Project AgreementAgreements with respect to the use of material subcontractors. The Project Company shall not substitute or terminate any such approved subcontractor without the prior written consent of RIPTA. Without limiting the foregoing, the Project AgreementAgreements shall contain RIPTA's standard terms and conditions with respect to subcontracting.</p>
Diversity and Disadvantaged Business Entities (DBE)	<p>The Project Company shall comply with the final equity, inclusion and diversity subcontracting plan it develops during the Preliminary Services, which will be set forth in the final Project Agreement. See also Section 2.8 of the RFP.</p> <p>In addition, any final Project Agreement will (i) include RIPTA's customary provisions relating to DBE planning, utilization and reporting (a specimen of which is attached in Exhibit 1 (DBE Matters) to this Term Sheet, and (ii) require the Project Company to execute and submit certain forms relating to DBE matters (specimens of which are attached as Exhibit 1 (DBE Matters)).</p>
Equal Employment Opportunity (EEO) and Non-Discrimination	<p>Any final Project Agreement shall include RIPTA's customary language with respect to equal employment opportunity (EEO) and other non-discrimination matters. Specifically, the Project Company will be prohibited, among other things, from discriminating against any employee or applicant for employment because of race, color, religion, sex, or natural origin. Any final Project Agreement shall also (i) address discrimination based on age and physical/mental disabilities, and (ii) require the Project Company to prepare and submit, among other things, a General Contract Compliance Certificate & Agreement Form.</p>
Prevailing Wages	<p>The Project Company shall comply with federal Davis Bacon wage rates, and any State of Rhode Island prevailing wage requirements, in effect during the Term.</p> <p>For current Davis Bacon wage rates see:</p>

	https://sam.gov/search/?index=wd&page=1&pageSize=25&sort=-modifiedDate&sfm%5Bstatus%5D%5Bis_active%5D=true&sfm%5Bwdol_id%5D%5B0%5D%5Bkey%5D=Rhode%20Island&sfm%
Labor Relations	The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the work and has exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company or its subcontractors, whether pertaining to organization or subdivision of the work, employee hiring, or any other matters.
General Organizational Requirements	The Project Company shall comply with, and be solely responsible for, all Rhode Island organizational requirements, including corporate registration and taxation requirements.
Insurance, Indemnity and Security for Performance	
Insurance Requirements	The Project Agreement will specify minimum insurance requirements for the Project Company and all subcontractors. Compliance with the minimum insurance requirements will not serve to limit the Project Company’s liability to RIPTA in respect of indemnification or otherwise under the Project Agreement Agreements .
Indemnity	The Project Company will be required to indemnify, defend and hold harmless RIPTA (and related indemnitees) from and against any and all claims or losses resulting from subcontractor claims, intellectual property claims, breach of the either Project Agreement (including breach of Applicable Law), negligence or willful misconduct.
Liability Limitations	The Project Agreement will contain no possibility of stated dollar limitation limitations on damages for non-performance under the Project Agreements (which may vary by Project Agreement) will be discussed during the PSA stage . Special, consequential and punitive damages will be mutually waived, subject to customary commercial exceptions.
Security for Performance re Infrastructure Facility	<p>The primary Infrastructure Facility security for performance will be (1) the Project Company’s “at-risk” private financing (equity and debt) of the Infrastructure Facility; and (2) the deductions from the Service Fee imposed by RIPTA related to any failure to meet the Performance Guarantees.</p> <p>In addition the Project Company shall be responsible for securing (i) a performance and payment bond to secure the Design-Build Subcontractor’s payment and performance obligations associated with the Infrastructure Facility Design-Build Work, and (ii) an operations and maintenance performance bond from the Operator Subcontractor to secure the</p>

	performance of the Project Company’s Infrastructure Facility Maintenance Services.
Default and Remedies	
Project Company Default	<p>Project Company defaults will include failure to timely commence or diligently pursue the Infrastructure Facility Design-Build Work necessary to achieve beneficial occupation/substantial completion within [360] days of the scheduled date therefor (the “Longstop Date”), abandonment of the Project, failure to maintain security for performance, bankruptcy and insolvency events, failure to make payments when due, misrepresentations, persistent and/or material failure of compliance with the performance requirements, and other material breaches of the relevant Project Agreement.</p> <p>Project Company defaults under the TOD Project Agreement will be negotiated and finalized during the PSA term.</p>
Cure Rights	<p>The Project Company shall be entitled to notice and an opportunity to cure certain Infrastructure Facility defaults. The Project Company, however, will not have any further opportunity to cure Infrastructure Facility defaults in respect of a failure to achieve beneficial occupation/substantial completion by the Longstop Date, bankruptcy and insolvency events, or breaches of provisions relating to changes in control or refinancings.</p> <p>Project Company default cures under the TOD Project Agreement will be negotiated and finalized during the PSA term.</p>
RIPTA Remedies	<p>RIPTA shall be entitled to exercise remedies in respect of Project Company defaults under either Project Agreement, including rights to step in and cure, recover actual damages, make demands upon security for performance, termination, and other remedies under law.</p>
RIPTA Default	<p>RIPTA defaults under the Infrastructure Facility Project Agreement will include failure to make payments when due (subject to a notice and cure opportunity) and extended suspension of the Project Company’s performance of the Design-Build Work and other Project Agreement Services absent Project Company default.</p> <p>The Project Company shall be entitled to exercise remedies in respect of an Infrastructure Facility RIPTA default, including termination of the applicable Project Agreement and recovery of actual damages. Damages recoverable by the Project Company under the Infrastructure Facility Project Agreement, however, shall not exceed the lesser of (1) the amount payable in respect of compensable relief events; or (2) the amount payable in the event of convenience termination of the Infrastructure Facility Project Agreement by RIPTA.</p> <p>RIPTA defaults and cure periods under the TOD Project Agreement, and the Project Company related remedies, will be</p>

