

**VOLUME I
INSTRUCTIONS TO PROPOSER**

RFP SOLICITATION #: P318R03

REQUEST FOR PROPOSAL

**AMTRAK STATION IMPROVEMENT PROJECT
KEYSTONE CORRIDOR – MIDDLETOWN STATION
THROUGH A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT**

**A PROJECT OF THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

July 27, 2018

**Pennsylvania Department of Transportation
Office of Public-Private Partnerships
P.O. Box 3643
400 North Street, 5th Floor
Harrisburg, Pennsylvania 17120**

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INSTRUCTIONS TO PROPOSER

(Request for Proposal: Amtrak Station Improvement Project Keystone Corridor – Middletown Station)

1. INTRODUCTION, PROJECT OVERVIEW AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposal (**RFP**) is issued by the Pennsylvania Department of Transportation (the **Department**), an administrative department of the Commonwealth of Pennsylvania (the **Commonwealth**), to seek a competitive Proposal to enter into a Public-Private Transportation Partnership Agreement (the **PPA**) as more fully described in this RFP and the Project Documents. The form of the PPA, together with the other Project Documents, is set forth in Volume II of the RFP.

The Department is issuing the RFP to the proposer shortlisted on January 27, 2017 (the **Proposer**) based on the Department's evaluation of the Proposer's Statements of Qualification (**SOQ**) delivered to the Department on or before December 16, 2016, in response to the Request for Qualifications for the Project issued on September 12, 2016 (as amended, the **Request for Qualifications** or **RFQ**).

The Proposer must comply with these Instructions to Proposer during the procurement and in its Proposal. The Proposal shall also take into consideration the Project goals identified in Section 1.2 below.

1.2 Department Objectives and Goals

The Department's objectives and goals for the Project are as follows (in no particular order of importance):

- Improve connectivity of the surrounding area to maximize transit ridership to Middletown Station (the **Station**);
- Offset the costs of providing transportation facilities at the Station through operations and maintenance efficiencies;
- Develop and oversee implementation of an integrated solution for the Station;
- Facilitate the build-out of the Project within an agreed-upon schedule;
- Perform the Required Project Services (as defined below); and
- Support and facilitate economic development within and around the Project area.

1.3 Stakeholders

The Project may necessitate coordination with Stakeholders. For purposes of this RFP, **Stakeholder** means any Person that may have a stake in the Project by virtue of its location or

funding other than the Department, including such Person's officers, directors, and employees and each of the following Persons:

- the Borough of Middletown (the **Borough**);
- Capital Area Transit;
- National Passenger Rail Corporation (**Amtrak**);
- Harrisburg International Airport;
- Federal Transit Administration (the **FTA**);
- Federal Aviation Administration;
- any political subdivision of the Commonwealth or local government body or locality within the Commonwealth that has an interest in the Project; and
- any environmental, regulatory or permitting agency.

1.4 Project Overview

(a) Project Background

The Department is currently working with Amtrak to fund a separate project at the Station to bring the Station into compliance with the Americans with Disabilities Act, improve safety and reliability, reduce travel time, and accommodate present and future ridership. The Station will be relocated nearby to a tangent section of track near the intersection of Ann Street and W. Main Street (**PA 230**) within the Borough. The construction of the Station is being completed under separate contracts and is not a part of the Scope of Work for the Development Entity.

(b) Scope of Work

The Department intends to select a Development Entity with experience in successfully implementing and managing all aspects of the Scope of Work, which will be provided in greater detail in the PPA. The Scope of Work for the Project includes:

(i) Required Project Services.

The Development Entity will be responsible for performing all Required Project Services. Although the Development Entity may choose to rely on Major Team Members in executing its responsibilities, the Development Entity shall bear sole responsibility for performing the Required Project Services as between the Development Entity and the Department.

The **Required Project Services** will include:

- Developing, designing, constructing, financing, operating and maintaining parking facilities (the **Parking Facility**) that provide a minimum of 400 parking spaces specific for transportation use, including the administration, collection, and accounting for all parking fees;

- Constructing and financing an extension of Emaus Street and the sidewalk along Emaus Street (Proposer should note that this element has been designed and if Proposer proposes a new design for Emaus Street, the Proposer would be responsible for additional studies, permits, licenses and approvals associated with such new design);
- Constructing, financing and maintaining a pedestrian bridge over PA 230 (Proposer should note that this element has been designed and if Proposer proposes a new design for the pedestrian bridge, the Proposer would be responsible for additional studies, permits, licenses and approvals associated with such new design);
- Providing routine maintenance for the Station;
- Ensuring public safety and security for the Project;
- Any Project Site development including all necessary utilities necessary to support the Project, hardscape/landscape, parking facilities, street improvements, and construction Project Site security; and
- Permitting and licensing requirements, demand studies, drainage, and other requirements needed.

(ii) Commercialization Activities.

The Development Entity will have the right, but not the obligation, to develop retail, lodging or other services and/or facilities developed and managed by the Development Entity on the Project Site (the **Commercialization Activities**). The Development Entity will also be responsible for any permitting and licensing requirements, demand studies, drainage, and other requirements needed in connection with Commercialization Activities. If the Development Entity fails to develop an element of the Commercialization Activities listed in the Proposal on or before the date which is three (3) years after the proposed date for such Commercialization Activity listed in the Proposal, the Development Entity will forfeit its rights with respect to such Commercialization Activity, as described in Article 15 of the PPA.

(c) **Compliance with Applicable Laws**

The Development Entity will be responsible for investigating, reviewing, overseeing, and ensuring that all federal, Commonwealth, and local applicable laws, regulations and requirements are followed in the process of establishing licenses or permits required to be obtained in connection with the performance of its obligations under the PPA.

(d) **Real Estate Structure**

Under the PPA, the Department will grant a license to operate and maintain the Parking Facility for a term of 30 years commencing on the Station Completion Date. In addition to the PPA, the Department will enter into one or more ground leases with the Development Entity with respect to the Project Site for the Commercialization Activities.

(e) **Due Diligence**

The Department has or is providing the following information as Disclosed Information (see Section 1.5 (*Documents in the Request for Proposal*)):

- *Conceptual Project Site Plans* – Project Site layouts; and
- *Project Site Environmental Summary* – summary of previous environmental findings and compliance.

The above documents will be updated as additional information becomes available.

Additionally, the Department will arrange for Project Site investigations for the Proposer. The Proposer will be permitted to visit the Project Site accompanied by a Department and/or site representative to perform visual investigations of existing Project Site conditions. The Project Site investigation shall be approximately four (4) hours at which time the Proposer will be allowed to take pictures and gather field information.

(f) **Environmental Matters**

The Project Site was part of the area that was studied and cleared under a 2015 Re-evaluation Environmental Assessment of an existing Finding of No Significant Impact. The Project Site was the location of the former Middletown Car Works for many years and in more recent years, the AP Green Refractory, and the buildings have since been demolished. The background data for the Project Site does not indicate that any subsurface contamination exists. All underground storage tanks were removed with proper Pennsylvania Department of Environmental Protection closure documents. The above-ground materials have been removed. The Project would have no significant impact on contaminated sites or hazardous waste and would not introduce any hazardous waste into the Area of Potential Effects.

The Development Entity will be responsible for performing or causing the conducting of any additional hazardous materials investigations that may be required. Additional important environmental and permitting matters related to the Project are set forth in the PPA.

(g) **Separations Act Compliance**

(i) Bidding Stage of the Request for Proposal Process

The Proposer (including any joint venture partner, parent company and subsidiaries) is permitted to self-perform any of the required Work with the exception of the following divisions of work: HVAC, electrical and plumbing construction. The Proposer and its contractors, subcontractors, consultants and subconsultants shall comply with all provisions of the Technical Provisions, including the preparation of drawings and specifications that separate at least the HVAC, plumbing and electrical construction.

The Proposer shall not identify in the Technical Proposal any proposed MEP firms. The Proposer may contact and engage in discussions with any MEP firms it deems necessary up until the Proposal Due Date. In the event that the Proposer receives cost estimates from any MEP firms, it may not share those estimates with any other MEP firm. Following the Proposal Due Date, the

Proposer shall have no further contact or discussions concerning this Project with any MEP firms that may perform work under the PPA except as provided for herein.

The Department does not require the Proposer to submit qualifications for the aforementioned three divisions of work. The Proposer, by submitting the Technical Proposal, certifies to the process in subsections (iii) and (iv) below.

(ii) Design Documents – Separate HVAC, Plumbing and Electrical Work

The Final Design Documents from the Proposer to the Department shall be submitted in accordance with the PPA. During the design review process under the PPA, the Department will reject any design submission that does not comply with this separations requirement.

(iii) Award of Separate HVAC, Plumbing and Electrical Construction Subcontracts

When the design for the HVAC, plumbing, and/or electrical work has progressed to the point where the Department has reviewed and approved the final design in accordance with the PPA, the Development Entity will be required to solicit prices for the separate scopes of work from all interested parties. The Proposer may not pre-qualify HVAC, electrical and plumbing subcontractors.

The Development Entity will be required to award at least one separate subcontract for each of the three aforementioned divisions of work. The awards shall be made to the bidders who submitted the lowest responsible and responsive bid for each bid package. All required subcontractor provisions in the PPA must be included in these subcontracts.

Multiple awards may be made in each of the selected major divisions of the Work as the Proposer determines is in the best interest of the Project. The Proposer shall certify compliance numerous times; once as part of the affidavit submitted with the proposal and then again for each separate MEP package of work that is awarded. The Proposer's bidding process and selected subcontractors are subject to the Department's review in order to validate the process, the award(s) and/or that the selected subcontractors are responsible.

The Proposer shall submit with the Proposal a Non-Collusion Affidavit conforming to Form F stating that the Proposer agrees to solicit bids for the major divisions of work (HVAC, plumbing and electrical). After the Final Design is completed (or partially completed if the Proposer elects to have multiple separate awards for portions of the Work) and the Work has been bid, the Proposer shall submit a notarized affidavit (based on the Non-Collusion Affidavit in Form F and approved by the Department) for each award that names the successful bidder, states that the award has been made to the lowest responsible and responsive bidder and that the successful bidder named will perform that scope of work. Each affidavit shall also include a bid tabulation identifying the other bidders and their prices.

For purposes of this process, "responsible" shall be defined as (1) acceptable to the Department based upon clearance through the Contractor Responsibility Program of the Commonwealth; and (2) acceptable to the Development Entity based upon acceptance by the General Liability Insurance carrier. The Development Entity's bidding process and selected subcontractors are subject to the Department's review in order to validate the process.

For purposes of this process, “responsive” shall be defined as a bid which conforms in all material respects to the requirements and criteria in the Development Entity’s solicitation for bids. The Department will reject the Development Entity’s tendered HVAC, electrical and plumbing subcontractors if the Department reasonably believes that the Development Entity has violated the above procurement process.

