



DORRANCE STREET TRANSIT CENTER JOINT DEVELOPMENT PROJECT

ADDENDUM NO. 2 (23-22A2)

DATED: February 1, 2023

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

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DATED: February 1, 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. Schedule 2 and Schedule 3

Schedule 2 (Draft Preliminary Services Agreement) hereto is hereby inserted as Schedule 2 (Draft Preliminary Services Agreement) to the RFP.

Schedule 3 (Project Agreement Term Sheet) hereto is hereby inserted as Schedule 3 (Project Agreement Term Sheet) to the RFP.

2. Section 5.9.2.1

RFP Section 5.9.2.1 is hereby amended be deleting “Chief Legal Counsel” in clause e. thereof and replacing it with “Chief Legal Counsel”.

3. Acknowledgement of Addenda

The acknowledgement of addenda form on the following page should be returned with the Proposal package (along with this Addendum).

[Remainder of page deliberately left blank]

Acknowledgment of Addenda

The undersigned acknowledges receipt of the following addenda to the RFP:

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

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

Name of Bidder

Street Address

City, State, Zip

Signature of Authorized Official

Date

SCHEDULE 2 – DRAFT PRELIMINARY SERVICES AGREEMENT

[See following pages]

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

between

RHODE ISLAND PUBLIC TRANSIT AUTHORITY

and

[INSERT]

Dated

[INSERT DATE]

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**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);

E. The Parties anticipate that they will consult as to whether it best serves the Project to have the entirety of the Project covered by a single 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 fully negotiate and finalize the terms of any Project Agreement(s) prior the submission of the Definitive Project Submittal, 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 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 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 Indemnatee” 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) 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 (ii) 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 the Preliminary Services shall be effective upon the delivery of the written notice by RIPTA pursuant to this subsection. 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 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.

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.

(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. 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 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.

Section 3.14 Definitive Project Agreement.

(a) Negotiation and Execution of Project Agreement(s).

(i) It is the intention of RIPTA to distribute a draft of one or more Project Agreements to the Project Company in advance of the development 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 a single Project Agreement, or 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 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.

(e) No Obligation of RIPTA to Enter into a 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 a 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 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. 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 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 (i) 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.

(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 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 Indemnites 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 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 Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the RIPTA Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the RIPTA Indemnitee 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 Indemnitee 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 Indemnitee 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 Indemnitee, the RIPTA Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the RIPTA Indemnitee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the RIPTA Indemnitee 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 Indemnitee fully informed and consult with it about material elements of the conduct of such defense;

(ii) the Project Company shall demonstrate to the RIPTA Indemnitee, at the reasonable request of the RIPTA Indemnitee, 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

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

between
RHODE ISLAND PUBLIC TRANSIT AUTHORITY
and
[INSERT]

Dated
[INSERT DATE]

APPENDIX 1

SCOPE OF BASIC SERVICES

[See Schedule 5 to RFP]

ATTACHMENT 1A

GEOTECHNICAL INVESTIGATIONS WORKSCOPE

The Project Company's scope of work for assessing the geotechnical subsurface risk of the Project Site necessary to enable the Project Company to accept any differing geotechnical/subsurface site conditions, as required by Section 3.12(d) (Assumption of Risk of Differing Site Conditions) of this Agreement, will be set forth at the time of execution of this Agreement.

APPENDIX 2

WORK SCHEDULE

APPENDIX 2

WORK SCHEDULE

2.1. MILESTONE SCHEDULE FOR PERFORMANCE AND REVIEW

Upon the execution of this Agreement, the Project Company shall proceed with Task 1, as set forth in Appendix 1 (Scope of Basic Services). The Project Company shall complete each Task within the time for performance set forth in the following table. RIPTA expects to complete its review within the period indicated in the table.

2.2. COMPLETION DATE

Based on the time for Project Company performance and for RIPTA review provided in Section 2.1 (Milestone Schedule for Performance and Review) of this Appendix, and assuming (1) no material suspension of Preliminary Services by RIPTA, and (2) that no Relief Events have occurred, the Preliminary Services shall be completed within ____ days of the Agreement Date.

APPENDIX 3

REQUIRED INSURANCE

APPENDIX 3

REQUIRED INSURANCE

3.1. REQUIRED INSURANCE

3.1.1 Insurance Coverage. The Project Company shall obtain, pay for and maintain, the insurance coverage listed below during the Term and thereafter as specifically set forth in this Appendix 4 without any reimbursement obligation on the part of RIPTA (the “Required Insurance”). Failure to provide and maintain the Required Insurance will constitute a material breach of the Agreement. Regardless of the consent to exclusions, coverage limitations or deductibles by RIPTA, the Project Company shall be responsible for any deductible amount.

The insurance policies required by this Appendix shall provide that coverage afforded under the policies will not be cancelled, reduced below the minimum limits required under this Agreement or allowed to expire without renewal until at least thirty days’ prior written notice has been given to RIPTA by the insurance company, except 10 days’ notice shall be provided in the event of cancellation, non-renewal, or reduction below the minimum limits required under this Agreement due to non-payment of premium; and such provision shall be made by endorsement. The Project Company must also provide RIPTA with at least thirty days’ prior written notice of any cancellation, non-renewal, or reduction below the minimum limits required under this Agreement of any Required Insurance, except 10 days’ notice shall be provided in the event of cancellation, non-renewal, or reduction below the minimum limits required under this Agreement due to non-payment of premium.

3.1.1.1 Professional Liability. A professional liability errors and omissions insurance policy covering negligent acts, errors or omissions caused by the Project Company’s professional services for which it is legally liable, which policy shall:

- (a) be in an amount not less than \$10,000,000 per claim and in the aggregate;
- (b) be on a “claims-made” basis; and
- (c) have an extended reporting or discovery “tail” period, or be renewed for a period, of not less than two years after the date that the Definitive Project Submittal is submitted to RIPTA or the termination date of this Agreement, whichever occurs first.