	negotiated and finalized during the PSA term.
Early Termination and Compensation for Early Termination re Infrastructure Facility	
RIPTA Termination for Convenience	RIPTA will have the right to terminate the Infrastructure Facility Project Agreement for its convenience and without cause at any time. In such event, RIPTA shall pay the Project Company the amount of termination compensation to be specified in the Infrastructure Facility Project Agreement.
RIPTA Termination for Project Company Default	RIPTA will have the right to terminate the Infrastructure Facility Project Agreement for an event of default by the Project Company (subject to any applicable cure period, if any) . In such event, any termination compensation payable to the Project Company shall be limited to termination compensation specified in such Project Agreement in respect of Project Company default, and RIPTA has the right to recover actual damages.
Project Company Termination for RIPTA Default	The Project Company will have the right to terminate the Infrastructure Facility Project Agreement for an event of default by RIPTA (subject to any applicable cure period, if any) . Termination compensation payable by RIPTA in such event shall be no greater than the termination compensation in respect of RIPTA termination for convenience, and the Project Company has no right to recover additional damages or compensation.
Assignment and Change in Control	
Generally	<p>The Project Company may not assign or transfer, or otherwise permit the assignment or transfer of, any of its rights or obligations under theeither Project Agreement without RIPTA’s prior written consent, which consent shall not be unreasonably withheld, provided that the Project Agreements shall include market provisions with respect to change of control arising from mergers, acquisition and other corporate reorganizations.</p> <p>It will not be unreasonable for RIPTA to withhold its consent to any assignment by the Project Company in which: (1) the tangible net worth of the proposed transferee is not equal to or greater than the tangible net worth of the Project Company as of the date to be set forth in the Project AgreementAgreements; (2) the proposed transferee does not possess adequate business experience for the obligations it is assuming under the Project AgreementAgreements as determined by RIPTA in its commercially reasonable discretion; or (3) other conditions set forth in the final Project AgreementAgreements are met. RIPTA may assign theeither Project Agreement to any agency, authority, commission, or similar instrumentality of the State of Rhode Island in its discretion. RIPTA may otherwise assign the Project</p>

	<p>AgreementAgreements to any other party with the Project Company’s prior written consent, which shall not be unreasonably withheld. It will not be unreasonable for the Project Company to withhold its consent to any assignment by RIPTA where the assignee does not have a similar or better credit rating as RIPTA and/or such assignment will negatively impact the financing for the Project. Any assignee must assume all obligations under the Project AgreementAgreements or otherwise agree to be subject to the terms of the Project AgreementAgreements; and if an event of default by the assigning party has occurred and is continuing, either at the time of the request for consent or on the effective date of the proposed transfer, the assigning party must either cure such default prior to the assignment, or, as an express condition of such transfer, the proposed transferee shall agree to cure all defaults promptly following the effective date of such transfer.</p>
Governing Law and Dispute Resolution	
Governing Law	Rhode Island
Forum for Dispute Resolution	All legal proceedings, with respect to which the parties do not agree to any alternative dispute resolution (to be specified in the Project AgreementAgreements), relating to the Project, the Project AgreementAgreements or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the state court in Providence, Rhode Island or in the U.S. District Court for the District of Rhode Island.
RIPTA Standard Terms	
Standard Terms	<p>The Project AgreementAgreements shall include RIPTA’s standard terms and conditions (consistent with this Term Sheet), including, without limitation, with respect to the following matters:</p> <ul style="list-style-type: none"> • Order of Precedence of Documents • Officials Not to Benefit • Covenant against Contingent Fees • Rights in Technical Data • Apprentices and Trainees • Audit and Inspection Rights/Records Retention • Public Records/Confidentiality • Withholding Payments/Setoff • Rights in Data and Copyrights

	<ul style="list-style-type: none"> • Licenses and Certifications • Use of New Materials • Correction of Deficiencies/Warranties • Federal and State False Claim Laws • Covid 19 Safety Procedures
Federal Requirements	
<p>Federal Regulations, Policies, Procedures, and Directives</p>	<p>Federal funding (from the FTA or other federal agencies) may be used in the Project. If such funding is made available, the <u>applicable</u> Project Agreement will require that the Project Company, during the Term, comply with all applicable US DOT / FTA (and other applicable federal) laws, regulations, policies, procedures, and directives (collectively, “Federal Regulations”) (including, without limitation, FTA Circular 4220.1F, dated November 1, 2008, and those listed directly or by reference in the Agreement (Form FTA MA (9) dated October 2002) between RIPTA and FTA)) relating to the work under the<u>such</u> Project Agreement, as such Federal Regulations may be amended or promulgated from time to time during the Term of the<u>such</u> Project Agreement.</p> <p>Exhibit 2 (Applicable FTA/Federal Regulations, Policies, Procedures, and Directives) to this Term Sheet sets forth certain applicable Federal Regulations (if Federal funding is used).</p> <p>Exhibit 3 to this Term Sheet includes certain certifications and forms which the Project Company will be required to deliver in connection with the execution of the Project Agreement<u>Agreements</u> (if Federal funding is used).</p>

Exhibit D

RFP Proposal Forms (Schedule 5)

(changed pages showing changes made by Addendum 3)

5. Evidence that the Proposer meets the Minimum Qualifications set forth in Section 5.4.1.2 of the RFP is provided in Proposal Form 4.
6. All Key Personnel which are currently included as part of the Proposer Team are identified in Proposal Form 6.
7. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that RIPTA will rely on such information and statements in selecting the selected Proposer and executing the Preliminary Services Agreement and the Project Agreement.
8. No member of the Proposer Team is currently suspended, debarred or proposed for debarment from doing business with any governmental entity.
9. No member of the Proposer Team is currently suspended, debarred or proposed for debarment, declared ineligible or voluntarily excluded, from covered transactions by any Federal Department or Agency.
10. Proposer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323 (j) (1) and the Applicable regulations on 49 CFR Part 661.12 (**Buy America**)~~for procurement of steel and manufactured products.~~
11. The Proposer has reviewed all of the engagements and pending engagements of the members of the Proposer Team and no potential exists for any conflict of interest or unfair advantage.
12. No person or broker has been employed or retained to solicit the award of the Preliminary Services Agreement or the Project Agreement under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the members of the Proposer Team.
13. Proposer is not included on the Comptroller General's Lists of Persons or Firms Currently Barred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.
14. Proposer Team members have not engaged in any practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration in connection with the submittal of this Proposal.
15. The Proposer, or applicable Proposer Team member, has all current and valid licenses, registrations and certificates required by applicable law to submit this Proposal and for provision of the services described in the RFP.
16. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
17. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
18. Have not within a three-year period preceding this application/Proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

PROPOSAL FORM 2

MAJOR PARTICIPANT INFORMATION

Name of Proposer Team: _____

[For each Major Participant, please complete tables MP1, MP2 and MP3. If information requested in relation to an entity is not relevant to such entity, state "Not Applicable".]