- (iv) Proposer is advised that the Development Entity will be required to follow the below process in bidding its MEP subcontracts for the Project.
 - (A) When the design for the HVAC, plumbing, and/or electrical work has progressed to the point where the Department has reviewed and approved the final design under the PPA, the Development Entity must solicit prices for the separate scopes of work from all interested parties. The Development Entity shall submit its MEP bid process to the Department for its review and approval within ten (10) days of final design approval. The Proposer may not pre-qualify HVAC, plumbing and electrical subcontractors.
 - (B) The Development Entity must award at least one separate contract for each of the three aforementioned divisions of work, if applicable. The awards shall be made to the bidders who submitted the lowest responsible and responsive bid for each division of work. All required subcontractor provisions in the Development Entity’s proposal must be included in these subcontracts.
 - (C) At a minimum, the Development Entity’s bidding process will be required to include the following for each HVAC, plumbing, and electrical package:
 - (i) The Development Entity’s MEP work shall be publicly bid and shall have a public announcement. The public announcement shall be included in/on, but is not limited to, newspaper and web page advertisement. In addition to any and all other announcements by the Development Entity, this public announcement shall also be publicly displayed on the Department’s web page for the Project.
 - (ii) The Development Entity shall hold a public pre-bid meeting where all interested parties are invited.
 - (iii) There shall be questions/answers, request for information process, whereby the Development Entity accepts questions from the bidding community and then formally answers said questions. The Development Entity’s answers shall be in the form of a written Bulletin or other official procedure, which shall be issued to all interested parties and MEP bidders.
 - (iv) There shall be a public bid opening where sealed MEP bids are opened. The Department or its agent will attend this public bid

opening. A tab with the bid information (bid tab) shall later be made available for the Department.

- (v) The Development Entity will be required to award its MEP subcontracts to the lowest responsive and responsible bidders. No price negotiation with low bidders shall be allowed.
 - (vi) The Development Entity will be required to have a written bid protest procedure in place before issuing any MEP packages. The Development Entity's documents will set forth the bid protest procedure. The Development Entity will be required to ensure that the protest procedure provides disappointed bidders with a meaningful and viable process to protest the bid award.
- (D) Multiple awards may be made in each of the selected major divisions of the Work as the Development Entity determines is in the best interest of the Project. The Proposer, as part of the RFP certification process, and the Development Entity, once the separate divisions of the work are bid, shall certify to the Department that the Proposer/Development Entity will/did award the HVAC, plumbing and/or electrical construction work to the lowest responsible and responsive bidder for the work. The Development Entity's bidding process and selected subcontractors are subject to the Department's review in order to validate the process, the award(s) and/or that the selected subcontractors are responsible.
- (E) After the Final Design is completed (or partially completed if the Proposer elects to have multiple separate awards for portions of the Work) under the PPA and the Work has been bid, the Development Entity will be required to submit a notarized affidavit (in a form approved by the Department) for each award that names the successful bidder, states that the award has been made to the lowest responsible and responsive bidder and that the successful bidder named will perform that scope of work. Each affidavit shall also include a bid tabulation identifying the other bidders and their prices.
- (F) For purposes of this process, "responsible" shall be defined as 1) acceptable to the Department based upon clearance through the Commonwealth's Contractor Responsibility Program; and 2) acceptable to the Development Entity based upon acceptance by the Proposer's General Liability Insurance carrier.
- (G) For purposes of this process, "responsive" shall be defined as a bid which conforms in all material respects to the requirements and criteria in the Development Entity's solicitation for bids.
- (H) The Department reserves the right to reject the Development Entity's selected HVAC, plumbing and electrical subcontractors if the Department

reasonably believes that the Development Entity violates the above procurement process.

1.5 Documents in the Request for Proposal

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented in accordance with the terms hereof and thereof, as applicable (collectively, the **RFP Documents**):

Volume I—this ITP (including exhibits and forms);

Volume II—the Project Documents; and

Volume III—the Disclosed Information.

Please see Section 1.2 (*Project Documents; Order of Precedence*) of the PPA for a list and the order of precedence of the Project Documents and Volume III for the Disclosed Information.

The Disclosed Information, which can be found on the Collaboration Portal, is included in the RFP for the purpose of providing information to the Proposer. Except as may be expressly provided otherwise in the Project Documents, (a) the Disclosed Information is not mandatory or binding and (b) the Proposer is not entitled to rely on the Disclosed Information or any opinions, suggestions, directions or recommendations therein as presenting financing, design, engineering, construction or maintenance solutions or other direction, means or methods for complying with the requirements of this procurement, the Project Documents, Governmental Approvals or applicable Laws.

Except as may be expressly provided otherwise in the Project Documents, the Department shall not be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages or losses whatsoever suffered by the Proposer by reason of (i) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Disclosed Information, or (ii) any action or forbearance in reliance on the Disclosed Information. Although the Disclosed Information may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and construction means and methods, such interpretations, extrapolations, analyses and recommendations are (A) preliminary in nature and may be obsolete, (B) not intended to express the views or preferences of the Department or any other Governmental Entity or represent any statement of approval or acceptance thereof by the Department or any other Governmental Entity, and (C) not intended to form the basis of the Proposer’s design solutions, technical solutions or construction means and methods. The Proposer shall use or not use the Disclosed Information at its sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to any geotechnical conditions, Utilities or structures with respect to the Project Site, (y) the preparation of its Proposal, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Disclosed Information.

The Department does not represent or warrant that the information, opinions and recommendations contained in the Disclosed Information are complete, accurate, or suitable for

any purpose, or that such information, opinions and recommendations are in conformity with the requirements of the RFP or applicable Laws. Except as otherwise expressly provided in the Project Documents, the Proposer shall have no right to compensation, time extension or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Disclosed Information.

1.6 Definitions and Acronyms

Refer to Exhibit 1 (*Definitions and Acronyms*) hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Schedule 1 (*Definitions*) to the PPA for the meaning of capitalized terms and acronyms used but not defined herein or in said Exhibit 1 (*Definitions and Acronyms*).

1.7 Procurement Schedule, Address for Proposal Delivery and Certain Deadlines

(a) Procurement Schedule

The following represents the current schedule for the procurement:

EVENT	DATE
Issuance of Draft RFP Documents	October 16, 2017
Deadline for Proposer Comments/Questions on Draft RFP Documents	November 21, 2017
One-on-One Meeting with Proposer	December 5, 2017
One-on-One Meeting with Proposer	February 7, 2018
Issuance of Draft RFP Documents	February 26, 2018
Deadline for Proposer Comments/Questions on Draft RFP Documents	March 9, 2018
One-on-One Meeting with Proposer	April 24, 2018
Issuance of Draft RFP Documents	June 8, 2018
Deadline for Proposer Comments/Questions on Draft RFP Documents	June 22, 2018
One-on-One Meeting with Proposer	July 12, 2018
Issuance of Final RFP Documents	July 27, 2018
Deadline for submittal of Pre-Proposal Submittals contemplated by Section 2.6(a) (<i>Changes in Proposer's Organization</i>) and Section 2.6(b) (<i>Changes in Key Personnel</i>)	September 26, 2018
Proposal Due Date	October 12, 2018 at 11:00 a.m.
Anticipated Announcement of Acceptance of Proposal	November 26, 2018
Commercial Closing Deadline (unless extended pursuant to Section 1.7(c) (<i>Commercial Closing Deadline</i>))	90 days after announcement of acceptance of Proposal

All dates set forth above and elsewhere in this RFP are subject to change, in the Department's sole discretion, by Addendum.

(b) Address for Proposal Delivery

The Proposal shall be submitted and delivered in a sealed container no later than 11 a.m. on the date set forth in Section 1.7(a). The Proposal is to be delivered to the Department at the following address:

Public Private Partnerships Office
Pennsylvania Department of Transportation
P.O. Box 3643
400 North Street, 5th Floor
Harrisburg, PA 17120-3643
Attention: Kathryn Tartaglia

Note that because of increased security requirements in the Commonwealth's mailing processing operations, all incoming mail, including overnight deliveries, to the Department is routed scanned, and sorted at an off-site location before delivery. Therefore, when documents are submitted via overnight delivery services, there is no guarantee that the Department will receive the documents by the deadline. Any Proposal that is received after the deadline will be rejected regardless of the reason for the late arrival. The Proposer is advised to allow extra time to ensure timely delivery.

If the Department is closed on the Proposal Due Date because of inclement weather, natural disaster, or any other cause, the submission deadline will be automatically extended until 11 a.m. eastern time the next Commonwealth business day on which the Department is open unless the Department notifies the Proposer otherwise. If the Proposer hand delivers the Proposal to the Department, the Proposer is responsible for obtaining a signed receipt showing the date and time delivered. If the Department is not available, the Proposer should obtain a signed receipt showing date and time of delivery from the 5th floor receptionist at the Department. The hour for submission of the proposal shall remain the same. The Department will reject any late Proposal, unopened.

(c) **Commercial Closing Deadline**

If the Proposal is accepted and the Department decides to move on to negotiation, finalization and execution of the PPA, the Proposer shall be required, on or before the Commercial Closing Deadline set forth in Section 1.7(a) (*Procurement Schedule*) (the **Commercial Closing Deadline**) (as the same may be extended pursuant to this Section 1.7(c) (*Commercial Closing Deadline*)) to (i) execute and deliver to the Department the PPA and (ii) satisfy each of the DE Conditions Precedent. The Department may extend the Commercial Closing Deadline in its sole discretion by Addendum, *provided that* in no circumstances shall the Commercial Closing Deadline be extended to a date that is beyond the last day of the Proposal Validity Period.

If any document executed and delivered to the Department by the Proposer pursuant to Section 5.1(b) (*Documents To Be Delivered by Proposer with Executed PPA*) is delivered prior to expiration of the protest period set forth in 62 Pa.C.S. § 1711.1(b), then such document shall be held in escrow by the Department. If no protest has been filed with respect to this procurement by the expiration of such period, and no action to contest the validity of the PPA is then pending, such documents shall be immediately released from escrow and shall be deemed delivered to the Department.

1.8 General Provisions Regarding the Proposal

(a) Proposal Contents

As used in this procurement, the term Proposal means the Proposer's complete response to this RFP, including (i) a Technical Proposal, including properly completed Proposal forms, (ii) a Commercialization Proposal, including properly completed Proposal forms, and (iii) a Financial Proposal, including properly completed Proposal forms.

Requirements for the Technical Proposal, the Commercialization Proposal and the Financial Proposal are set forth in Exhibit 2 (*Technical Proposal Instructions*), Exhibit 3 (*Commercialization Proposal Instructions*) and Exhibit 4 (*Financial Proposal Instructions*), respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit 5 (*Summary and Order of Proposal Contents*). The Proposal shall be organized in the order listed in Exhibit 5 (*Summary and Order of Proposal Contents*) and shall be clearly indexed. Each Proposal component shall be clearly titled and shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or any submittal of the Proposal subject to any reservations, qualifications, conditions or assumptions, may result in the Department's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms by the Proposer.

(b) Inclusion of Proposal in Project Documents

The Proposer should note that portions of the Proposer's Proposal will become the Development Entity's Proposal Commitments and will be attached as Appendix 1 (*Development Entity's Proposal Commitments*) of the PPA (or otherwise made a part of the PPA as provided therein or herein), and shall be binding obligations of the Development Entity thereunder, including portions of the Proposer's:

- Technical Proposal;
- Financial Proposal;
- Commercialization Proposal;
- Preliminary Project Baseline Schedule; and
- such other portions of the Proposer's Proposal deemed by the Department to be relevant to the obligations of the Development Entity with respect to the Project.