Such policy shall have a retroactive date effective before the commencement of any design work.

The primary design professional shall maintain its practice policy until the statute of repose expires in an amount not less than \$10,000,000. Such practice policy shall not include any exclusionary language relating to Design-Build joint ventures or partnerships or both.

Similar professional liability insurance shall also be obtained and maintained by the Project Company’s Subcontractors which will provide professional services in connection with the Agreement, such as engineers, architects and other design professionals.

3.1.1.2 Commercial General Liability. A commercial general liability insurance policy, written on an occurrence basis and be at least as broad as the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and covering liabilities arising out of the performance of the Preliminary Services, including coverage for underground hazard, collapse hazard, and explosion, independent contractors, products and completed operations, personal liability, advertising liability, contractual liability, and liability assumed under an insured contract. The policy shall not include exclusions for property damage from explosion, collapse or underground hazard, or construction defects. The insurance shall apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability. This insurance policy shall:

- (a) have coverage for any one occurrence or claim of not less than \$25,000,000 per occurrence and a \$25,000,000 annual aggregate applicable solely to the performance of the Preliminary Services, which requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” or umbrella basis; and
- (b) be maintained throughout the Term. Notwithstanding the foregoing, the products and completed operations liability coverage shall be maintained for a period of not less than two years following the date that the Definitive Project Submittal is submitted to RIPTA or the termination date, whichever occurs first.

3.1.1.3 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than \$10,000,000 per accident for bodily injury and property damage, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” basis, with a deductible to be determined by the Project Company in accordance with Section 3.3 (Deductibles and Self-Insured Retentions) of this Appendix. The insurance must cover liability arising from any motor vehicle, including owned, non-owned, leased, hired, rented, borrowed or otherwise assigned to or used in connection with the performance of the Preliminary Services.

3.1.1.4 Workers’ Compensation and Employer’s Liability. Workers’ compensation insurance as required by Applicable Law which provides for compensation payments to employees, or their dependents, for any injuries or death arising out of and in the course of employment in connection with the performance of services under this Agreement, and employer’s liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit).

3.1.2 Waiver of Subrogation. The Project Company and its insurers providing the insurance required under this Appendix shall waive any right of subrogation they may have against RIPTA, RIPTA Indemnitees and those for whom RIPTA is in law responsible, whether or not the damage is caused by the act, omission or negligence of the Project Company. The Project Company shall require similar waivers by its Subcontractors. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

3.1.3 Non-Recourse Provision. All insurance policies required under this Appendix shall provide that the insurers shall have no recourse against RIPTA, as Additional Insured, for payment of any

premium or assessment and shall contain a severability of interest provision in regard to the Project Company's liability policies.

3.1.4 Subcontractors. All Subcontractors providing Preliminary Services shall be required to obtain and maintain insurance coverage of the types and at the coverage levels required to be maintained by the Project Company; provided, however, that the Project Company shall require its Subcontractors to provide at least the following minimum limits for the following types of insurance: (1) commercial general liability insurance with limits of at least \$5,000,000 per occurrence; (2) commercial automobile liability insurance with limits of at least \$5,000,000 per accident; (3) workers' compensation insurance, as required by Applicable Law; and (4) employer's liability insurance with limits of at least \$1,000,000 per accident or disease. Notwithstanding the insurance coverage and limits specified in this Appendix, lower coverage levels may be maintained appropriate to the Subcontractor's tier and scope of work to the extent such lower level of coverage is agreed to by RIPTA.

The Project Company shall be responsible for ensuring that all Subcontractors of the Project Company performing Preliminary Services:

- (a) secure and maintain all insurance coverages (including workers' compensation insurance) and other financial sureties required by the laws of the State in connection with their presence and the performance of their duties pursuant to the Agreement;
- (b) secure and maintain all insurance coverage required by Applicable Law and other insurance commensurate with the scope of their services; and
- (c) maintain products and completed operations liability insurance for not less than 24 months following the date on which the Definitive Project Submittal is submitted to RIPTA or the termination date of this Agreement, whichever occurs first.

3.1.5 Specific Provisions for Commercial General Liability Insurance. Commercial general liability insurance, as required under this Appendix, shall include terrorism, premises-operations, blanket contractual liability, products and completed operations, personal injury and advertising injury, host liquor liability, explosion, collapse, underground hazards, broad form property damage including completed operations, and independent contractors coverages.

3.1.6 Specific Provisions for Workers' Compensation Coverage. Workers' compensation insurance, as required under this Appendix, shall be in accordance with the requirements of the laws of the State, as amended from time to time. The required workers' compensation insurance shall include other states' coverage and voluntary compensation coverage, if applicable.

3.1.7 Qualifications of Insurers. All insurance required under this Appendix shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in this Section and authorized to write such insurance in the State. The Project Company shall obtain the insurance set forth in this Appendix with insurance companies that carry a minimum rating of "A-VII," or equivalent, by A.M. Best's key rating guide.

In addition, insurance may not be obtained or maintained with insurers which are prohibited from conducting business in the State.

3.1.8 Insurance Coverage Forms. The following forms shall be used with respect to the applicable insurance required in this Appendix:

- (a) commercial general liability insurance shall be written on an industry standard Commercial General Liability Occurrence form (CG 00 01) or equivalent.
- (b) comprehensive auto liability insurance shall be written on an industry standard Business Auto Liability policy form (CA 00 01) or equivalent; and
- (c) workers' compensation insurance shall be written on an industry standard Workers' Compensation and Employer's Liability policy form (WC 00 00 00) or equivalent, where applicable.
- (d) Each of the insurance policies (1) shall specify that it acts as primary insurance and that no insurance effected by RIPTA shall be called upon to cover a loss under the policy so procured or caused to be procured by Project Company or Subcontractor, and (2) shall otherwise be in a form satisfactory to RIPTA.
- (e) Using ISO Additional Insured Endorsement forms CG 20 10 11 85 or CG 2010 10 01 and CG 2037 10 01 or their equivalent, the Project Company and its Subcontractors shall name RIPTA, and their respective officers, directors and employees, as "Additional Insureds" on all policies of commercial general liability insurance. Without limiting the foregoing, each of the comprehensive auto liability insurance and excess liability insurance shall name RIPTA as an "Additional Insured". The duty to provide such additional insurance coverage is independent of the defense and indemnity obligations set forth in the Agreement.