Table MP1. Team Member and Role

(1) Name of Team Member:	<i>[please provide]</i>
(2) Role:	<ul style="list-style-type: none">• Financing Member• Lead Design-Builder• Lead Design-Builder Member• Lead Operator• Lead Operator Member• Lead Affordable Housing Developer• Lead Affordable Housing Developer Member• Lead Commercial Developer• Lead Commercial Developer Member• Guarantor for <i>[provide entity name]</i>

Table MP2. Legal Information

(1) Type of Legal Entity:	<ul style="list-style-type: none">• Corporation• Limited liability company• Joint venture• Partnership• Other: <i>[Proposer to provide]</i>
<p>If the entity is a limited liability company, joint venture or partnership, indicate the name of each member firm in the space below. Complete a separate <u>Form 3 (Major Participant Information)</u> for each member firm and include it with the Proposal.</p>	
<p>Names of member firms:</p>	
<p>1. . 2. .</p>	
(2) Year Established:	<i>[Proposer to provide]</i>
(3) Country (and where applicable State) of Organization or Formation:	<i>[Proposer to provide]</i>
(4) Dun and Bradstreet Number (DUNS #):	<i>[Proposer to provide]</i>

PROPOSAL FORM 3

PROPOSER TEAM MEMBER LIST

(Provide the information requested on this form for each member of the Proposer Team. Add additional rows, as necessary.)

Proposer Name: _____

Major Participant	Firm/Entity	Guarantor (if any)
Lead Member		

Major Participant	Firm/Entity	Guarantor (if any)
Financing Member		
Financing Member		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Design-Builder		
Lead Design Firm <i>(if any)</i>		
Lead Construction Firm <i>(if any)</i>		
Other Lead Design-Build Members <i>(if any)</i>		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Operator		
Lead Operator Member <i>(if any)</i>		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Affordable Housing Developer		
Lead Affordable Housing Developer Member <i>(if any)</i>		

Major Participant	Firm/Entity	Guarantor (if any)
Lead Commercial Developer		
Lead Commercial Developer Member <i>(if any)</i>		

Key Non-Major Participant	Firm/Entity
Lead Architect	
Financial Advisor	
Public Outreach	
Others (key subcontractor)	

PROPOSAL FORM 4

CONFIRMATION OF MINIMUM QUALIFICATIONS

Proposer to provide summary information to demonstrate that it complies with the Minimum Qualifications set out in Section 5.4.1.2 of this RFP. For each Project, please indicate the project name, location, responsible Major Participant, and role of Major Participant. RIPTA reserves the right to independently verify the information provided.

Financing Capacity and Experience	<i>[Confirm compliance of Lead Member or Financing Members with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP.]</i>	<p>A. Project Experience</p> <ol style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3 4. Project 4 5. Project 5
Design-Build	<i>[Confirm compliance of Lead Design-Builder, or the Lead Design-Build Members collectively, with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<p>A. Project Experience</p> <ol style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3 <p>B. Identify Key Personnel possessing experience of a minimum of three qualifying projects (and please list projects)</p> <p>C. Confirm Capacity to meet al local design-build licensing requirements.</p>
Affordable Housing Development	<i>[Confirm compliance of Lead Affordable Housing Developer, or the Lead Affordable Housing Developer Members collectively, with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<p>A. Project Experience</p> <ol style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3
Commercial Development	<i>[Confirm compliance of Lead Commercial Developer with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<p>A. Project Experience</p> <ol style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3
Facilities Maintenance	<i>[Confirm compliance of Lead Operator, or the Lead Operator Members collectively, with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]</i>	<p>A. Project Experience</p> <ol style="list-style-type: none"> 1. Project 1 2. Project 2 3. Project 3

Financial Advisor *[Confirm compliance of Financial Advisor with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]*

A. ~~Confirm that Financial Advisor is qualified as a registered municipal advisor~~

B. ~~Relevant Project Experience~~

- ~~1. Project 1~~
- ~~2. Project 2~~
- ~~3. (may list up to 5)~~

Progressive Services *[Confirm compliance of Lead Member and/or and/or Lead Design-Builder (or a Lead Design-Build Member) with minimum qualifications threshold set out in Section 5.4.1.2 of this RFP]*

- 1.

PROPOSAL FORM 5

EXPERIENCE SUMMARY

Please provide information for a minimum of five (5) projects on which the Major Participant has worked over the past 10 years in each category. Only include projects on which the Major Participant was at least 50% responsible for delivery of the project in each category.

Please try to limit the information to that requested in the Form itself. Additional information on reference projects for each category may be provided in the Technical Narrative Attachment to this Form.

The description should, at a minimum, give an overview of the project, and explain why the experience that the Major Participant gained on the project is relevant to the Project. Please also indicate on which projects multiple Major Participants have worked together.