(c) Commitments in the Proposal

The Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment (such as when phrases such as "we will" or "we shall" are used).

(d) **Ownership of Proposal; Applicability of Right-to-Know Law and P3 Records Provision**

All documents submitted by the Proposer in response to the RFP shall become the property of the Department and will not be returned to the Proposer except for Proprietary IP (as defined below). Upon the Proposer's acceptance of the stipend payment offered by the Department, the Proposer grants the Department the non-exclusive, non-revocable, right to make or use Proposer's intellectual property and work product (including but not limited to patents, inventions, concepts, ideas, methods, and processes submitted by or on behalf of the Proposer to the Department during the procurement and in connection with the Proposal) for the purposes of the Project; *provided, however*, that such right shall not extend to intellectual property of the Proposer relating to patents, inventions, concepts, ideas, processes, methods or know-how used by the Proposer or its affiliates in the course of its wider business operations and which were not developed specifically for the Proposal (the **Proprietary IP**). The right of the Department to make or use the Proposer's intellectual property (except for the Proprietary IP) shall be royalty-free. The Proposer acknowledges that the stipend payment offered by the Department contains sufficient consideration for the Department's manufacture and use of the Proposer's intellectual property (except for the Proprietary IP).

The Proprietary IP shall be identified as such in the Proposal, and the Department shall return all Proprietary IP to the Proposer in the event that the parties do not reach Commercial Close and such intellectual property shall not become the property of the Department.

Subject to the exceptions specified herein and the Proposer's acceptance of the payment for work product, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to the Department by the Proposer during this procurement process, whether included in the Proposal or otherwise submitted, shall become the property of the Department upon delivery to the Department and will not be returned to the submitting parties.

The Proposer shall familiarize themselves with the provisions of 65 P.S. § 67.101 *et seq.* (the **Right-to-Know Law**), and 74 Pa.C.S. § 9111 (the **P3 Records Provision**). Unless otherwise qualified for exemption from disclosure therein, all materials submitted by the Proposer shall be subject to disclosure pursuant to the Right-to-Know Law or the P3 Records Provision and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. In no event shall the Department or any of its agents, representatives, consultants, directors, officers or employees be liable to the Proposer or any of the Proposer's team member for the disclosure of any materials or information submitted in response to this RFP.

1.9 Certain Policy Requirements

The Project is being procured by the Department on terms intended to establish the eligibility of the Project for federal aid funds. Accordingly, the procurement documents and Project Documents require compliance with applicable federal law and FTA regulations, including those set forth in Schedule 15 (*Additional Federal Requirements*) to the PPA, including specifically 49 CFR Part 26. The Department reserves the right to modify the procurement process described herein to address any concerns, conditions or requirements of FTA. Proposers will be notified of any such modifications.

(a) **EEOC; DBE Requirements**

The Department is an Equal Employment Opportunity (**EEO**) employer. Since the Project is being procured on terms intended to establish its eligibility for the use of federal-aid funds, the Department has determined that the federal Disadvantaged Business Enterprise (**DBE**) requirements set forth in Title 49 of the Code of Federal Regulations Part 26 (**Part 26**) shall apply to the D&C Work. To this end, the Department intends to administer the DBE goal, DBE good faith efforts, DBE assurances and DBE counting provisions of Part 26.

By applying the DBE program to the D&C Work, the Department intends to afford DBEs contracting opportunities to participate in such capacities as service providers, vendors, contractors, subcontractors, advisers and consultants. A “DBE” is a small for-profit business concern that complies with the definition of “Disadvantaged Business Enterprise” set forth in Section 26.5 of Part 26. A DBE must be certified by the Pennsylvania Unified Certification Program (**PA UCP**) and be a registered business partner with the Department. All responses to solicitations involving the use of DBEs shall be governed by all applicable federal regulations, including Part 26, as well as applicable requirements set forth in the Project Documents. The Department intends to organize an informational forum with the Department’s DBE program personnel for all Proposers concerning the Project.

The Department has set forth the applicable DBE goal, DBE assurances, DBE good faith efforts, DBE counting, reporting, monitoring and oversight provisions in the PPA and intends to comply with the reporting requirements delineated in Section 26.11 of Part 26, including the *Uniform Report of DBE Awards or Commitments and Payments*. The Proposer’s DBE compliance obligations, including its compliance obligations with respect to the D&C Work, are set forth in Schedule 15 (*Additional Federal Requirements*) and shall otherwise be governed by Part 26.

(i) DBE Contract Goal

The DBE contract goal for the Project is 11.97% of the D&C Contract Amount. With respect to the Maintenance Work, there is no DBE goal; however, the Development Entity will be required to use good faith efforts to encourage DBE participation in the Maintenance Work.

(ii) Detailed Plan

The Development Entity shall be required to submit to the Department a detailed DBE performance plan (the **Detailed DBE Performance Plan**), including for avoidance of doubt a DBE participation schedule, describing the methods to be employed for achieving the Department’s DBE goals for the Project, including the Development Entity’s exercise of DBE good faith efforts and complying with the requirements set forth in Schedule 15 (*Additional Federal Requirements*) of the PPA. The Detailed DBE Performance Plan shall be subject to review, comment and approval by the Department solely for conformity with the requirements set forth in the PPA as a condition precedent to the issuance of NTP1 and NTP2.

(b) **Funds Subject to Appropriations**

The Proposer should be aware that, except with respect to those sources of funds, if any, that are available for payments required to be made by the Department under the PPA that as a matter of law are not subject to appropriations, the Department's obligations to provide funding under the PPA are subject to the appropriation of funds for such purposes by the General Assembly of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth) and the certification of the availability of such funds by the Commonwealth's Office of the Budget pursuant to Section 327 of the Commonwealth Procurement Code, 62 Pa.C.S. § 327 and any federal funds required for the Project are subject to federal appropriation.

1.10 Insurance

The Proposer should note that the PPA contains certain minimum insurance requirements which must be reflected in its Proposal. Please refer to the PPA for further details.

2. PROCUREMENT PROCESS

2.1 Procurement Method

This RFP is issued pursuant to the Public-Private Transportation Partnerships Act, codified at 74 Pa.C.S. § 9101 *et seq.*, as amended, and other applicable provisions of Commonwealth and federal Law. The Department will award the PPA (if at all) to the Proposer if it meets the standards set by the Department and if it is determined by the Department, through evaluation based upon the criteria set forth in applicable Law and this RFP, to provide the best value for, and to be in the best interest of, the Department.

The Department will accept a Proposal for the Project only from the Proposer. The Department will not review or consider alternative proposals.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP will be issued and made available to the Proposer in electronic format on the secure file transfer site for the Project, located on the FTP Site. The FTP Site's URL is <https://sportal.dot.pa.gov/PMO/trainstations/P3Middletownstation/default.aspx>.

(a) **Authorized Department Representative**

The Department has designated the following individual to be its authorized representative for the procurement (the Authorized Department Representative):

Kathryn Tartaglia
Public Private Partnerships Office
400 North Street, 5th Floor
Harrisburg, PA 17120-3643
Telephone: (717) 787-3154
Email: P3MdtTrainStation@pa.gov

From time to time during the procurement process or during the term of the PPA, the Department may designate another Authorized Department Representative or Representatives to carry out some or all of the Department's obligations pertaining to the Project and shall promptly notify the Proposer upon the occurrence of such designation.

(b) Identification of Authorized Proposer Representative

The Proposer shall identify in its Proposal one individual authorized to act on behalf of the Proposer relating to the procurement (**Authorized Proposer Representative**). If the Proposer changes its Authorized Proposer Representative to receive documents, communications or notices in connection with this procurement subsequent to its submission of its Proposal, the Proposer shall provide the Authorized Department Representative with the name, address, email address and telephone number of such new Authorized Proposer Representative. Failure to identify an Authorized Proposer Representative in writing may result in the Proposer failing to receive important communications from the Department. The Department is not responsible for any such failure.

(c) Rules of Contact

From the date of issuance of the RFQ until the date of delivery by the Proposer of its written commitment to the Department concerning rules of contact and other matters set forth in the form required by the Department, the rules of contact set forth in Section 7.1 of the RFQ are applicable to the Proposer. From the date of such written commitment until the issuance of the final RFP, the terms of such written commitment are applicable to the Proposer.

From and after the date of issuance of the final RFP and ending on the earliest of (x) the execution and delivery of the PPA, (y) rejection of the Proposal by the Department, or (z) cancellation of the RFP:

- (i) The Proposer's Authorized Proposer Representative shall be responsible for contacts with the Department on behalf of the Proposer, and, except at one-on-one meetings and other group discussions with the Department, the Proposer may only communicate with the Department regarding the RFP through its Authorized Proposer Representative.
- (ii) Neither the Proposer nor any representative thereof through their employees, agents or representatives shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Department or with any Department staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or approved in advance by the Authorized Department Representative, in such person's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Department or any public or Proposer workshop related to the RFP. If the Proposer engages in such prohibited

communications, it may be disqualified from the procurement at the sole discretion of the Department.

- (iii) Communication by or on behalf of the Proposer with any Stakeholder (including any of the Stakeholder's employees and representatives) regarding this RFP or the procurement described herein is prohibited, except for communication expressly permitted by the RFP or approved in advance by the Authorized Department Representative, in such person's sole discretion. It is the intent of the Department that the Department will provide any necessary coordination during the RFP stage with Stakeholders in order that, among other things, the procurement may be implemented in a fair, competitive and transparent manner and with uniform information. Information requests concerning Stakeholders should be sent to the Authorized Department Representative, who, in the Department's good-faith discretion, may arrange for general or separate meetings between one or more of such Stakeholders and the Proposer or facilitate delivery of responses to such questions by a Stakeholder.
- (iv) Any communications in breach of the foregoing clauses (i) through (iii) may result in disqualification from the procurement.
- (v) Any official information regarding the Project will be in writing, on Department letterhead, and signed by the Authorized Department Representative or designee.
- (vi) The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this Section 2.2 (*Receipt of the Request for Proposal Documents, Communications and Other Information*).

The Proposer shall note that no correspondence or information from the Department or anyone representing the Department regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2(c)(v).

For purposes of this Section 2.2(c) (*Rules of Contact*), "contact" and "communication" includes face-to-face, telephone, facsimile, electronic mail (email), other electronic means or formal written communication.

(d) Language Requirement

All correspondence regarding the RFP, Proposal, and PPA are to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Regarding the RFP and Addenda

(a) Questions and Responses Regarding the RFP

The Proposer shall be responsible for reviewing the RFP and any Addenda issued by the Department and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision that the Proposer fails to understand. Failure of the Proposer to make such review and to request such clarification shall be at its sole risk, and no relief for error or omission will be provided by the Department. The Proposer shall submit requests for clarification in accordance with this Section 2.3(a) (*Questions and Responses Regarding the RFP*). The Department reserves the right not to respond to any clarification requests (whether received after the last date for Proposer submittal of questions regarding the RFP, as set forth in Section 1.7(a) (*Procurement Schedule*), or otherwise), including clarification requests with respect to any version of the RFP marked “draft” or “industry draft.” To the extent responses are provided, they will not be considered part of the Project Documents and may not be relied upon nor will they be relevant in interpreting the Project Documents, except as otherwise expressly set forth in the Project Documents.