3.2. INSURANCE CERTIFICATES AND CONTINUATION OF COVERAGE

Insurance, and any renewal thereof, shall be evidenced by certificates of insurance issued by insurance companies authorized to do business in the State and such certificates of insurance shall be delivered to RIPTA before the Project Company or any Subcontractor begins work under this Agreement and thereafter upon renewal or replacement of each required policy of insurance. Upon request of RIPTA, the Project Company shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. At all times during the pendency of insurance, Project Company shall notify RIPTA of any endorsements that are issued amending coverage or reducing limits below the minimum required under the Agreement.

The Project Company shall furnish to RIPTA a certificate which shall set forth the number of the worker's compensation policy in effect, the name of the employer, and the expiration date of the policy.

The Project Company shall obtain from each of its Subcontractors and suppliers their certificates of insurance and endorsements and maintain said proofs of insurance at its office.

At RIPTA's request, the Project Company shall provide to RIPTA, or make available for review by RIPTA at any reasonable time at the principal office of RIPTA, copies of the Project Company's insurance policies and any endorsements for the Required Insurance, without charge. The Project Company's disclosure of insurance policies shall be subject to applicable procedures related to business confidential information. At RIPTA's request, the Project Company shall provide RIPTA with proof of insurance for each of its Subcontractors and suppliers.

Additional certificates evidencing continuation of general liability coverage (including completed operations coverage) and professional liability coverage shall be submitted following completion and acceptance of the Preliminary Services, and thereafter upon renewal or replacement of such coverage until (1) such time as RIPTA notifies Project Company that the insurance is no longer required by RIPTA, or (2) 24 months following the date on which the Definitive Project Submittal is submitted to RIPTA or the termination date of this Agreement, whichever occurs first.

The certificates of insurance and the insurance policies required hereunder shall be provided on current industry standard Acord forms. All certificates of insurance and endorsements shall be sent to RIPTA notice addresses indicated in Section 8.10(B) (RIPTA Notice Address) of this Agreement.

3.3. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any of the policies of insurance required under this Appendix may provide that the amount payable in the event of any loss shall be reduced by a deductible amount to be paid by the Project Company, which shall not exceed \$250,000 unless otherwise approved in writing by RIPTA. Alternatively, any of the policies of insurance required under this Appendix may provide for a self-insured retention by the Project Company in an amount not to exceed \$250,000 (except with respect to professional liability insurance which may have a higher self-insured retention consistent with reasonable industry practice), unless otherwise approved in writing by RIPTA.

APPENDIX 4
DESCRIPTION OF THE PROJECT SITE

APPENDIX 4

DESCRIPTION OF THE PROJECT SITE



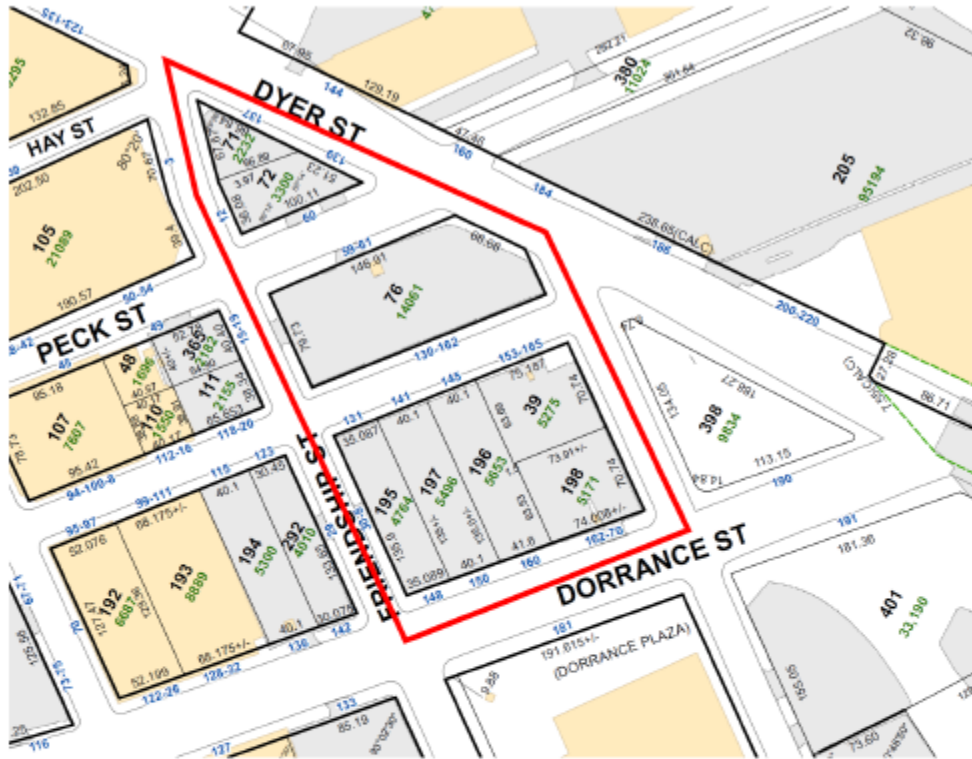
2022 RAISE Grant Application

Figure 2: Project Site Proximity to Existing Kennedy Plaza



Dorrance Street Transit Center

City of Providence, Rhode Island
Subject Property



Legend	
Parcel Lines	
— Parcel	— Easements
— Road	— Edge of Pavement
--- Paper Street	— Hook
— Water	— Leader
— Rail Road	— Misc
— City Boundary	— Building Footprint
— InActive Parcel Line	— Parking Lots
	— Water Bodies