Form 5.A. – Project Finance & Management Experience

Form 5.B. – Design-Build Experience

Form 5.B.(i) – Safety Performance Questionnaire

Form 5.C. – Affordable Housing Development Experience

Form 5.D. – Commercial Development Experience

~~*Form 5.E. – Infrastructure Facilities Maintenance Experience*~~

~~*Form 5.F. – Financial Advisor Experience*~~

Form 5.E. Infrastructure Facilities Maintenance Experience

[Using the format below, please provide detailed information on each project for which the Lead Maintenance Provider (or Lead Maintenance Provider Member) was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out asset management (life-cycle maintenance, repair and replacement) similar to the services contemplated under this Project, with an emphasis on transit or transportation facilities, social sector facilities, etc. Each project table should be limited to two pages. Proposers are also encouraged to submit a summary table highlighting relevant infrastructure facilities maintenance experience in the past 10 years.]

Project name:	Project Size and Scope: [size and type of facilities under maintenance contract]
Project Location:	Project Duration: [start and completion dates]
Client or Owner:	Level of Major Participant's Participation:
Name of associated companies, if any:	Contractual arrangement (service agreement, O&M contract, DBFM, etc.) and compensation structure (performance-based availability payment, fixed fee, etc.)
<p>Scope of Services:</p> <p>[Please describe responsibilities assigned to Major Participant, such nature and extent of maintenance services, etc.]</p>	
<p>Narrative description of Project:</p> <p>[Please provide an overview of the Project, indicating why this is relevant to the scope of services envisioned in the RFP.]</p>	
Description of role and actual services provided on the Project by any proposed Key Personnel:	
Owner Reference: (please include name, title, email and phone)	



Form 5.F. Financial Advisor Experience

[Please provide detailed information on relevant projects or engagements in which the Financial Advisor was legally contracted to provide funding and financial advisory services to either public agencies or a lead member of the P3 entity similar to those services contemplated under this Project (with an emphasis on financial advisory services provided to transit or transportation agencies). Proposers are also encouraged to submit a summary table highlighting relevant financial advisory experience in the past 10 years.]

Financial Advisor:	
Project Name & Location	Project or Portfolio cost:
Client name and relationship to project (i.e., owner, P3 entity, equity investor, etc.)	Date of Financial Close (if relevant)
Capital Structure	Delivery Structure (i.e., DBFOM, DBB, etc.)
Name of associated companies, if any:	arrangement (design-build finance, DBFOM, etc.) and compensation structure (availability payment, milestone payment, demand-risk, pay-go, etc.)
Narrative description of Project or Engagement:	
<p><i>[Please provide an overview of the Project or Engagement, indicating why this is relevant to the scope of services envisioned in the RFP, and describing the services provided by the Financial Advisor. Please highlight outcome of work performed, including securing federal grants and loans, value capture initiatives, etc.]</i></p>	
Description of role and services provided on the Project by any proposed Key Personnel	
Owner Reference: (please include name, title, email and phone)	

PROPOSAL FORM 6

KEY PERSONNEL LIST

Please provide the names of all Key Personnel, as well as any other significant personnel the Proposer wishes to propose as Key Personnel, along with their relationships within the Proposer’s Project Company organization. At a minimum,

Key Position	Proposed Person	Major Participant Affiliation / Employer
(i) Lead Member Principal-in-Charge		
(ii) Lead Member’s Project Manager		
(iii) Financing Member’s Project Principal		
(iv) Affordable Housing Developer’s Project Executive		
(v) Affordable Housing Developer’s Project Manager		
<u>(v)</u> (vi) Commercial Developer’s Project Executive		
(vii) Commercial Developer’s Project Manager		
<u>(vi)</u> (viii) Design-Builder’s Principal-in-Charge		
<u>(vii)</u> (ix) Design-Builder’s Design Manager		
<u>(viii)</u> (x) Design Builder’s Design Architect		
<u>(ix)</u> (xi) Design-Builder’s Construction Manager		
<u>(x)</u> (xii) Design-Builder’s Safety Manager		
(xiii) Infrastructure Facilities Maintenance Principal in Charge		
(xiv) Infrastructure Facilities Maintenance Project Manager		
(xv) Property Manager Principal in Charge		
(xvi) Financial Advisor Principal in Charge		
(xvii) Financial Advisor Project Manager		
<u>(xi)</u> (xviii) Public Outreach Principal-in-Charge		
(xix) Public Outreach Project Manager		

PROPOSAL FORM 13

SCHEDULE FOR PRELIMINARY SERVICES

The Preliminary Services will be completed by the following date: _____

Each of the Preliminary Services tasks are expected to commence and be completed by the following dates:

Preliminary Services Task	Commencement Date	Completion Date
<u>Task 1 - Project Kick-Off & Visioning</u>	_____	_____
Task #1:2 - Initial Due Diligence & <u>Conceptual</u> Options Package	_____	_____
Task #2:3 - Basis of Design Package <u>Submittal</u>	_____	_____
Task #3:4 - 30% <u>Package</u> Submittal- Package	_____	_____
Task #4:5 - 60% <u>Package</u> Submittal- Package	_____	_____
Task #5:6 - Definitive Project Submittal	_____	_____

The Proposer shall attach a narrative that includes the job description, nature of the task, and the basis for the completion date of each task above, including hours and all other assumptions for each task made to prepare the Preliminary Services schedule.

Proposers may also provide additional optional tasks or subtasks to this Proposal Form. Such additional optional tasks or subtasks should reflect additional diligence during the Preliminary Services period that the Proposer believes will result in Project savings for RIPTA.

Name of Proposer

Name of Designated Signatory

Signature

Title

PROPOSAL FORM P-1

PRELIMINARY SERVICES FEE

The Preliminary Services Fee, in US dollars, for the Preliminary Services (identified in Appendix 1 of the Preliminary Services Agreement), is:

_____ Dollars (\$ _____)

The breakdown of the Preliminary Services Fee is:

Preliminary Services Task	Percent of the Preliminary Services Fee	Amount
<u>Task 1 - Project Kick-Off & Visioning</u>	____%	\$ _____
Task #1:2 - Initial Due Diligence & <u>Conceptual Options Package</u>	____%	\$ _____
Task #2:3 - <u>Basis of Design Package Submittal</u>	____%	\$ _____
Task #3:4 - 30% <u>Package Submittal</u> Package	____%	\$ _____
Task #4:5 - 60% <u>Package Submittal</u> Package	____%	\$ _____
Task #5:6 - <u>Definitive Project Submittal</u>	____%	\$ _____
TOTAL	100%	

The Preliminary Services Fee set forth herein is inclusive of all direct and indirect costs.