The Department will only consider comments and questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by the Proposer to the Authorized Department Representative, by electronic mail in the prescribed format.

Comments and questions may be submitted at any time prior to the applicable date specified in Section 1.7(a) (*Procurement Schedule*) or such later date as may be specified in any Addenda and shall:

- (i) be submitted in writing in Word using the form set forth in Form M (*RFP Comment Form*);
- (ii) be sequentially numbered;
- (iii) identify the document;
- (iv) identify the relevant Section number and page number (e.g., Section [x], page [x]) or, if it is a general question, indicate so;
- (v) not disclose the Proposer’s identity in the body of the question nor contain proprietary or confidential information; and
- (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

As used above, **Category 1** means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. **Category 2** means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. **Category 3** means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 or Category 2 issue. **Category 4** means an issue that is minor in nature, a clarification or a comment concerning a conflict between documents or within a document, etc.

No telephone or oral requests will be considered. The Proposer is responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any Person other than the Authorized Department Representative will be considered. Questions may be submitted only by the Authorized Proposer Representative or its designee, and must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents.

With respect to questions regarding any version of the RFP that is not marked "draft" or "industry draft," the Department's responses, if any, will be in writing and will be delivered to the Proposer. If the Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as "confidential." The Department reserves the right to disagree with the confidentiality of information in the interest of complying with applicable Laws and the terms of the RFP. Under such circumstances, the Department will inform the Proposer and will allow the Proposer, within a time period set by the Department, to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if the Department determines that it is appropriate to provide a general response, the Department will modify the question to remove information that the Department determines is confidential. If the Proposer fails to respond to the Department within the time frame identified by the Department, such failure shall be deemed to allow the Department to answer the question non-confidentially. The Department may rephrase questions as it deems appropriate and may consolidate similar questions. The Department may also create and answer questions independently of the Proposer. The Department contemplates issuing multiple sets of responses at different times during the procurement process. A consolidated, final set of questions and answers will be compiled and delivered to the Proposer prior to award.

The Proposer may, at its option, elect to submit revised drafts, in redline, of this ITP and PPA in connection with the submission of its comments/questions with respect to the issued RFP version. Subject to the Right-to-Know Law, the Department will not circulate the Proposer's submitted revised drafts, nor make such revised drafts public. The Department will not respond to any such revised drafts, nor is the Department obligated to review any such revised drafts. The Department may convene pre-Proposal meetings with the Proposer as it deems necessary pursuant to Section 2.5 (*Pre-Proposal Meetings*), and the Proposer must make themselves available to the Department for such pre-Proposal meetings and to discuss any matters they submit to the Department under this Section 2.3(a) (*Questions and Responses Regarding the RFP*). If the Department determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, the Department will prepare and issue an Addendum.

(b) Addenda

The Department reserves the right, in its sole discretion, to revise, modify, or change the RFP (i) at any time before the Proposal Due Date, (ii) if Proposal Revisions are requested, prior to the due date for Proposal Revisions, or (iii) at any time to extend the Commercial Closing Deadline pursuant to Section 1.7(c) (*Commercial Closing Deadline*). Any such revisions, modifications, or changes will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP Site, and the Proposer will be notified of the issuance of such Addenda. If any

Addendum significantly impacts this RFP, as determined in the Department's sole discretion, the Department may change the Proposal Due Date or the Commercial Closing Deadline. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

The Proposer shall acknowledge in its Proposal Letter receipt of all Addenda and question-and-answer responses issued by the Department prior to the Proposal Due Date. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. The Department reserves the right to hold one-on-one meetings with the Proposer to discuss any Addenda or response to requests for clarifications. The Department does not anticipate issuing any Addenda later than 15 Business Days prior to the Proposal Due Date. However, if the need arises, the Department reserves the right to issue Addenda after such date. If the Department finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Proposal Due Date determined necessary by the Department, in its sole discretion.

2.4 Pre-Proposal Submittals

The following Pre-Proposal Submittal is required:

- pursuant to Section 2.6 (*Changes in Proposer's Organization and Key Personnel*) (regarding changes in the Proposer's organization, changes in Key Personnel and new Key Personnel).

The applicable deadlines for submission of the Pre-Proposal Submittals, and the last date for the Department to respond thereto (as such date may be extended by the Department pursuant to this Section 2.4) (*Pre-Proposal Submittals*), are set forth in Section 1.7(a) (*Procurement Schedule*).

Except to the extent that the Proposer is required by this ITP to make a Pre-Proposal Submittal on a certain date (or at a certain time), the Proposer is encouraged to submit Pre-Proposal Submittals at any time prior to the stated deadlines. The Department will endeavor to respond to the Pre-Proposal Submittals within fourteen (14) days of the Friday in the week in which the Pre-Proposal Submittals were submitted; provided, however, that this time period for the Department's response may be extended in the Department's sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. The Department reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

2.5 Pre-Proposal Meetings

(a) Informational Meetings

The Department may hold joint informational meetings with the Proposer at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or

electronic means. If held telephonically or electronically, the meeting will permit interactive communication between the Proposer and the Department. The Department will provide written notice of any such informational meetings to the Proposer. If the meeting is conducted by telephonic or electronic means, the notice will inform the Proposer of the manner of the meeting.

The Proposer shall attend informational meetings with appropriate members of its proposed key management personnel, and if required by the Department, senior representatives of proposed team members identified by the Department.

(b) One-on-One Meetings

The Department intends to conduct one-on-one meetings with the Proposer on the dates set forth in Section 1.7(a) (*Procurement Schedule*) herein, and on such other dates designated by the Department in writing to the Proposer, to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by the Department or the Proposer (including the RFP). Participation at such meetings by the Proposer shall be mandatory. Representatives of any Stakeholder identified in Section 1.3 (*The Stakeholders*) and their consultants may attend and participate in one-on-one meetings.

The one-on-one meetings are subject to the following rules:

- (i) The meetings are intended to provide the Proposer with a better understanding of the Project and Project-related documents or communications provided by the Department.
- (ii) The Department, except as provided in this ITP, will not discuss with the Proposer any information submitted as part of this procurement other than its own.
- (iii) The discussions or any statements made by either party in one-on-one meetings shall not be binding on such entity.
- (iv) No part of the evaluation of the Proposal will be based on the conduct or discussions that occur during one-on-one meetings.
- (v) Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules at each meeting.

(c) Questions and Responses During One-on-One Meetings

During one-on-one meetings, the Proposer may ask questions, and the Department may provide responses. However, any responses provided by the Department during one-on-one meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3(a) (*Questions and Responses Regarding the RFP*) (and then, only to the extent provided in the Project Documents). Such questions and responses will be provided in writing to the Proposer, except to the extent such questions contain confidential or proprietary information relating to the Proposer's Proposal not otherwise required

to be disclosed by applicable Law or permitted to be disclosed pursuant to this ITP. Nothing stated at any pre-Proposal meeting or included in a written record or summary of a meeting will modify this ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3(b) (*Addenda*).

2.6 Changes in Proposer's Organization and Key Personnel

(a) Changes in Proposer's Organization

In order for the Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by the Department, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process (i.e., until the Commercial Closing Date). If the Proposer wishes to make changes in the Major Team Members identified in its SOQ, including, without limitation, additions, deletions, reorganizations, and/or role changes in or of any of the foregoing, the Proposer shall submit to the Department a written request for its approval of the change as soon as possible but in no event later than the date and time designated in Section 1.7(a) (*Procurement Schedule*) as the deadline for submission of such Pre-Proposal Submittal. Any such request shall be addressed to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*), accompanied by the information specified for such entities or individuals in the RFQ. If a request is made to allow deletion of any Major Team Members identified in its SOQ, the Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five (5) copies of each such request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its reasonable discretion. Except as provided herein and in the PPA, the Proposer may not make any changes in any Major Team Members identified in its RFP after the deadline set forth in Section 1.7(a) (*Procurement Schedule*) for submission of such Pre-Proposal Submittal. Between the deadline set forth in Section 1.7(a) (*Procurement Schedule*) for submission of such Pre-Proposal Submittal and the Commercial Closing Date, the Department, in its reasonable discretion, will consider requests by the Proposer to make changes in the Proposer's organization based only on unusual circumstances beyond the Proposer's control.

(b) Changes in Key Personnel

In order for the Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by the Department, the Proposer's personnel identified in Volume 1 of its SOQ (the **Key Personnel**) must remain intact for the duration of the procurement process (i.e., until the Commercial Closing Date). If the Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to the Department a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.7(a) (*Procurement Schedule*) as the deadline for submission of such Pre-Proposal Submittal. Any such request shall be addressed to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*), accompanied by the information specified for such individuals in the RFQ. If a request is made to allow deletion of any Key Personnel identified in its SOQ, the Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and

technical). The Proposer shall submit an original and five (5) copies of each such request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its reasonable discretion; *provided that* it shall do so within fifteen (15) Business Days of receiving such requests. Except as provided herein and in the PPA, the Proposer may not make any changes in any Key Personnel identified in its SOQ after the deadline set forth in Section 1.7(a) (*Procurement Schedule*) for submission of such Pre-Proposal Submittal. Between the deadline set forth in Section 1.7(a) (*Procurement Schedule*) as the deadline for the submission of such Pre-Proposal Submittal and the Commercial Closing Date, the Department, in its reasonable discretion, will consider requests by the Proposer to make changes in the Proposer's Key Personnel based only on unusual circumstances beyond the Proposer's control.

2.7 Confidentiality

(a) Confidentiality of Proposer Information

If the Proposer has special concerns about information that it desires to make available to the Department but that it believes constitutes a trade secret, proprietary information, or other information exempted from disclosure pursuant to the Right-to-Know Law or the P3 Records Provision, then the Proposer shall specifically and conspicuously designate that information by placing "CONFIDENTIAL" in the header or footer of each such page affected. Blanket designations that do not identify the specific information shall not be acceptable and shall be cause for the Department to treat the entire Proposal (other than such sections for which a specific designation was provided) as public information. The Department will neither (A) advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Pennsylvania Right-to-Know Law, the P3 Records Provision or other applicable Laws, nor (B) advise the submitting party as to the interpretation of such Laws, including with respect to the meaning of the terms "proprietary information," "trade secret," "commercial information," "financial information," and "security information" as used therein. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the Department by the Right-to-Know Law, the P3 Records Provision, or other applicable Law. If the Proposer asserts that certain information is confidential under this Section 2.7(a) (*Confidentiality of Proposer Information*), the Proposer shall be solely responsible for all determinations made by it under applicable Laws and for clearly and prominently marking each and every page or sheet of materials with "CONFIDENTIAL" as it determines to be appropriate. The Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to the Proposer's own circumstances. The provisions of the Right-to-Know Law, the P3 Records Provision, and other applicable Laws shall control in the event of a conflict between the procedures described above and the applicable Law.