Plat No. 020

APPENDIX 5

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

APPENDIX 5

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

Key Personnel

[To be supplied at the time of
execution of the Agreement]

APPENDIX 6
PROJECT AGREEMENT TERM SHEET

[See Schedule 3 to RFP]

SCHEDULE 3 – PROJECT AGREEMENT TERM SHEET

[See following pages]

APPENDIX 6 TO PSA
PROJECT AGREEMENT 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)	RIPTA 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 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 Project Agreement (subject to agreement on final pricing) prior to 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.
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.</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 Selecting Financing Structure for Infrastructure Facility	<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 prior to executing the 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 will occur concurrently. Any Project Agreement will, 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. RIPTA will share in any refinancing gains.</p>
Infrastructure Facility Lender Rights	<p>The 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.</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: (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>
Design and Construction Requirements	<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, 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,</p>

	nor any RIPTA review, comment or monitoring of the Design-Build Work, nor any failure or delay by RIPTA 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 Project Agreement.
Infrastructure Facility: Design and Construction Requirement Changes	<p>Once the 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 Project Agreement. The Project Agreement will also address design and construction requirement changes necessitated by relief events (as described in the Project Agreement) or required in connection with a governmental approval.</p>
Construction Monitoring	RIPTA retains the right to monitor construction through regular updates and inspections.
Permitting and Governmental Approvals	<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> <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.</p>
Beneficial Occupation/Substantial Completion	
Beneficial Occupation/ Substantial Completion Standards and Requirements	The beneficial occupation/substantial completion standards and requirements will be determined prior to the execution of the Project Agreement. Beneficial occupation/substantial completion procedures will be developed during the Design-Build Work period.
Scheduled Beneficial Occupation/ Substantial Completion	The Project Company shall achieve beneficial occupation/substantial completion within a specified number of days following financial close. Final completion of the Design-Build Work, including punch-list items, shall be achieved within 60 days following beneficial occupation/substantial completion.

Date, Punchlist and Occupancy Readiness	In addition, the Project Company shall have a material obligation to prepare and maintain a critical path schedule for the performance of the Design-Build Work.
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 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 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.
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 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 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 Project Agreement shall include mechanisms to address capital modifications to the Infrastructure Facility during the operations period. Capital modifications requested by the Project Company shall be subject to RIPTA's approval in its sole discretion. Capital modifications required due to Project Company fault shall be for the account and expense of the Project Company. 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 Project Agreement and (2) other standards and conditions (including remaining useful life requirements) to be contained in the exit standards and conditions appendix to the 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>
Infrastructure Facility Compensation Terms	
No RIPTA Payment Obligations Prior to Beneficial Occupation/Substantial Completion	<p>RIPTA shall not have any payment obligations to the Project Company prior to the achievement of beneficial occupation/substantial completion. The Project Company will be expected to finance all costs incurred for the Project prior to the achievement of beneficial occupation/substantial completion.</p>
Service Fee for Infrastructure Facility	<p>Following beneficial occupation/substantial completion, 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> $SF = CC + OC - CR - DC \pm EI$ <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;</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 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 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>
TOD Rent, Revenue Participation, and Resets	<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</p>

	participate with a negotiated portion of gross revenue deriving from the TOD, the terms of which shall be negotiated and included in the Project Agreement (subject to resets).
Minimum Service Fee	The 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.
Infrastructure Facility Relief Events	
Infrastructure Facility Relief Events Generally	<p>With respect to the Infrastructure Facility , the 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 the 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 Project Agreement.</p>
Schedule, Performance and Cost Relief for the Infrastructure Facility	<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 an 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>

Notice and Mitigation	<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 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 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 Agreement 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 Agreement 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> <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	<p>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.</p>
General Organizational Requirements	<p>The Project Company shall comply with, and be solely responsible for, all Rhode Island organizational requirements, including corporate registration and taxation requirements.</p>
Insurance, Indemnity and Security for Performance	
Insurance Requirements	<p>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.</p>
Indemnity	<p>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 Project Agreement (including breach of Applicable Law), negligence or willful misconduct.</p>
Liability Limitations	<p>The Project Agreement will contain no stated dollar limitation on damages for non-performance. Special, consequential and punitive damages will be mutually waived, subject to customary commercial exceptions.</p>
Security for Performance	<p>The primary 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>

	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 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.
Default and Remedies	
Project Company Default	Project Company defaults will include failure to timely commence or diligently pursue the 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 Project Agreement.
Cure Rights	The Project Company shall be entitled to notice and an opportunity to cure certain defaults. The Project Company, however, will not have any further opportunity to cure 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.
RIPTA Remedies	RIPTA shall be entitled to exercise remedies in respect of Project Company defaults, including rights to step in and cure, recover actual damages, make demands upon security for performance, termination, and other remedies under law.
RIPTA Default	<p>RIPTA defaults 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 RIPTA default, including termination of the Project Agreement and recovery of actual damages. Damages recoverable by the Project Company, 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 Project Agreement by RIPTA.</p>
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 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. 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. 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 the Project Agreement without RIPTA's prior written consent, which consent shall not be unreasonably withheld.</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 Agreement; (2) the proposed transferee does not possess adequate business experience for the obligations it is assuming under the Project Agreement as determined by RIPTA in its commercially reasonable discretion; or (3) other conditions set forth in the final Project Agreement are met. RIPTA may assign the 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 Agreement 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 Agreement or otherwise agree to be subject to the terms of the Project 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</p>

	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.
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 Agreement), relating to the Project, the Project Agreement 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 Agreement 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	
Federal Regulations, Policies, Procedures, and Directives	<p>Federal funding (from the FTA or other federal agencies) may be used in the Project. If such funding is made available, the 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 Project Agreement, as such Federal Regulations may be amended or promulgated from time to time during the Term of the 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 (if Federal funding is used).</p>

Exhibit 1

Provisions Relating to DBE Planning, Utilization, and Reporting

[See attached.]