Name of Proposer

Name of Designated Signatory

Signature

Title

Exhibit E

RIPTA Response to Questions and Comments received from Proposers
(on or prior to the submission date specified in the RFP)



RFP No. 23-22

DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT
 ADDENDUM 3 – RESPONSE TO REQUEST FOR CLARIFICATIONS & AMENDMENT

Issued: April 4, 2023

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
1.	RFP	Proposal Form 1, item 10	Buy America	The RFP references that the Proposer must certify that it will comply with the requirements of 49 U.S.C. 5323 (j) (1) and the applicable regulation on 49 CRF Part 661.12 (Buy America) for the procurement of steel and manufactured products, but the requirements have changed and now BABA also applies to construction equipment. Will these new BABA requirement be applicable to this project?	Yes, given the timing of the award, the updated BABA requirements will be applicable. The RFP has been amended accordingly to read follows: <i>“Proposer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323 (j) (1) and the Applicable regulations on 49 CFR Part 661.12 (Buy America)”</i> ”, thus removing the previous limitation on its scope.
2.	RFP	Section 3.1	Submission Deadline	Would RIPTA consider an extension of submission deadline to allow Proposers additional time to find teaming partners and prepare a proposal?	At this time, RIPTA does not consider an extension of the submission deadline to be necessary. That said, in accordance with Section 6.1. of the RFP< RIPTA retains the right to modify deadlines in the future if, at its sole discretion, it deems such modification to be in the Project’s best interest.
3.	Generally	PSA 3.14(a)	Project Agreement Structure	Market precedent suggest that there should be at least two separate project agreements, one for the TOD and one for the Transit Center. Accordingly, separate term sheets, or at least provisions acknowledging that some risks will be unique to one and not to the other would seem appropriate.	RIPTA hereby confirms that there will be two separate Project Agreements (one covering the Infrastructure Facility and the other addressing the TOD). During the PSA period, the Parties shall have ample opportunity to discuss the unique risk factors associated with each, as well as cross-over issues, and the Term Sheets will be updated accordingly. That said, RIPTA view this as a joint development project, with each Project Component integrated with the other, so there will necessarily be some cross-over provisions.

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
4.	Generally	N/A	Project Structure (Documentation)	Given likely participation by tax credit investors, and imposition of other federal and state laws to ensure the tax-favored financing, the lenders for either project will not accept a cross-default, and this should be stated explicitly in the term sheet(s). Cross-defaults generally should be avoided, given their separate postures.	RIPTA understands the concern, but also needs to ensure that the interests of RIPTA, public and the project itself are protected. As a joint development project, these are not two totally separate development initiatives, but instead are being procured and developed on an integrated basis. There is extensive market precedent for addressing these issues and there will be ample opportunity to discuss prior to execution of any Project Agreements.
5.	RFP	Proposal Form P-1	PSA Fee Breakdown	Form P-1 includes a breakdown of how the preliminary service fee is apportioned in terms of PSA submissions, but there is some discordance with this and the terms of both the PSA and descriptions in the RFP.	Form P-1 has been amended to reflect the Project Tasks set forth in the Schedule 1 of the PSA.
6.	RFP	Section 5.4.2.3 and Section 5.4.3; Forms P-2 and P4	Price Proposal / Scoring Methodology	<p>a. The price proposal is 50% of the total proposal scoring, which is too high given the PSA structure. In particular, the Preliminary Services Fee is 30% of total proposal scoring. While it is completely understandable RIPTA is concerned with respect to the costs the bidders are able to quantify at this stage, the services under the PSA may vary based on the Project proposals, and often more thorough preliminary services can identify issues early on and save money in the long run (whereas this payment structure would incentivize bidders to backload as much of the pre-development services as possible).</p> <p>b. Forms P-2 and P-4 – RIPTA to confirm whether the “Design-Build Subcontractor Fee” and “Return-on-Equity” figures are limited to the transit component of the Project.</p> <p>c. How is the PSA Fee to be scored and does the breakdown in Form P1 influence the scoring? 5.4.3 to be scored quantitatively. RIPTA to confirm how (if at all) Form P-1 factors into proposal scoring.</p>	<p>(a) Best value scoring is determined by the procuring agency (RIPTA) in accordance with its own priorities. RIPTA also believes that the scope of services is more than sufficient to allow Proposers to prepare well considered price proposals for the PSA period. The weighting of the price proposal remains unchanged.</p> <p>(b) RIPTA hereby confirms that amounts bid on Proposal Forms P-2 and P-4 “Design-Build Subcontractor Fee” and “Return-on-Equity”, respectively, are applicable only to the Infrastructure Facility and not to the TOD. That said, during the PSA period, RIPTA anticipates discussions with the Project Company around potential revenue sharing arrangements deriving from the TOD.</p> <p>(c) As set for in Section 5.4.3.2 of the RFP, the evaluation formula shall be applied to the total PSA fee, not to its subcomponents (price breakdown by individual task).</p>