Notwithstanding this Section 2.7(a) (*Confidentiality of Proposer Information*), the Department may disclose the Proposal to the representative of any Stakeholder identified in Section 1.3 (*The Stakeholders*) (together with the Stakeholder's consultants, **Stakeholder Representatives**) solely for the purpose of its review of the Proposal on behalf of the Stakeholder; *provided that* the Department shall inform such Stakeholder Representative of the confidentiality requirements set forth in this ITP and direct such Stakeholder Representative to treat the Proposal

confidentially; *provided, further*, that the Department will not be responsible for any disclosure of the Proposal by such Stakeholder Representative if the Department has complied with this Section 2.7(a) (*Confidentiality of Proposer Information*).

(b) Request for Disclosure

If a request is made for disclosure of the Proposal or other materials pursuant to the Right-to-Know Law, the P3 Records Provision or other applicable Laws, the Department will comply with its obligations under the Right-to-Know Law, the P3 Records Provision, and other applicable Laws. The Proposer consents to, and expressly waives any right to contest, the provision by the Department to the Department Chief Counsel of all, or representative samples of, the Proposal or other materials in accordance with the Right-to-Know Law, P3 Records Provision or other applicable Laws. The Department shall have no responsibility or obligation for a failure of the Department Chief Counsel to respond timely or at all to any Department request for advice, and the Department shall not be required to wait therefor if it is required to disclose or otherwise take action under the Right-to-Know Law, the P3 Records Provision, or other applicable Laws; *provided, however*, that prior to disclosing any information or otherwise taking any action under such applicable Law, the Department will notify the Proposer and give the Proposer an opportunity to either consent to the disclosure or action or assert its basis for non-disclosure or non-action and its claimed exemption from disclosure or action under applicable Law to the Department. **Under no circumstances will the Department be responsible or liable to the Proposer or any other party as a result of disclosing any such materials, including materials marked “CONFIDENTIAL,” whether the disclosure is deemed required by law or by an order of court or by the Department Chief Counsel or occurs through inadvertence, mistake or negligence on the part of the Department or its officers, employees, contractors or consultants.**

(c) Litigation

In the event of any proceeding or litigation concerning the disclosure of the Proposal, portion thereof or other materials, the Proposer shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; *provided that* the Department reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All reasonable costs and fees (including attorneys’ fees and costs) incurred by the Department in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer.

2.8 Examination of RFP

(a) Examination of RFP

The Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Disclosed Information and any Addenda, and material posted on the FTP Site for the Project, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of the Development Entity’s obligations under the Project Documents with the Department. The Proposer is responsible for monitoring the Collaboration Portal and FTP Site for information concerning this RFP and the

procurement. The Proposal Letter includes an acknowledgment that the Proposer has received and reviewed all materials posted thereon. Failure of the Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and the Department will provide no relief for any error or omission. The extent to which the Proposer may rely on the Disclosed Information, if any, shall be as expressly set forth in the PPA.

(b) Access to Project Site and Site Investigations

The Proposer is prohibited from arranging Project Site visits without the Department's prior written approval. Requests for Project Site visits shall be made in writing to the Department at the address given in Section 1.7(b) (*Address for Proposal Delivery*) above.

2.9 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the procurement process in any of the documents supplied by the Department, the Proposer shall have a duty to notify the Department of such mistake, error, or ambiguity and recommend a correction in writing in accordance with Section 2.3(a) (*Questions and Responses Regarding the RFP*).

2.10 Improper Conduct

(a) Non-Collusion

Neither the Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit.

(b) Conflicts of Interest

Pursuant to the State Adverse Interest Act, codified at 71 P.S. § 776 (the **State Adverse Interest Act**) and 74 Pa.C.S. § 9120, and except as otherwise provided therein, no Commonwealth employee may have an adverse interest in any contract with the Commonwealth agency employing such employee or attempt to influence the employing Commonwealth agency into taking a course of action in which such employee has an adverse interest, nor may any person or firm under contract with the Department to prepare procurement documents or provide advice for the Project be allowed to participate in any capacity on the Proposer's team. Any person or firm previously under contract with the Department to prepare preliminary plans, planning reports or other project development products for the Project may be able to participate on the Proposer's team, if such firms first submit a written request for a determination of no conflict from the Department and receive written confirmation that they may participate, or conditionally participate, on the Proposer's team. The Authorized Proposer Representative for the Proposer shall be responsible for submitting any written request for a determination of no conflict to the Department for any member or potential member of the Proposer's team. No other Person shall submit to the Department a request for a determination of no conflict.

Additional exceptions to this policy may be granted by the Department, upon written request from such person, if it is determined that the person's involvement is in the best interest of the

public and does not constitute an unfair advantage. If the Proposer seeks such exception it must submit such written request as soon as possible because the Department does not intend to extend the Proposal Due Date nor will the Department be responsible for any inability or failure to respond prior to the Proposal Due Date to any such request.

In addition to the foregoing, the requirements of 49 CFR § 18.36(b)(3) regarding conflicts of interest shall apply. Among other things, 49 CFR § 18.36(b)(3) provides that no employee, officer or agent of the grantee or sub-grantee shall participate in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. According to 49 CFR § 18.36(b)(3), such a conflict would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or an organization which employs, or is about to employ, any of the foregoing persons, has a financial or other interest in the firm selected for award. 49 CFR § 18.36(b)(3) further provides that the grantee's and sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Proposer shall provide information concerning conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests that may present a conflict of interest. Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or key personnel thereof, may result in, or could be viewed as, a conflict of interest.

Prior to the Commercial Closing Date, the Proposer is prohibited from teaming with, receiving any advice from, or discussing any aspect with (in each case, relating to the Project or the procurement of the Project) any person or entity with a conflict of interest, including, but not limited to:

- AECOM;
- Ahmad Zaffarese LLC
- Alvarez and Marsal;
- Ballard Spahr LLP;
- HNTB Corporation;
- JMT;
- KPMG LLP;
- McCormick Taylor;
- Turner Law, P.C.; and

- Affiliates (including parent companies, subsidiary companies, entities under common ownership, joint venture members and partners, and other financially liable parties for an entity) of any of the above.

Such persons and entities are also prohibited from participating on the Proposer's team as a Major Team Member, contractor, subcontractor, consultant or subconsultant.

By submitting its response to this RFP, the Proposer agrees that, if a conflict of interest that existed prior to the Commercial Closing Date is discovered after Proposer's submittal of its Proposal, then the Proposer must make full written disclosure to the Department that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts within a reasonable time following discovery of said conflict of interest. If a conflict of interest that the Proposer has actual knowledge of, but failed to disclose is determined to exist during the procurement process, the Department may, at its discretion, disqualify the Proposer. The Department reserves all legal rights and remedies.

The Proposer is also advised that the Department's guidelines in this RFP are intended to augment applicable federal and state law, including federal conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable law will also apply to the Proposer's team and may preclude certain firms and their entities from participating on the Proposer's team.

3. REQUIREMENTS FOR SUBMITTAL OF PROPOSAL AND ACCEPTANCE OF DELIVERY BY THE DEPARTMENT

3.1 General Submittal Requirements

The Proposal shall include a Technical Proposal, a Commercialization Proposal and a Financial Proposal that meet the requirements set forth in Exhibit 2 (*Technical Proposal Instructions*), Exhibit 3 (*Commercialization Proposal Instructions*) and Exhibit 4 (*Financial Proposal Instructions*), respectively.

(a) Proposal Due Date

The completed Proposal shall be delivered in a sealed container no later than 11 a.m. on the date set forth in Section 1.7(a).

(b) Signatures Required

The Proposal Letter shall be signed in blue ink by the Proposer and each Proposed Guarantor (if any) and shall be accompanied by evidence of signatory authorization as specified in Form A.

(c) Certified Copies

Where certified copies of the Proposal are required, the Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark over-signed by the Authorized Proposer Representative. The over-signature can be undertaken by graphic reproduction.

(d) **Consequences of Failure to Follow Requirements**

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if the Department determines that the Proposer did not follow the foregoing instructions. It is the Proposer's sole responsibility to see that its Proposal is received as required. If the Proposal is received after the time due on the Proposal Due Date, it may be rejected without consideration or evaluation, in the Department's sole discretion.

3.2 Requirement to Submit Compliant Proposal

The Proposer shall sign the original copy of the Technical Proposal, the Commercialization Proposal and the Financial Proposal submitted to the Department. Multiple or alternate proposals or proposals with options may not be submitted.

The Proposal may be considered non-compliant and may be rejected for any of the following reasons:

- (a) the Proposal is submitted in a paper or electronic form other than that specified by the Department, if it is not properly signed, if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;
- (b) the Department determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including due to illegible text, omissions, erasures, alterations, items not called for in the RFP, or unauthorized additions;
- (c) multiple or alternate Proposals or Proposals with options are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a PPA following award;
- (d) the Proposer attempts to limit or modify the Proposal Security approved by the Department;
- (e) the Proposal Security is not provided;
- (f) the Proposer does not provide material information requested by the Department;
- (g) the Proposal contains a material alteration of any of the forms or Exhibits set forth in the RFP; and
- (h) the Proposal includes any qualifications, conditions, exceptions to or deviations from the requirements of the RFP.

If the Proposal is (at the sole discretion of the Department) determined non-compliant, the Department may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

3.3 Format

The Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal, the Commercialization Proposal and the Financial Proposal are essential. The Technical Proposal and the Commercialization Proposal shall not exceed the page limitations set forth in Section 2 (*Format*) of Exhibit 2 (*Technical Proposal Instructions*) and Section 2 (*Format*) of Exhibit 3 (*Commercialization Proposal Instructions*) respectively. No page limit applies to appendices, dividers, exhibits and tables of contents; however, the Department does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8½ by 11-inch format (½-inch margins) is required for typed submissions and an 11 by 17-inch format is required for drawings, except that design drawings may be submitted in roll format not to exceed 36 by maximum 120 inches (and such design drawings shall be submitted on a flash drive in Adobe (.pdf) format and in MicroStation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera P6 or Microsoft Project.

Submittals must be bound with all pages in binders sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point (*provided that* organizational charts, graphics and tables may be in type font no smaller than 10-point font) in each case, either Times New Roman or Arial. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. Technical drawings and schedules in 11 by 17-inch format that comprise large continuous portions of the Proposal (i.e., more than 10 continuous pages) shall be bound in an appendix such that the 11 by 17-inch sheets are not folded. In addition, sheets for technical drawings that exceed 11 by 17-inch size shall be submitted in roll form and need not be placed within the bound document.

Dividers may be used within bound volumes and for any 11 by 17-inch appendix volumes and will not be counted towards any applicable page counts.

3.4 Additional Requirements for Proposal Delivery

The Proposal is to be delivered to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*).

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical, Commercialization and Financial Proposals shall be clearly identified as "original"; copies of the Proposal shall be sequentially numbered, labeled and bound.

(a) **Technical Proposal**

The Technical Proposal shall be contained in two volumes: Volume 1—Executive Summary, Administrative Materials and Forms and Volume 2—Preliminary Project Management Plan and Design-Build Technical Solutions, as more fully described in Exhibit 2 (*Technical Proposal Instructions*).