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XVIII. DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

For the purpose of this Contract, the goal for utilization of DBEs shall be the following percent of the Contract Dollar Amount:

DBE GOAL FOR THIS CONTRACT: «DBE_Goal» Percent

A. Policy

1. It is the policy of the DOT that Disadvantaged Business Entities are given the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds, pursuant to 49 CFR Part 26. Consequently, the DBE requirements of 49 CFR Part 26, as amended, apply to this Contract and RIPTA and its Contractors shall take all necessary and reasonable steps to ensure that DBE's have the maximum opportunity to compete for such contracts. RIPTA 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.

2. Contractor Obligation –

a. In the event that a DBE Utilization Goal is set on this Contract, Contractors and subcontractors failing to carry out applicable requirements of 49 CFR Part 26 and/or uses or attempts to use false, fraudulent, or deceitful statements/representations or otherwise exhibits a serious lack of business integrity or honesty to meet such DBE Utilization Goal, shall be in breach of contract. After notification to the DOT, RIPTA may terminate the Contract or take any other action it deems appropriate. The DOT may take joint or separate action, as it deems appropriate and necessary.

b. The Contractor shall provide the following assurance and ensure that each subcontract that it enters with a subcontractor contains the same assurance:

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, religion, age, national origin, sexual orientation, disability, gender identity, expression, or veteran status in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient, deems appropriate, which may include, but is not limited to:

- (1). Withholding monthly progress payments.
- (2). Assessing sanctions.
- (3). Liquidated damages; and/or

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- (4) Disqualifying the Contractor from future proposals as non-responsible
2. Contractor Obligation – In the event that a DBE Utilization Goal is set on this Contract, Contractors and subcontractors failing to carry out applicable requirements of 49 CFR Part 26 and/or uses or attempts to use false, fraudulent, or deceitful statements/representations or otherwise exhibits a serious lack of business integrity or honesty to meet such DBE Utilization Goal, shall be in breach of contract. After notification to the DOT, RIPTA may terminate the Contract or take any other action it deems appropriate. The DOT may take joint or separate action, as it deems appropriate and necessary.
3. DBE Utilization - The Contractor shall provide for full and fair utilization of DBEs by complying with the requirements of this Section. Such requirements include the achievement of the stated DBE Utilization Goal in the performance and completion of the work under the Contract. Nothing in this Section shall be construed to require the utilization of any DBEs, which is either not qualified or unavailable.
 - a. *All DBEs submitted must be certified by the State of Rhode Island at the time of Proposal submittal. A copy of the DBE Certification Letter from the State of Rhode Island Office of Civil Rights must accompany the Proposal submittal.*
 - b. *If a DBE Utilization Goal is set for this Contract, a Contractor's DBE utilization and/or "Good Faith Effort" to obtain DBE participation shall be considered when reviewing proposal submittals for responsiveness.*
 - c. *If NO DBE Utilization Goal is set for this Contract, Contractors are, nonetheless, encouraged to have DBE/Small Business participation in their proposal and to include the associated DBE forms in its proposal submittal.*

B. Definitions.

The terms used in these special provisions shall be defined as follows:

1. **Joint Venture**
An association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skills, and knowledge.
2. **Disadvantaged Business**
means a small business concern in which is, at least, 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically, disadvantaged individuals who own it.

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3. **Small Business Concern**

A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

4. **Socially and Economically Disadvantaged Individuals**

means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities of individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act, RIPTA shall make a rebuttal presumption the individuals in the following groups are socially and economically disadvantaged. RIPTA may also determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- a. **Black or African Americans**, which includes persons having origins in any of the Black racial groups of Africa.
- b. **Hispanic or Latino Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or Portuguese culture, regardless of race.
- c. **American Indian or Alaska Native**, which includes persons who are American Indian, Eskimo or Aleuts.
- d. **Asian-Pacific Americans or Native Hawaiian**, which includes persons whose origins are Hawaii, Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- e. **Asian-Indian Americans**, which includes persons whose origins, are from India, Pakistan, and Bangladesh.
- f. **Disadvantaged Business Enterprise (DBE) Liaison Officer** – the individual designated by the Authority to monitor compliance with these Special Provisions and to assist in their implementation.
- g. **Proposers** – any individual, partnership, joint venture, corporation, or firm submitting a Proposal for the contract.

C. Recognition of DBE Commitment

Each Contractor shall recognize RIPTA's commitment to ensure that DBEs be afforded full opportunity to participate in contracts awarded by RIPTA and will not be discriminated against on the grounds of race, color, religion, age, national origin, sexual orientation, disability, gender identity or expression or veteran status.

D. Proposal Submissions for Contracts with DBE Utilization Goals and/or DBE Participation

The Schedule of DBE Participation (Attachment A) shall have the following information:

1. The name and address of each DBE firm that will participate in the Contract.
2. A description of the work each named DBE firm will perform; and

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3. The dollar amount and percentage of the DBE Utilization Goal, if applicable, of participation by each named DBE firm.
4. RIPTA encourages all firms located in the United States that are currently certified as DBEs and SBAs by Federal, State and Local agencies to apply for certification in the State of Rhode Island. **Only DBEs certified by the State of Rhode Island at the time of Proposal submittal shall be counted towards any DBE Utilization Goal requirement.**

If a minority business would like to be certified by the State of Rhode Island, contact the Minority Business Enterprise Compliance Program:

Ms. Dorinda Keene, Assistant Administrator – MBE Compliance
RI Department of Administration
Office of Diversity, Equity and Opportunity
Minority Business Enterprise Compliance Program
One Capitol Hill, 3rd Floor
Providence, RI 02908
401.574.8670

E. Good Faith Efforts for DBE Participation:

If the apparent successful Contractors' submissions does not satisfy the goal, RIPTA shall determine whether the apparent successful competitor has made good faith efforts to obtain DBE participation in accordance with the guidelines stated in Paragraph F, Sub-paragraph 1, below.