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
7.	RFP/PSA	Section 2.2 of RFP; PSA (generally)/ 3.1 1I; Attachment 1A; see also “Relief Event” clause (iii)	Access to / Acquisition of Project Site	<p>a. The RFP relates that RIPTA has not yet acquired the Project Site, but RIPTA has condemnation authority. Will the Project Company get schedule relief and/or subsurface-type relief if hampered by lack of access rights? Broadly speaking, the Project Company needs protections for failure to obtain or delay in obtaining the Project site built into the PSA (and Project Agreement if post-closing)</p> <p>b. The RFP, PSA, and Term Sheet need to have presumed the bidders’ receipt and digestion of deadlines, processes, and otherwise as attends Project Site acquisition.</p> <p>c. Section 3.11 of the PSA places site investigation risk onto the Project Company, which needs to be qualified in the event the Project Company is not given access by the existing third party owner.</p> <p>d. Section 1A of the PSA states that the scope of work for assessing the geotechnical subsurface risk will be determined at the time the PSA is executed, but it’s difficult for the bidder to price the Preliminary Services without this information or access to the Project Site to collect some/all of the information.</p>	<p>(a) Site acquisition will be a condition precedent to executing the Project Agreement; however, Site acquisition is NOT a requirement for the delivery of the services under the PSA. As is standard for contracts of this type, RIPTA will arrange for temporary access to the SITE during the PSA period to allow the Project Company to undertake all required studies. The timing of that access will be determined by the schedule proposed by the Selected Proposer, which will be incorporated within the PSA. Should RIPTA be unable to facilitate access in accordance with the contractually agreed schedule, then it could trigger a relief event.</p> <p>(b) Again, the RFP is requiring bidders to propose their own schedule for undertaking the PSA services. This is not something that is dependent on Site acquisition. RIPTA will arrange for temporary access to the Site during the PSA period, to undertake required studies.</p> <p>(c) See B above. The parties will agree upon a schedule for temporary access to the Site during the PSA period. This is something that Proposers should consider in developing their proposed schedule, as required by the RFP.</p> <p>(d) Proposer should include in its PSA price all such testing and investigation that the Proposer believes are reasonable and necessary in order for it to assume (in the Project Agreement) the obligations contemplated in Section 3.12(d) of the PSA.</p>
8.	General	N/A, but see PSA 3.11 See also PSA, Appendix 1 (Scope), A.12	NEPA	<p>There is mention of potential federal funding and few mentions in passing to NEPA/other environmental clearances, but no real information on or provision for the NEPA process/environmental process(es) in the RFP/PSA/Term Sheet. Given the impact of the environmental posture on the Project activities and timeline, it is critical RIPTA provides further information.</p> <p>Furthermore, it would appear under the PSA that the Project Company is to prepare a plan (Environmental Review and Permitting Plan), which could be inferred to place environmental clearances on the project Company. This is customarily an owner risk, but if placed upon the Project Company, relief should be accorded for time/costs in receiving this/these clearances.</p>	<p>The Project Company is being hired by RIPTA to assist in managing the NEPA process on its behalf. This, as well as all permitting, is a fundamental component of the scope of any progressive P3. At this early stage, RIPTA does not yet know whether the Project will receive a Categorical Exclusion, or it will require an EIS or Environmental Assessment. This assessment and prep work is to be undertaken by the Project Company during the PSA period. Quite obviously, environmental requirements may influence the Construction timeline, which will be defined by the Project Company during the PSA period and codified in any future Project Agreement. This is the purpose of a progressive P3 approach. Required permitting including NEPA, is to be managed by the Project Company on behalf of RIPTA.</p>

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
9.	PSA	Section 3.14(g); Section 6.1	Termination Compensation Regime	<p>As drafted, RIPTA can terminate for convenience at any time, and (a) require assignment of all Project work product; (b) require assignment of all Project Company subcontracts; and (c) pay only for the work performed up to the most recent milestone. Given that, we would suggest the following:</p> <ul style="list-style-type: none"> (i) For any non-Project Company-default termination other than termination for convenience/RIPTA default, all costs incurred up until termination date; and (ii) For termination for convenience/RIPTA default, an equity IRR payment if RIPTA takes the work product and commence construction in the next [5] years, where the payment for work performed is not constrained by the Preliminary Services Fee. (iii) Additionally, the requirement that all subcontracts including the design-build contract are assigned following termination should be limited to Project Company default terminations and in terms of scope, just for the completion of the Preliminary Services. 	<ul style="list-style-type: none"> (i) RIPTA is contracting with the Project Company under the PSA on a pay-go basis to undertake work on its behalf and is the owner of those work products. This is standard for most public contracts and not subject to negotiation. In the event of termination, RIPTA will pay for the work incurred up to the termination date, subject to the terms set forth in PSA. (ii) In the event of termination for convenience or RIPTA default, RIPTA does not consider it reasonable to offer or require an equity IRR payment if RIPTA commences construction within 5 years with another company, RIPTA would note that it is paying for the work product and is the legal owner of said work product and is thus not restricted in its ability to use such work product. Additional consideration to the Project Company is not required, nor reasonable, much less in the form of equity IRR payment when the PSA period is being funded on a pay-go basis. Comment considered. No change will be made. (iii) RIPTA would further note that the assignment of Project Company subcontracts to the owner is a standard right contemplated in the DBIA progressive contracting model and associated templates and is thus considered standard industry practice. That said, RIPTA has modified PSA Section 3.14(g) will be modified to provide that, at the request of RIPTA, the Project Company will assign the Subcontract(s) with the designer/ Architect-of-Record (relating to the performance of the relevant Preliminary Services) to RIPTA. Further, no Subcontract or other agreement between the Project Company and any Subcontractor shall prohibit or prevent such Subcontractor from entering into an agreement with RIPTA following termination of this Agreement.
10.	PSA	General; see Appendix 2 to PSA	Term of Agreement / Review Timeframes	<p>There are no time limits on RIPTA’s review of submissions. Without those RIPTA can (i) in theory extend this agreement out indefinitely; and (ii) delay (without relief) the Project Company’s ability to hit the remaining submission deadlines. Additional clarification on RIPTA standards of review and comment/response should be added.</p>	<p>PSA Section 3.4 has modified to stipulate maximum review periods by RIPTA for each of required design submissions.</p>