All of the binders comprising the original Technical Proposal (including roll form documents) together with an electronic copy of the entire Technical Proposal (including roll form documents) on one or more flash drives shall be packaged in a single sealed container, clearly addressed to the Department as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for the Amtrak Station Improvement Project – Keystone Corridor – Middletown Station.” The Proposer shall provide one original and 10 certified copies of the bound Technical Proposal (except for two original certified copies of all roll form technical drawings that are referenced in the Technical Proposal). The containers that include the required hard copies of the Technical Proposal shall be labeled “[Proposer Name]: Copies of Technical Proposal for the Amtrak Station Improvement Project – Keystone Corridor – Middletown Station.” “Hard copy” roll form documents shall be included in the containers in a fashion that the Proposer deems most prudent to deliver such roll form documents.

The electronic copy shall be in a searchable Adobe (.pdf) format on flash drives; *provided, however*, that Proposal forms may be submitted in either Adobe or Word format.

(b) **Commercialization Proposal**

One original and 10 certified copies of the Commercialization Proposal, together with one electronic copy on a flash drive in either Adobe or Word format. The documents shall be included in a sealed container labeled “[Proposer Name]: Commercialization Proposal for the Amtrak Station Improvement Project – Keystone Corridor – Middletown Station.”

(c) **Financial Proposal**

The Financial Proposal shall be contained in two volumes: Volume 1 —Administrative Materials and Forms and Volume 2—Pricing Information, as more fully described in Exhibit 4 (*Financial Proposal Instructions*).

One original and 10 certified copies of the Financial Proposal and except for audited and unaudited financial statements (for which a single hard copy shall be provided in the original Financial Proposal and no certified copies shall be required)), together with one electronic copy on a flash drive of Volume 1, the financial capacity information and Financial Plan in either Adobe or Word format. The documents shall be included in a sealed container labeled “[Proposer Name]: Financial Proposal for the Amtrak Station Improvement Project – Keystone Corridor – Middletown Station.”

(d) **Proposal Security**

- (i) As security for its commitment to enter into the Project Documents in accordance with its Proposal commitments if the Department accepts the Proposal, the Proposer shall submit to the Department security either in the form of Form I-1 or Form I-2 (or in any combination thereof) (in each case, the **Proposal Security**). The Proposer shall provide as part of its Financial Proposal one original copy of the Proposal Security and three certified copies of the Proposal Security enclosed in a single envelope labeled “[Proposer Name]: Proposal Security for the Amtrak Station Improvement Project – Keystone Corridor – Middletown Station.” The original of the Proposal Security shall be stamped “original.”
- (ii) The Proposer shall provide Proposal Security in an amount equal to \$1,000,000. The Proposer may submit more than one letter of credit or demand guarantee in the form of Form I-1 and Form I-2, respectively, as its Proposal Security; *provided that* the amount of all such Proposal Security will equal \$1,000,000 in the aggregate.
- (iii) The Proposal Security shall be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. At any time following the Proposer’s submission of its Proposal Security to the Department, if any issuer thereof shall fail to be an Eligible Security Issuer, the Proposer shall promptly notify the Department in writing of such change, and within 10 days of such notice, the Proposer shall deliver to the Department new Proposal Security from a replacement Eligible Security Issuer. Upon the Department’s receipt of such replacement Proposal Security, the Department shall promptly return the replaced Proposal Security to the Proposer.

3.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2018 dollars, such pricing shall be as of the Proposal Due Date.

3.6 Modifications, Withdrawals and Late Submittals

(a) **Modifications to the Proposal**

The Proposer may modify its Proposal in writing prior to 11 a.m. on the date set forth in Section 1.7(a). The modification shall conform in all respects to the requirements for submission of the Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Department can accurately identify the final Proposal. The modification must contain complete Proposal Sections, complete pages or complete forms as described in Exhibit 2 (*Technical Proposal Instructions*), Exhibit 3

(*Commercialization Proposal Instructions*) and Exhibit 4 (*Financial Proposal Instructions*). Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

(b) **Withdrawal and Proposal Validity Period**

- (i) The Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by its Authorized Proposer Representative. Such written request shall be delivered to the address in Section 1.7(b) (*Address for Proposal Delivery*). A withdrawal of the Proposal will not prejudice the right of the Proposer to file a new Proposal; *provided that* it is received before the time due on the Proposal Due Date. The Proposal may not be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by the Department upon the Proposal Security. The Proposal shall be valid for a period of 120 days after the Proposal Due Date (as such period may be extended pursuant to Section 3.6(b)(ii), the **Proposal Validity Period**). The Proposer shall not withdraw its Proposal during the Proposal Validity Period, unless notified by the Department that (A) no PPA for the Project will be awarded by the Department pursuant to the RFP or (B) the Department does not intend to award the PPA to the Proposer.
- (ii) The Proposer may elect, in its sole discretion, to extend its Proposal Validity Period; *provided that* the Proposer will, as a condition to the Department's acceptance thereof, provide an amended or replacement Proposal Security covering the validity period of the Proposal, as extended.

(c) **Late Proposal**

The Department will not consider any late Proposal. The Proposal and/or modifications to the Proposal not requested by the Department received after the time for submittal of the Proposal will be returned to the Proposer without consideration or evaluation.

3.7 Forfeiture of Proposal Security

By submitting its Proposal, the Proposer understands and agrees that the Department shall be entitled to draw on the Proposer's Proposal Security in its entirety if any of the following events occurs:

- (a) the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal; or
- (b) following notification by the Department of the Proposer that the Proposal has been accepted:
 - (i) the Proposer fails to negotiate in good faith as expressly defined in Section 4.11(a) (*Finalization of Project Documents*);

- (ii) the Proposer fails to provide the documents as, when, and to the extent required under, or satisfy the conditions set forth in, Section 4.12(a) (*Documents to be Submitted Following Notification of Proposer*) and Section 5.1(b) (*Documents To Be Delivered by Proposer with Executed PPA*); or
- (iii) the Commercial Closing Date does not occur by the Commercial Closing Deadline specified in Section 1.7(a) (*Procurement Schedule*) (as the same may be extended pursuant to Section 1.7(c)) (*Commercial Closing Deadline*), unless:
 - (A) the Development Entity has satisfied (or caused to be satisfied) each of the DE Conditions Precedent on or before the Commercial Closing Deadline; and
 - (B) the failure of the Commercial Closing Date to occur by the Commercial Closing Deadline is not attributable to either (1) any action or omission of the Proposer, or (2) the Proposer failing to honor any commitment made in its Proposal; or
- (c) (i) the Proposer fails to notify the Department of the ineligibility of the issuer of the Proposal Security or fails to deliver replacement Proposal Security, if applicable, in each case in accordance with Section 3.4(d)(iii), (ii) the Proposer fails to deliver replacement Proposal Security pursuant to Section 3.4(d)(iii) five days prior to the expiration of the Proposal Security then in effect, or (iii) the Department determines that the Proposal Security submitted by the Proposer contains a material alteration from the form of Proposal Security set forth in Form I-1 or Form I-2 that has not been previously approved by the Department, as the case may be; *provided that*, to the extent that the Department draws on the Proposer's Proposal Security pursuant to this Section 3.7(c) and the Proposer replaces such drawn cash with replacement Proposal Security from an Eligible Security Issuer in compliance with this RFP, the Department will return such drawn cash to the Proposer.

3.8 Acceptance of Delivery by the Department

The Department will provide a receipt for the Proposal if it is timely delivered to the Department as specified herein.

4. EVALUATION AND POST-SELECTION PROCESS

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposal in compliance with all applicable Laws governing this procurement. Pursuant to Section 2.3(b) (*Addenda*) (and without limitation thereof), at any time prior to the Proposal Due Date, the Department in its sole discretion may revise, modify or change the evaluation and selection process and criteria set forth in this Section 4 (*Evaluation and Post-Selection Process*). The details of the evaluation and selection process are set forth more fully in this Section 4 (*Evaluation and Post-Selection Process*).

4.1 Organization of Review Panels and Evaluation and Scoring Committee

(a) Review Panels

The Director of the Public Private Partnerships Office will select Commonwealth staff and/or Commonwealth consultants with relevant experience to comprise, and participate in, the Pass/Fail Review Panel (the **Pass/Fail Review Panel**), the Technical Review Panel (the **Technical Review Panel**), the Commercialization Review Panel (the **Commercialization Review Panel**) and the Financial Review Panel (the **Financial Review Panel**).

- (i) The Pass/Fail Review Panel will conduct fact-gathering and analyze the extent to which the Proposal satisfies the “pass/fail” requirements set forth in Section 4.2 (*Pass/Fail Review*).
- (ii) The Technical Review Panel will conduct fact-gathering and analyze each Technical Proposal in light of the evaluation criteria set forth in Section 4.4 (*Evaluation of Technical Proposal by Evaluation and Scoring Committee*).
- (iii) The Commercialization Review Panel will conduct fact-gathering and analyze each Commercialization Proposal in light of the evaluation criteria set forth in Section 4.5 (*Evaluation of Commercialization Proposal by Evaluation and Scoring Committee*).
- (iv) The Financial Review Panel will conduct fact-gathering and analyze each Financial Proposal in light of the evaluation criteria set forth in Section 4.6 (*Evaluation of Financial Proposal by Evaluation and Scoring Committee*).

Each of the Pass/Fail Review Panel, the Technical Review Panel, the Commercialization Review Panel and the Financial Review Panel shall deliver its respective findings in writing to the Public Private Partnerships Office and thereafter brief the Evaluation and Scoring Committee on its respective findings.

(b) Evaluation and Scoring Committee

The Director of the Public Private Partnerships Office will select Commonwealth staff and/or Commonwealth consultants with relevant experience to comprise, and participate in, the Evaluation and Scoring Committee (the **Evaluation and Scoring Committee**). The Evaluation and Scoring Committee will select a chairperson. The Evaluation and Scoring Committee will conduct fact-gathering, and will:

- (i) determine the extent to which the Proposal satisfies the responsiveness and “pass/fail” requirements set forth in Section 4.2 (*Pass/Fail Review*);
- (ii) score the Proposer’s Technical Proposal in light of the evaluation criteria set forth in Section 4.4 (*Evaluation of Technical Proposal by Evaluation and Scoring Committee*);

- (iii) score the Proposer’s Commercialization Proposal in light of the evaluation criteria set forth in Section 4.5 (*Evaluation of Commercialization Proposal by Evaluation and Scoring Committee*); and
- (iv) score the Proposer’s Financial Proposal in light of the evaluation criteria set forth in Section 4.6 (*Evaluation of Financial Proposal by Evaluation and Scoring Committee*).

The Evaluation and Scoring Committee shall deliver its scoring of the Proposal in writing to the Public Private Partnerships Office and thereafter brief the Public Private Partnerships Office on its findings.

(c) Use of Advisors

The chairperson of any of the Pass/Fail Review Panel, the Technical Review Panel, the Commercialization Review Panel, the Financial Review Panel, and the Evaluation and Scoring Committee may, in his or her discretion, decide to use subject matter advisors. In addition, observers from federal, state or other agencies with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All participants in the evaluation process, including evaluators, outside consultants and observers, will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to the Department confidentiality restrictions and conflict of interest control requirements.