Unsuccessful efforts in gaining DBE participation must be documented on the "DBE Unavailability Certification" attached hereto as Attachment D. Meeting the DBE contract goals or making good faith efforts to meet the goals is a condition of receiving a Federal Transit Administration assisted contract for which contract goals have been established by RIPTA.

The legitimacy of each DBE or disadvantaged-majority joint venture shall be determined by RIPTA, based on the information submitted in the affidavits attached hereto as Attachments C and D. RIPTA will require all prime contractors to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. RIPTA shall approve all substitutions of subcontractors **before** award of contract and **during** contract performance, in order that substitute firms are eligible DBE's.

F. Procedure Prior to Contact Award

1. Guidance Concerning Good Faith Efforts to Meet DBE Contract Goals.

RIPTA may decide that a Contractor that has failed to meet DBE contract goals may receive the Contract upon determining that the efforts the Contractor made to obtain DBE participation were "good faith efforts" to meet the goal. RIPTA shall not consider efforts that are merely pro forma to be good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation

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sufficient to meet the goals. In order to award a contract to a Contractor that has failed to meet DBE contract goals, RIPTA must determine that the competitor's efforts were those that, given all relevant circumstances, a competitor, actively and aggressively seeking to meet the goals would make.

Following is a list of the kinds of efforts RIPTA may consider. The list is not exclusive or exhaustive and in appropriate cases, RIPTA shall consider other relevant factors or types of efforts. RIPTA shall consider not only the different kinds of efforts the contractor has made, but also the quantity and intensity of those efforts. All information must be in writing and copies of all ads, written notices, follow-up letters and/or all other correspondence must be presented whenever a waiver is asked for.

RIPTA will consider the following efforts:

- i. whether the contractor attended any pre-solicitation or pre-Proposal meetings that were scheduled by RIPTA to inform DBEs of contracting opportunities.
- ii. whether the contractor advertised in general circulation, trade association, and disadvantaged focus media concerning the sub-contracting opportunities.
- iii. whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow the DBEs to participate effectively.
- iv. whether the contractor followed up initial solicitation of interest by contracting DBEs to determine with certainty whether the DBEs were interested.
- v. whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.
- vi. whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract.
- vii. whether the contractor negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- viii. whether the contractor made efforts to assist interested DBEs in obtaining bonding lines of credit, or insurance required by RIPTA or contractor; and
- ix. Whether the contractor effectively used the services of available disadvantaged community organizations, disadvantaged contractor's groups, Local, State and Federal disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and place of DBEs.

G. Termination of DBE Subcontractors

In any case when a prime contractor wishes to either: A: decrease the price to be paid to the DBE and the disadvantaged non-disadvantaged joint venture or to B:

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terminate a DBE firm, the prime contractor must first provide the DBE with five days' notice of the prime contractor's intent and reason to terminate the contract between them, and must also advise the DBE firm that it has the right to contact RIPTA to object to the termination. In addition, after the five-day written notice to the DBE has expired, the prime contractor must provide RIPTA with a written request to approve termination. The request must state the business reason why the prime contractor wishes to terminate the contract and must include all documentation in support of that business reason. A prime contractor may only reduce the scope or terminate a DBE firm for cause. It may not terminate a DBE contract for convenience. A DBE firm may not be terminated until written approval has been provided by RIPTA. If RIPTA approves a request to terminate, the prime contractor must make a good faith effort to substitute another DBE firm to replace the firm that has been terminated. This good faith effort shall be documented and subject to review by RIPTA. Failure to make a good faith effort may be deemed a breach of the prime contractor's contract with RIPTA and may result in the prime contractor being barred from submitting proposals on future RIPTA projects or subject to any other remedy RIPTA deems appropriate.

H. Substitution of Subcontractors

RIPTA shall review for its approval all substitutions of subcontractors in order to determine if the percentage goal will be decreased by substitution of a disadvantaged contract/supplier with a non-disadvantaged contractor/supplier. Where RIPTA has approved termination of a sub-contract held by an DBE or disadvantaged non-disadvantaged joint venture, the successful Proposers shall make every reasonable effort to propose and enter into an alternative sub-contract or subcontracts for the same work to be performed by another qualified DBE for a contract price or prices totaling not less than the contract price of the terminated sub-contract. Satisfactory evidence of reasonable efforts shall be timely furnished by RIPTA.

I. Program Compliance

Discrimination on the basis of race, color, religion, age, national origin, sexual orientation, disability, gender identity or expression or veteran status shall not be tolerated under any circumstance. RIPTA shall monitor the schedule for DBE participation in an effort to isolate those prime contractors who do not adhere to the non-discriminatory policies of RIPTA. If such contractor fails to respond to counseling with respect to the disposition of subcontracts pertaining to RIPTA funds, RIPTA reserves the right to terminate the contract and to consider future Proposals of such contractor to be non-responsive in the absence of written assurance from it of the full opportunity for DBEs to participate in its awards of subcontracts, together with the follow-up to verify such participation.

J. Maintenance of Records

All records relating to the contract shall be maintained by the contractor for a period of three (3) years after project completion.

K. Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from RIPTA. The prime

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contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above reference period may occur only for good cause following written approval of RIPTA. This clause applies to both DBE and non-DBE subcontractors. RIPTA reserves the right to hold payments to the Contractor if payments verification logs are not submitted within 30 days of payments. Failure to submit payments to DBE subcontractors within 30 days will result in action by RIPTA up to and including disqualification from any future RIPTA Procurements.