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
11.	Term Sheet	N/A	Service Fee for Infrastructure Facility	The Term Sheet in one place appears to leave the door open to milestone payments for the infrastructure component, but mostly refers to a post-substantial completion service payment structure. Please confirm whether RIPTA is considering a milestone payment-driven structure.	RIPTA reserves the right to utilize future grant or other funding to make milestone payments associated with the Transit Facility. The use of milestone payments is highly likely; however, the amount and timing are still uncertain. As set forth in the Term Sheet for the Infrastructure Facility, during the Preliminary Services period, the parties will explore the value in RIPTA financing a portion of the Infrastructure Facility (either up front or through milestone payments). Such decision shall be made by RIPTA at its discretion. In addition, RIPTA will reserve the right to prepay any Project Company financing associated with the Infrastructure Facility during the Term, with appropriate make whole provisions.
12.	RFP	Section 5.4.1.2	Submission Requirements	Please confirm that (i) the Lead Design-Builder, Lead Affordable Housing Developer, and Lead Commercial Developer can be the same party (based on the nature of the Project, it seems likely the Lead Affordable Housing Developer and Lead Commercial Developer will be the same party); and (ii) whether the same past project can be listed more than once in satisfying the resume requirements of the various positions under this section.	So confirmed. A single entity can assume the role of multiple Major Participants. Likewise, the same project can be used for qualification or evaluation purposes in multiple categories.
13.	RFP	Proposal Form 6	Key Personnel	There are 19 required Key Personnel (KP) positions under Form 6 of the RFP, which is high in comparison with market precedent. It's understandable that this project would feature a higher-than-typical amount of KPs given its diverse components, but there are still some positions (e.g., public outreach positions, financial advisor position) that would not typically merit assumption of KP-type risks to the Project Company. Please consider revising.	Please refer to Schedule 1, section B-8 for the revised Key Personnel positions. Proposal Form 6 has been revised accordingly.
14.	RFP	Section 5.4.2.2/Package A, C-3	Substantial Completion	RIPTA to confirm whether substantial completion by 2026 is a requirement or a preference to be weighted in scoring, as these two sections appear inconsistent in this regard.	RIPTA clarifies that the substantial completion by 2026 "strong preference", not a strict requirement. RIPTA recognizes that factors beyond the control of the Project Company, such as site conditions, Force Majeure, NEPA requirements, etc., may impact timelines. That said, RIPTA is targeting 2026 and believes that to be reasonable, barring any external factor.

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
15.	RFP	Section 4.9.2(b)	Proposal Security	RIPTA to clarify that proposal security will not be drawn on for “material changes to the draft Preliminary Services Agreement”. This is a legal document with which the bidders have had the opportunity to present issues only twice, without any changes from RIPTA.	One of the key purposes of the Proposal Security is to secure the Successful Proposer’s execution of the PSA attached to the RFP. Material changes to the form PSA attached to the RFP will not be considered by RIPTA. Per RFP Section 4.9.2(c)(ii), the Proposal Security may be drawn upon if the “Successful Proposer insists on material changes to the draft Preliminary Services Agreement as a condition to its execution”. The RFP remains unchanged in this regard.
16.	RFP	“Task 6” of Scope of Services	Firm Offer Re: Definitive Submittal	The requirement that the Definitive Submittal is a firm offer for 180 days should be moved to the PSA and clarified as subject to its relief event regime.	The PSA has been modified to include the 180-day Definitive Project Submittal validity period. The Definitive Project Submittal is not subject to a relief event regime.
17.	PSA	Section 6; 3.14(d)	Failure to Agree / Infeasibility	Failure to agree on pricing and Project affordability may be an issue. As currently drafted, in one spot, only RIPTA has a generic off-ramp, but in another, an off-ramp right is referred to for the Project Company See 6.2(c). Please clarify whether Project infeasibility beyond certain financial threshold will constitute a Project Company default. We proposed striking strike PSA 3.14(d).	RIPTA has not set an affordability threshold / maximum price in the RFP. PSA Section 3.14(d) has been modified to provide that the inability of the parties to agree upon a Project Agreement Services Fee or other cost or price aspect of the Project will not in and of itself constitute a breach of the PSA by either Party. T
18.	PSA	3.2(e)	Reduction in Scope	As currently drafted, RIPTA can unilaterally reduce the scope of the PSA with a corresponding reduction in fee. Given that this could (a) functionally allow for a backdoor termination; and (b) allow for a removal of one or more components of this Project in a manner that renders it no longer the same business deal for the Project Company, this right will need to be narrowed. We believe the fee should remain the same regardless as to whether the scope is reduced.	Section 3.2(e) has been modified to require agreement between the Parties with respect to modifications to the scope, schedule and fee.

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
19.	PSA, Term Sheet	3.14.(g) (PSA)	Indemnification and Liability	Section 3.14(g) states that if RIPTA terminates and buys the work product, the Project Company is liable for errors etc. in the assigned work product. With regard to drawings, plans etc. this liability should extend only to signed/sealed documents (and ideally capped at agreed upon professional liability insurance limits). We suggest that indemnification should only extend to third party claims, and not to any claim (see, e.g., “to third parties (or otherwise)”).	Limiting liability for errors and omissions in the “Deliverable Material” to only those documents that are stamped/sealed is too limiting and undercuts the scope of coverage of the professional liability insurance. RIPTA would be open to an overall liability cap based on the dollar amount of professional liability coverage provided. See revised Term Sheet.
20.	PSA	8	Proprietary Intellectual Property	Please consider adding Proprietary Intellectual Property protections to the PSA (currently silent on Project Company Proprietary Intellectual Property).	Given the nature of the PSA services, RIPTA does not expect that Proprietary Intellectual Property will need to be addressed in the PSA but is open to discussing the matter prior to PSA execution. If required, Proprietary Intellectual Property can be addressed in the Project Agreement.
21.	PSA	5.2(a)	RIPTA Default	The PSA should be expanded to include a few more typical industry defaults such as RIPTA makes it materially impossible for Project Company to perform and inaccurate reps/warranties (note standard RIPTA reps/warranties (in particular re: authorizations and litigation) will also need to be added to the PSA).	Comment considered. No change will be made. Note that “Relief Events” includes “action or inaction by RIPTA that is materially inconsistent with the Preliminary Services”
22.	Term Sheet	N/A	Financing	The Term Sheet states RIPTA will not enter into any kind of agreement with the Project lenders as to the real estate components. Lenders for the real estate components will likely require customary estoppels and other lender protection type documents.	Term Sheet has been amended to contemplate standard market estoppels.
23.	Term Sheet	N/A	Limitation on Liability	There must be an overall limitation of liability under the Project Agreements (currently the Term Sheet is specific there will be none).	The Term Sheet has been modified to state that dollar limitation on damages for non-performance under the Project Agreements may be discussed during the PSA stage.
24.	PSA	Def. “Force Majeure Event”	COVID-19	Exception of COVID-19 from force majeure or other type event is not consistent with current P3 precedent. This should be a Relief Event and entitle the Project Company to time and additional costs, as the past has borne out.	COVID-19 is no longer a force majeure trigger, as it is endemic, and the world been living with it for some time now. Comment considered. No change will be made.