4.2 Pass/Fail Review

Upon receipt, the Technical Proposal, the Commercialization Proposal and the Financial Proposal will be made available for review by the Pass/Fail Review Panel and the Evaluation and Scoring Committee. They will be reviewed (x) for the Proposal’s conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (y) based on the pass/fail criteria set forth below. If the Proposal fails to achieve a passing score on any of the pass/fail portions of the evaluation, the Proposal may be considered non-compliant. Compliance shall be assessed on the basis of overall compliance, with the Department retaining the sole discretion to disregard or waive minor irregularities, omissions, nonconformities and discrepancies.

In the event that the Proposal contains or omits information that may potentially result in a “fail” determination, the Authorized Department Representative may request additional or clarifying information from the Proposer prior to a final pass/fail determination.

If the Proposal does not pass the pass/fail criteria, it may be excluded from consideration for scoring of the Technical Proposal, the Commercialization Proposal and Financial Proposal set forth hereunder, and the Proposer will be so advised. The Department may also exclude from consideration the Proposal if it contains a material misrepresentation. The Department reserves the right to waive minor informalities, irregularities, discrepancies, omissions and apparent clerical mistakes that are unrelated to the substantive content of the Proposal.

(a) **Technical Proposal**

The Technical Proposal will be evaluated based on the following pass/fail criteria:

- (i) the information, certifications, signed statements and documents as listed in Section 3.2 (*Proposer Information, Certifications, and Documents*) of Exhibit 2 (*Technical Proposal Instructions*) are included in the Technical Proposal and do not identify any material adverse information;
- (ii) the Technical Proposal (A) contains the required materials as listed in Section 3 (*Contents of the Technical Proposal*) and Section 4 (*Preliminary Project Management Plan and Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*) and (B) demonstrates, at a minimum, compliance with any minimum requirements of the PPA;
- (iii) each Major Team Member and Key Personnel listed in the Proposer's SOQ have not changed since the Proposer's submission of the SOQ, or if the Proposer has previously advised the Department of a change, the Department has consented to such change, and the Proposal attaches a true and correct copy of the Department's written consent thereto;
- (iv) the Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement (Form G);
- (v) the Proposer has delivered confirmation from an insurance company(ies), broker(s) or agent(s) that it has read the insurance requirements set forth in the PPA and that the entities required to obtain insurance under the PPA have the capability, as of the Proposal Due Date, of obtaining such insurance on the terms required under the PPA; and
- (vi) the Proposer has delivered all other specified forms and documents, properly completed and signed (if required), and such forms and documents do not identify any material adverse information (to the extent applicable).

(b) **Commercialization Proposal**

The Commercialization Proposal will be evaluated based on the following pass/fail criteria:

- (i) the Commercialization Proposal will comply with the provisions of Section 1.4(b)(ii) (*Commercialization Activities*); and
- (ii) the Proposer's schedule for the delivery of the Commercialization Activities will comply with the provisions of Section 1.4(b)(ii) (*Commercialization Activities*) and (iii) (*Timing of the Project*).

(c) **Financial Proposal**

The Financial Proposal will be evaluated based on the following pass/fail criteria:

- (i) Based on the information provided pursuant to Section 4 (*Financial Capacity Information*) of Exhibit 4 (*Financial Proposal Instructions*), the financial condition and capabilities of the Proposer and each Proposed Guarantor (if any) shall not have materially adversely changed from their respective financial conditions and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer and each Proposed Guarantor (if any) continues to have the financial capacity to perform the Required Project Services. Factors that will be considered in evaluating the Proposer's and any Proposed Guarantor's financial capacity include the following:
 - (A) profitability;
 - (B) capital structure;
 - (C) ability to service existing debt;
 - (D) ability to invest equity; and
 - (E) other commitments and contingencies.

If the Department determines that the Proposer (together with any relevant Proposed Guarantor) does not appear to have the financial capability to fulfill its obligations under the Project Documents, it may offer the Proposer the opportunity to meet the financial requirement through the provision of one or more guarantees acceptable to the Department.

- (ii) The Proposer's Financial Proposal demonstrates that it identifies sufficient funding and/or financing for the Project, to satisfy the Department that there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:
 - (A) execution and delivery of the PPA;
 - (B) achievement of Project Completion by the Project Facility Completion Deadline for all Project Facilities set forth in the PPA and in accordance with the requirements of the PPA; and
 - (C) maintenance of the portions of the Project to be maintained by the Development Entity throughout the term in accordance with the requirements of the Project Documents, including the Handback Requirements.
- (iii) The Proposer has delivered Proposal Security in the form of a complete, properly executed letter of credit and/or demand guarantee that complies with the requirements of Section 3.4(d) (*Proposal Security*).
- (iv) The Proposer's ability to finance the Project based on factors including the strength of contractual commitments to the Project made by the Proposer and the

depth of analysis performed with respect to the Financial Plan and the reasonable assurance to the Department that the Financial Plan is reasonable and can reach Financial Close.

- (v) The Financial Proposal (A) contains all the materials required by Exhibit 4 (*Financial Proposal Instructions*) and (B) neither includes nor assumes the use of a special purpose vehicle for the purposes of undertaking the Project and raising project finance, unless the obligations of such special purpose vehicle under the PPA will be guaranteed by the Proposer and each Proposed Guarantor (if any).
- (vi) The Proposer has provided a letter from its independent insurance consultant or broker in accordance with the requirements of Section 2(f) (*Insurance*) of Exhibit 4 (*Financial Proposal Instructions*) and substantially in the form of Form O (*Letter from Independent Insurance Broker/Consultant*) (with such modifications as shall be acceptable to the Department, in its good faith discretion).

4.3 Best Value Determination

The best value determination will be based on the following 100-point scale. The Technical Proposal Score will represent up to 25 points of the Total Proposal Score, the Commercialization Proposal Score will represent up to 25 points of the Total Proposal Score and the Financial Proposal Score will represent up to 50 points of the Total Proposal Score. The Total Proposal Score of the Proposal will be computed as follows:

Total Proposal Score (max. 100 points) = Technical Proposal Score (max. 25 points) + Commercialization Proposal Score (max. 25 points) + Financial Proposal Score (max. 50 points).

(a) Technical Proposal Score

The Technical Proposal Score shall be a maximum of 25 points.

The Technical Proposal Score will be calculated based on the Evaluation and Scoring Committee's evaluation score for the Preliminary Project Management Plan and Design-Build Technical Solutions (maximum 100 points) as described in Section 4.4 (*Evaluation of Technical Proposal by the Evaluation and Scoring Committee*). The Preliminary Project Management Plan and Design-Build Technical Solutions for technical scoring purposes will be divided into five parts: (i) the Preliminary Project Management and Administration Plan elements as further described in Section 4.4(b) (*Preliminary Project Management and Administration Plan*), (ii) the Preliminary Quality Management Plan elements as further described in Section 4.4(c) (*Preliminary Quality Management Plan*), (iii) the Preliminary Operations and Maintenance Management Plan elements as further described in Section 4.4(d) (*Preliminary Operations and Maintenance Management Plan*), (iv) the Preliminary Safety Plan as further described in Section 4.4(e) (*Preliminary Safety Plan*) and (v) the Design-Build Technical Solutions as further described in Section 4.4(g) (*Design-Build Technical Solutions*). The Evaluation and Scoring Committee's evaluation score of the Technical Proposal is the sum of the values of the seven parts described in the preceding sentence.

(b) **Commercialization Proposal Score**

The Commercialization Proposal Score shall be a maximum of 25 points and will be calculated based on the Evaluation and Scoring Committee’s evaluation score for the Commercialization Proposal.

The Commercialization Proposal will be scored based on a qualitative assessment of the following factors:

- (i) Estimated Commercialization Strategy and Marketing Plan; and
- (ii) Maximization of revenue generation from the Commercialization Activities.

(c) **Financial Proposal Score**

The Financial Proposal Score shall be a maximum of 50 points relating to the following factors:

- (i) the capital cost budget associated with the design, construction, and financing portion of the Required Project Services (the **D&C Price**) (as set forth on Form H); and
- (ii) the proposed budget for the Maintenance Work.

The Proposer will calculate the amounts to be included in Form H in accordance with the requirements of Exhibit 4 (*Financial Proposal Instructions*) of this ITP.

(d) **Compliant Proposal**

In order for a Proposal to be considered compliant, the Proposal must score a minimum of 70 points of the Total Proposal Score. If the Proposal does not score a minimum of 70 points, the Proposal will not be compliant and can either be accepted or rejected in the Department’s sole discretion.

4.4 Evaluation of Technical Proposal by Evaluation and Scoring Committee

After completion of the pass/fail and responsiveness review by the Evaluation and Scoring Committee, the Preliminary Project Management Plan and Design-Build Technical Solutions will be evaluated by the Evaluation and Scoring Committee based on the factors set forth in this Section 4.4 (*Evaluation of Technical Proposal by Evaluation and Scoring Committee*) to determine whether it includes any improvements over the requirements of the Project Documents and brings additional benefits and/or value to the Department and the public. In evaluating the Technical Proposal, the Evaluation and Scoring Committee may consider other information provided with the Technical Proposal.

The evaluation factors for the Preliminary Project Management Plan and Design-Build Technical Solutions component of the Technical Proposal are as follows:

- (a) **Preliminary Project Management and Administration Plan** (maximum five (5) Technical Proposal Score points)

Objectives: A plan that complies with the project management philosophy, plan and schedule for executing the Project and any related PPA administration, and how the Proposer plans to satisfy the requirements of the Project Documents.

The Preliminary Project Management and Administration Plan evaluation subfactors include:

- (i) Management Structure and Staffing Plan;
- (ii) Internal Organization Systems Plan;
- (iii) Preliminary Comprehensive Environmental Protection Plan;
- (iv) Preliminary Document and Data Management Plan; and
- (v) Preliminary Risk Management Plan.

The Preliminary Project Management and Administration Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.2 (*Preliminary Management and Administration Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

- (b) **Preliminary Quality Management Plan** (maximum five (5) Technical Proposal Score points)

Objective: A plan that will be used to meet the quality objectives with respect to the Required Project Services. The Preliminary Quality Management Plan evaluation subfactors include:

- (i) design quality component information;
- (ii) construction quality component information; and
- (iii) operations and maintenance quality component information.

The Preliminary Quality Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.3 (*Preliminary Quality Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

- (c) **Preliminary Operations and Maintenance Management Plan** (maximum five (5) Technical Proposal Score points)

Objective: A plan that describes the Proposer's technical solutions during the operations and maintenance period and the Proposer's approach to operations and maintenance for the Project, including the Proposer's approach to maintenance quality management.

The Preliminary Operations and Maintenance Management Plan subfactors are as follows:

- (i) internal organization system information;
- (ii) Maintenance Management Plan information;
- (iii) routine and preventative maintenance program information; and
- (iv) Renewal Work program information.

The Preliminary Operations and Maintenance Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.4 (*Preliminary Operations and Maintenance Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(d) **Preliminary Safety Plan** (maximum five (5) Technical Proposal Score points)

Objective: A plan that demonstrates a culture of safety and other obligations of the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

The Preliminary Safety Plan subfactors are as follows:

- (i) Procedures, policies, training, and enforcement programs to ensure the safety of all personnel, Department employees, and the general public and prevent incidents and accidents;
- (ii) Safety records for each Major Team Member that will perform or supervise installation and/or construction Work for the Project;
- (iii) Procedures for coordination with Governmental Entities on issues related to fire, security, and life safety;
- (iv) Procedures for tracking, documenting and reporting on safety compliance; and
- (v) Procedures for incorporating audit findings.