L. **Monitoring Payments to DBEs**

RIPTA requires that prime contractors to maintain records and documents of payments to DBEs following the completion of the contract. These records will be made available for inspection upon request by any authorized representative of RIPTA or United States Department of Transportation. This requirement also extends to any DBE Subcontractor. Reports of payments to DBE Subcontractors shall be provided to the RIPTA DBE Liaison Officer on a monthly basis. Failure to submit these reports on a timely basis may result in delay of payments.

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XIX. DISADVANTAGED BUSINESS ENTERPRISE REQUIRED FORMS

Attachment A: Schedule of DBE Participation

Submitted if DBE firm or firms will be participating in the Proposal.

Attachment B: DBE Application Agreement

Submitted if DBE firm or firms will be participating in the Proposal.

Attachment C: Letter of Intent to Perform as a Subcontractor

Submitted if DBE firm or firms will be participating in the Proposal

Attachment D: DBE Unavailability Summary Sheet

Submitted if DBE firm or firms you have contacted cannot participate. This form is used to document good faith effort. This form only needs to be completed when there is a DBE Participation Goal.

Attachment E: Narrative Explanation for Lack of DBE Participation

Submitted by the Prime Contractor to explain lack of DBE/SBA participation.

Attachment F: Documentation of DBE Utilization

To be filled in by the DBE firm and the prime contractor once the DBE Subcontractor has been paid.

Please Note: Final payment to the Prime Contractor will be held until this form or forms are received for each DBE Subcontractor.

DBE FIRMS PROPOSING AS A PRIME CONTRACTOR: the following forms must be filled in, signed, and submitted with the Proposal:

Attachment A, Attachment B

Please state, on these forms, that you are proposing as a prime contractor.

CERTIFICATION LETTER OR NOTIFICATION MUST BE INCLUDED FOR EACH DBE FROM THE STATE OF RHODE ISLAND.

Please record by letter (using the list below) under the DBE Category Column found on Attachment A: Schedule of DBE Participation Form on the following page

- a. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa.
- b. "Hispanic Americans", which includes persons of Mexicans, Puerto Rican, Cuban, Central or South America, or other Spanish culture or Portuguese or origin, regardless of race.
- c. "Native Americans", which include persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians:
- d. "Asia-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas.
- e. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh; and
- f. Any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act.

Exhibit 2

Applicable FTA/Federal Regulations, Policies, Procedures, and Directives

Project Company shall, during the Term, comply with all applicable FTA regulations, policies, procedures, and directives (including, without limitation, those listed directly or by reference in the Agreement (Form FTA MA (9) dated October 2002) between RIPTA and FTA), as they may be amended or promulgated from time to time during the Term. Such regulations, policies, procedures, and directives (**which shall be set forth in detail in the final Project Agreement**) include, without limitation, those listed below:

- a) **Civil Rights** (including, without limitation, those related to Nondiscrimination, Equal Employment Opportunity, Affirmative Action, Disadvantaged Business Enterprise, Confidentiality Obligations related to Drug or Alcohol Abuse, and Promoting Free Speech and Religious Liberty).
- b) **Energy Conservation** (including, without limitation, the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq.).
- c) **Telecommunications and video surveillance services or equipment** (including, without limitation, Public Law 115–232, Section 889).
- d) **Safe Operation of Motor Vehicles** (including, without limitation, provisions relating to seat belt use, Executive Order No. 13043, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217) and Executive Order No. 13513, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225) and U.S. DOT Order 3902.10).
- e) **False or Fraudulent Statements or Claims** (including, without limitation, the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31).
- f) **Pollution and Hazardous Materials** (including, without limitation, the Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended).
- g) **Legal matters that may affect the Federal Government** (including, without limitation, major disputes, breaches, defaults, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason).
- h) **Maritime shipping requirements** (including, without limitation, 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 CFR Part 381).
- i) **Air transportation requirements** (including, without limitation, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143)
- j) **Bonding** (including, without limitation, the furnishing of applicable payment and performance bonds).
- k) **Walsh-Healey Public Contracts Act (41 U.S.C. 34-35)**, and regulations issued thereunder by the Secretary of Labor.
- l) **Contract Work Hours and Safety Standards Act** - 40 U.S.C. 327-333 (1995) 29C.F.R. 5 (1995) 29 C.F.R. 1926 (1995)
- m) **Recovered Materials** - Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including 40 CFR Part 247, and Executive Order 12873, as applicable.
- n) **National Intelligent Transportation Systems Architecture and Standards** - National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001.
- o) **Veteran’s employment** – Project Company shall ensure that subcontractors shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the required work.

- p) ***Seismic safety*** (including, without limitation, Department of Transportation Seismic Safety Regulations 49 CFR Part 41).
- q) ***Public Transportation Employee Protective Agreements*** (including, without limitation, 49 U.S.C. § 5333(b)).
- r) ***Waste Disposal*** (including, without limitation, section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act).

In addition to the foregoing, if a current or prospective legal matter that may affect the Federal Government emerges, the Project Agreement will require the PC to notify the FTA Chief Counsel and FTA Regional Counsel for the region. The PC must include a similar notification requirement in its third party agreements and must require each third party participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Exhibit 3

Federal Certifications and Forms

1. Debarment
 - A. Debarment Certification
 - B. Certificate of Primary Participant Form – Disbarment
 - C. Certification of a Subcontractor Form - Disbarment
2. Contractor Apprenticeship Certification Form
3. General Contract Compliance Certificate & Agreement Form (Equal Employment Opportunity)
4. Buy America Form
5. Certificate of Nonsegregated Facilities
6. Notice of Prospective Subcontractors of Requirement for Certification of Nonsegregated Facilities

[See following pages]

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Request for Proposals Number «Bid Number»

XXX. DEBARMENT CERTIFICATION

CERTIFICATION REQUIREMENTS FOR RECIPIENTS OF GRANTS AND COOPERATIVE AGREEMENTS REGARDING DEBARMENT AND SUSPENSIONS

The purpose of the attached certifications is to exclude entities and individuals that the Federal Government has either debarred or suspended from obtaining Federal assistance funds through grants, cooperative agreements, or third-party contracts.