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
25.	PSA	Definition of “Relief Event”	Scope of “Relief Event”	Should be expanded to cover other concepts (e.g., not just an “inconsistent action” but also an affirmative delay by RIPTA, pandemic events, TRO’s/injunctions, environmental approval modifications (see comments above), suspensions for convenience). All Relief Events should be compensable and increase any fee caps. See above regarding Project Site access/subsurface conditions	<p>RIPTA does not agree that all Relief Events should be compensable and increase the fee caps. The addition of maximum RIPTA review periods in Section 3.4 of the PSA tightens this definition.</p> <p>“Relief Events” already includes “action or inaction by RIPTA that is materially inconsistent with the Preliminary Services, including its failure to comply with the review periods set forth in Appendix 2 (Work Schedule)”</p>
26.	PSA, Term Sheet	7.1 (PSA)	Insurance, generally	It should be clear that insurances may be program, corporate, or project-specific placements.	Agreed. PSA Section 7.1 will be modified to say that insurances may be program, corporate, or project-specific placements.
27.	Term Sheet	n/a	D&C requirement changes	Any change directed by RIPTA shall entitle the Project Company to time and cost relief <i>plus</i> changes in cost, equity return, delay costs, and effects upon financing. Furthermore, any change to design shall shift design risk back to RIPTA to the extent of the design change	Term Sheet has been modified to provide that any unilateral change directed by RIPTA (and not in response to Project Company performance issues) shall entitle the Project Company to time and cost relief. Impact of other changes will be discussed during PSA period.
28.	Financing structure / RIPTA participation	n/a	RIPTA’s Role in Selecting Financing Structure	RIPTA’s approval of the results of the PSA and entry into the Project Agreement(s) may not be later rejected or altered. This should be clear in the PSA and not in the Term Sheet. Any termination fee should include redemption premiums, etc., and not simply a fee. Any forced refinancing by RIPTA should bear the entirety of the imposition on the Project Company, such that the Project Company is in a neutral position vis-à-vis its equity investment.	RIPTA does not fully understand the Proposer’s concern or comment. Once a Project Agreement is executed, it can only be modified in accordance with its terms. Compensation upon termination will be calculated in accordance with relevant market precedent, the terms of which will be made available to the Project Company during the PSA period. Comment considered. No changes will be made.
29.	RFP	3.1	Scoring / Interview	Will Proposer interviews be evaluated and scored? If so, please clarify the factors to be considered.	RIPTA clarifies that interviews will not be scored but will simply serve as part of RIPTA’s due diligence into each Proposer and its Proposal.

No.	Document	Section	Issue Topic	Question / Clarification Request	RIPTA Response
30.	RFP	Page 10 RFP	Definition of Major Participant	Definition of “Lead Design Builder Member” – Page 10 of RFP – Are the architects considered to be a Major Participant? Definition on page 10 indicates that the "Lead Design Builder Member" is a joint venturer of the design-builder. Form 3 calls out the "Lead Design Firm" and "Lead Construction Firm" as Major Participants separately. Please clarify whether the design team members would be considered Major Participants as identified in the RFP.	RIPTA clarifies that the Architect Firm is not considered a Major Participant, except and unless such Architecture Firm is a Design-Build Member. Form P3 has been clarified accordingly.
31.	RFP	Schedule 1 Package D	Proposal Forms References	The titles listed for the forms described on in the Package D instruction of Schedule 1 differ from those indicated on forms P-1 thru PF P-4. Please clarify	Schedule D Instruction have been amended to correctly reflect the titles and ordering of the Price Proposal Forms.
32.	RFP	Section B-13 / Page 72	Equity, Inclusion, Diversity Subcontracting Plan	Please confirm that the requirements set for in the RFP under section B-13 on page 72 of the RFP for Equity, Inclusion, Diversity Subcontracting Plan is intended to meet the RI State Laws and procurement requirements which appear to differ from the requirements listed in B-13, or if the RFP supersedes the State’s requirements. As an example, the State of RI does not have a certification for Emerging Small Business (ESB) and therefore the 5% listed as a goal for this RFP would not be achievable under the State’s regulations.	While RIPTA retains the right to set any goal it determines to be appropriate for the project; given that neither the State nor the FTA certifies ESB’s, RIPTA is removing the requirement with regard to ESB. Please refer to section 2.8 of the RFP for relevant requirements. The RFP has been revised throughout to further clarify associated targets.
33.	RFP	Various	Request for Change to Major Participants and Key Contractors	Please consider removing Facilities Maintenance and Financial Advisor Minimum Qualifications – pages 49 & 54 of RFP; Package C-10; PF - 5 & PF – 6. We feel that the requirement to include a Facilities Maintenance Provider and Financial Advisor as part of the Proposer Team is not optimal for achieving “best value” for the project. Instead, we would suggest that the Project Company be required to select both the Facilities Maintenance Consultant and a Financial Advisor within 90 days of execution of the Preliminary Services Agreement.	RIPTA has amended the RFP accordingly. In the case of the FM provider, RIPTA recognizes that the scope of FM services still needs to be better defined, particularly vis-à-vis RIPTA retained services (RIPTA O&M). With regard to the Financial Advisor, RIPTA also sees value in allowing the Selected Bidder access to the a full market of options, as opposed to having Proposers compete ex ante for particular firms.