To assure that such entities and individuals are not involved in projects financed with Federal Transit Administration (FTA) assistance, FTA requires its applicants to complete the certificates.

The primary participant must sign the "**Certification of Primary Participant**" and, if there is a subcontractor, they must sign **the "Certification of a Subcontractor"** (If there is more than one subcontractor, they must all sign one of these forms.).

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XXIX. CERTIFICATION OF PRIMARY PARTICIPANT FORM

Request for Proposals Number: «Bid Number»
Project «Project Title»

The primary participant _____ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared eligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.
- 2) 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;
- 3) 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
- 4) 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.
- 5) The Primary Participant also certifies that, if it later becomes aware of any information contradicting the statements of Paragraphs 1-4 above, it will promptly notify RIPTA.

The primary participant _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C Sections 3801 **ET SEQ.** are applicable thereto.

Signature/Title of Authorized Official

Date

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XXXI. CERTIFICATION OF A SUBCONTRACTOR FORM

Request for Proposals Number:

«Bid Number»

Project

«Project Title»

The potential Subcontractor, _____
Certifies, by submission of this certification, that neither it 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.

The Subcontractor, _____ certifies or affirms the truthfulness
and accuracy of the contents of the statements submitted on or with this certification and understands that
the provisions of 31 U.S.C. Sections 3801 **ET SEQ.** are applicable thereto.

Signature/Title of Authorized Official

Print Signature

Date

XXVIII.

CONTRACTOR APPRENTICESHIP CERTIFICATION FORM

Rhode Island Department of Labor and Training Professional Regulation

(Applicable to Construction Contracts with a cost in excess of \$1 million)

_____(Company Name & Address)
(hereafter “bidder”) hereby certifies that bidder meets the general contractor apprenticeship requirements of R. I. Gen. Laws § 37- 13-3.1 because bidder meets one of the following qualifications (check):

- A. _____ Bidder sponsors a current and duly approved Rhode Island Department of Labor and Training Apprenticeship Program and currently employs at least one apprentice per trade/occupation, who will obtain “on the job training” experience in the apprentice’s trade by performing on the contract.
- B. _____ Bidder sponsors a current and duly registered Rhode Island Department of Labor and Training reciprocal apprenticeship program pursuant to R. I. Gen. Laws § 28-45-16 and currently employs at least one apprentice per trade/occupation, who will obtain “on the job training” experience in the apprentice’s trade by performing work on the contract (attach apprenticeship program standards, apprenticeship agreement and Rhode Island Department of Labor and Training Reciprocal Apprenticeship Program Approval).
- C. _____ Bidder has entered into a current collective bargaining agreement with a duly approved Rhode Island Department of Labor and Training Apprenticeship Program sponsor and, pursuant to the terms of the collective bargaining agreement, will employ at least one apprentice per trade/occupation, who will obtain “on the job training” experience in the apprentice’s trade by performing work on the contract (attach relevant section of collective bargaining agreement and signature page).
- D. _____ Bidder has entered into a current labor agreement with a duly approved Rhode Island Department of Labor and Training Apprenticeship Program sponsor and, pursuant to the terms of the labor agreement, will employ at least one apprentice per trade/occupation, who will obtain “on the job training” experience in the apprentice’s trade by performing work on the contract (attach relevant section of labor agreement and signature page).
- E. _____ Bidder will not perform work on the awarded contract except through subcontractors (nonperformance).
- F. _____ Bidder has received approval from the Rhode Island Department of Labor and Training that it satisfies the general contractor requirements of R. I. Gen. Laws §37-13-3.1 for purposes of a particular bid (attach Rhode Island Department of Labor and Training correspondence).

Printed Name and Title of Authorized Representative

Date

Signature of Authorized Representative

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XXVI. GENERAL CONTRACT COMPLIANCE CERTIFICATE & AGREEMENT FORM

(Equal Employment Opportunity)

Authorized Signature: _____

Print Name: _____

Title: _____

Company Name: _____

Date: _____

Indicate Job Location Address: _____

PROPOSAL NO. «Bid_Number»

XV. BUY AMERICA CERTIFICATION REQUIREMENTS FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS

49 U.S.C. 5323(j) and 49 CFR 661.6 provide that no Federal funds may not be obligated for mass transportation projects unless steel and manufactured products used in these projects are produced in the United States.

If steel or manufactured products are being procured, the appropriate certificate as set forth below shall be completed and submitted by each Proposers.

Construction materials used in projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, 70911 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of 70914(a) nor a finding under 70914(b).”

Certificate of Compliance-The Proposers 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

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

Certification of Non-Compliance-The Proposers hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1).

COMPANY NAME _____

SIGNATURE _____

TITLE _____

DATE _____

FORM MUST BE SIGNED AND SUBMITTED WITH PROPOSAL OR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE.

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XXIV. CERTIFICATE OF NON-SEGREGATED FACILITIES

Contractor certifies that he/she does not maintain or provide for his/her Employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any such location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "Segregated Facilities" means any waiting room, work areas, rest rooms, and washrooms, restaurants, and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods), he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000, which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will forward the following notice to proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

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XXV. NOTICE OF PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

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).

NOTE: The penalty for making false statements in offers is prescribed in 18 USA 1001.

A. Affirmative Action Compliance Program

Contractor agrees 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.

B. Employer's Information Report (EE)-1 Form 100

Contractor agrees 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.

Send original copy to Federal authorities, duplicate copy to the State Equal Opportunity Office, 1 Capitol Hill, Providence, Rhode Island 02908-5865.

C. Notice to All Vendors

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**.

D. Post Award Conference

Post Award Conference for the Implementation of Affirmative Action prior to Signing of Contract.

E. Signature Required

Failure to provide a signature prior to Award to successful Proposers shall be cause for Rejection of Proposal.