The Preliminary Safety Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.5 (*Preliminary Safety Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(e) **Design-Build Technical Solutions** (maximum five (5) Technical Proposal Score points)

The Design-Build Technical Solutions evaluation subfactors are as follows:

Objective: A set of technical solutions for the design and construction of the Project that meets the quality objectives of the Project Documents, minimizes the lifecycle cost of the Project Facilities over the useful life of the Project assets and is compliant with the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

The Design-Build Technical Solutions subfactors listed above will reflect the solutions and approaches as set forth in Section 4.6 (*Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*).

4.5 Evaluation of Commercialization Proposal by Evaluation and Scoring Committee

After completion of the pass/fail and responsiveness review by the Evaluation and Scoring Committee, the Evaluation and Scoring Committee will evaluate the Commercialization Proposal to provide its calculation of the Commercialization Proposal Score.

4.6 Evaluation of Financial Proposal by Evaluation and Scoring Committee

After completion of the pass/fail and responsiveness review by the Evaluation and Scoring Committee, the Evaluation and Scoring Committee will evaluate the Financial Proposal to provide its calculation of the Financial Proposal Score.

4.7 Total Proposal Score

After completion of the evaluation of the Technical Proposal by the Evaluation and Scoring Committee, the Commercialization Proposal by the Evaluation and Scoring Committee and the Financial Proposal by the Evaluation and Scoring Committee, the Director of the Public Private Partnerships Office, with the assistance of Department representatives and advisors, will determine the total proposal score for the Proposal by adding the Proposal's Technical Proposal Score, Commercialization Proposal Score and Financial Proposal Score (the **Total Proposal Score**).

4.8 Requests for Clarification

The Department may, at any time, issue requests for clarification to the Proposer requesting additional information or clarification from the Proposer, or may request that the Proposer verify or certify certain aspects of its Proposal. The Proposer shall respond to any such requests within three Business Days from receipt of the request (or within such other longer time as is reasonably specified by the Department). The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, the Department.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposal may be re-evaluated to factor in the clarifications and additional information.

4.9 Requests for Proposal Revisions

Pursuant to 74 Pa.C.S. § 9109(i), the Department may, at any time after receipt of the Proposal and prior to the Commercial Closing Date, determine that it is appropriate to request changes to the Proposal (**Proposal Revisions**). The Proposer will only be permitted to submit Proposal Revisions if it has submitted a responsive Proposal. The Department may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP Documents, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the procedures set forth in Section 4.1 (*Organization of Review Panels and Evaluation and Scoring Committee*) through Section 4.8 (*Requests for Clarification*) (*inclusive*) shall be repeated with respect to such Proposal Revisions, as appropriate, and the Evaluation and Scoring Committee shall revise ratings and value estimates as appropriate following the completion of such procedure. For the avoidance of doubt, to the extent that the Department requests Proposal Revisions and the Proposer elects not to submit a Proposal Revision, such election shall not constitute a withdrawal of the Proposer's Proposal Security and the Department shall promptly return the Proposer's previously-provided Proposal Security in its entirety.

4.10 Acceptance of Proposer's Proposal

- (a) Once the Director of the Public Private Partnerships Office has determined a Total Proposal Score for the Proposal (whether based on the original Proposal or Proposal Revisions) and, thereafter, recommends to the Pennsylvania Secretary of Transportation that the Proposal be accepted, then the Pennsylvania Secretary of Transportation may authorize the Authorized Department Representative to:
 - (i) select the Proposer for contract negotiation pursuant to 74 Pa.C.S. § 9109(j) and finalize the Project Documents with the Proposer, in each case pursuant to Section 4.11 (*Finalization*);
 - (ii) require Proposal Revisions pursuant to Section 4.9 (*Requests for Proposal Revisions*); or
 - (iii) reject the recommendation and cancel the procurement or request reconsideration of the recommendation.
- (b) If the Director of the Public Private Partnerships Office recommends to the Pennsylvania Secretary of Transportation that the Proposer shall be preliminarily selected as the Development Entity under the PPA, and the Pennsylvania Secretary of Transportation preliminarily selects the Proposer as the Development Entity under the PPA, the Authorized Department Representative will select the Proposer as the Proposer for contract negotiation pursuant to 74 Pa.C.S. § 9109(j) and finalize the Project Documents with the Proposer, in each case pursuant to Section 4.11 (*Finalization*).

4.11 Finalization

(a) Finalization of Project Documents

If authorized by the Authorized Department Representative, the Department will proceed with the Proposer to negotiate and finalize the Project Documents. By submitting its Proposal, the Proposer commits to enter into the form of Project Documents included in the RFP, without variation except to fill in blanks and include information that the form of PPA indicates is required from the Proposal; *provided, however*, that, at the Department's request, the Proposer shall negotiate in good faith with the Department regarding any aspect of the Project Documents;

provided that neither the Department nor the Proposer shall negotiate any matter (or be required to agree to any matter) that is inconsistent with this ITP.

If the Department elects to negotiate and finalize the Project Documents with the Proposer and a PPA satisfactory to the Department, in its sole discretion, cannot be negotiated and finalized with the Proposer, the Department may formally suspend or end negotiations and finalization with the Proposer and take action consistent with the direction provided by the Authorized Department Representative. Such action may include (A) requiring the Proposer to enter into the form of Project Documents included in the RFP, without further negotiation or variation except to fill in blanks and include information (x) from the Proposal as Development Entity's Proposal Commitments in accordance with this ITP and (y) that the form of PPA indicates is required from the Proposal or (B) rejection of the Proposal.

The Proposer will be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Security if the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department or insists upon terms or conditions for any documents to be negotiated or provided by the Development Entity hereunder that are inconsistent with the Project Documents.

4.12 Department Review of Post-Selection Deliverables

(a) Documents to be Submitted Following Acceptance of Proposal

Not later than 14 days prior to the Commercial Closing Deadline, and as a condition precedent to award of the PPA, the Proposer shall deliver to the Department for the Department's comment and approval (in respect of compliance with requirements of the RFP) copies, each in final form, of the documents described in Section 5.1(b) (*Documents To Be Delivered by Proposer with Executed PPA*).

(b) Department Comments on Post-Selection Deliverables

The Department shall provide comments on any Post-Selection Deliverable required to be delivered to the Department for review and approval hereunder (in respect of compliance with requirements of the RFP), within 10 Business Days after the date of the Department's receipt of such deliverable. The Department shall have four Business Days to review and respond to subsequent submittals of the deliverable.

5. AWARD AND EXECUTION; POST-EXECUTION ACTIONS

5.1 Execution

(a) Award and Execution of the PPA

The Department will not award the PPA unless there has been (i) successful negotiation and finalization of the PPA in accordance with Section 4.11 (*Finalization*), (ii) receipt by the Department of all of the documents required to be provided pursuant to Section 5.1(b) (*Documents To Be Delivered by Proposer with Executed PPA*), (iii) approval of the PPA as to

form and legality by the Attorney General of the Commonwealth pursuant to the act of October 15, 1980 (P.L. 950, No. 164), as amended, known as the Commonwealth Attorneys Act, and (iv) satisfaction of any other conditions to award set forth in this ITP or required by Law.

(b) Documents To Be Delivered by Proposer with Executed PPA

Prior to the execution of the PPA by the Department, the Proposer shall deliver to the Department with the executed copy of the PPA:

- (i) each document described in the DE Conditions Precedent, each duly executed as provided in the PPA; and
- (ii) any other documents reasonably required by the Department as a result of the Department's pre-award negotiations with the Proposer conducted in accordance with Section 4.11 (*Finalization*).

5.2 Return of Proposal Security

Except for any Proposal Security that has been forfeited pursuant to Section 3.7 (*Forfeiture of Proposal Security*), the Proposal Security will be returned to the Proposer within 10 Business Days of the earliest of (a) expiry of the Proposal Validity Period, as extended, (b) the Commercial Closing Date, and (c) cancellation of the procurement by the Department.

5.3 Stipend Payment

(a) Maximum Stipend Amount

- (i) Except as set forth in the Stipend Agreement and this Section 5.3 (*Stipend Payment*), the Proposer shall be eligible to receive a stipend in an amount not to exceed \$200,000 (the **Maximum Stipend Amount**) if:
 - (A) the Department cancels the procurement after the issuance of the Final RFP Documents; or
 - (B) the Proposer has submitted a timely and responsive Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents but the Proposer and the Department do not execute the PPA.
- (ii) If the Proposer shall be eligible to receive a stipend as a result of:
 - (A) any event described in Section 5.3(a)(i)(A), then the Proposer shall be eligible to receive the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by the Proposer in preparing the Proposal in an amount not to exceed the Maximum Stipend Amount; *provided that* the Proposer submits to the Department an invoice, waiver and release and the documentation of out-of-pocket development costs as further described in Section 5.3(a)(iii) (which shall be subject to the Department's reasonable review and

concurrence) (x) no earlier than the date of notice from the Department that the procurement has been cancelled and (y) no later than 90 days after the date of such notice; or

- (B) any event described in Section 5.3(a)(i)(B), then the Proposer shall be eligible to receive the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by the Proposer in preparing the Proposal in an amount not to exceed the Maximum Stipend Amount; *provided that* (1) a timely and responsive Proposal shall be considered unsuccessful if the Department cancels the procurement without award after the Proposal Due Date and (2) the Proposer submits to the Department an invoice, waiver and release and the documentation of out-of-pocket development costs as further described in Section 5.3(a)(iii) (which shall be subject to the Department's reasonable review and concurrence) (x) no earlier than the earlier of (1) the date of notice from the Department that the Commercial Closing Date has occurred and (2) the date of notice from the Department that the Commercial Closing Date has not occurred and that the procurement has been cancelled, and (y) no later than 90 days after the date of such notice; *provided that* in no event shall the Proposer that becomes the Development Entity be entitled to receive payment pursuant to this Section 5.3(a)(ii)(B).
- (iii) Any invoices to be submitted by the Proposer shall be in the form set forth in Exhibit 1 of Form N and shall be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against the Department, in the form attached as Form L.
- (iv) Any stipend payable pursuant to the Stipend Agreement and this Section 5.3 (*Stipend Payment*) shall become due and payable 60 days after the date the Proposer submits to the Department the invoice, waiver and release described in Section 5.3(a)(iii).
- (v) Except as provided in the Stipend Agreement and this Section 5.3 (*Stipend Payment*), the Proposer shall not be entitled to reimbursement of any of its costs in connection with this RFP.
- (vi) The Proposer shall not be entitled to receive any stipend pursuant to this Section 5.3 (*Stipend Payment*) unless the Department has received the required work product set forth in Exhibit 2 of Form N.

(b) **Eligibility**

Notwithstanding the foregoing, no stipend shall be payable to the Proposer in the following circumstances:

- (i) if the Proposer has not submitted an executed and delivered Stipend Agreement with its Financial Proposal;
- (ii) if the Proposer withdraws from the procurement;
- (iii) if the Proposer has not complied in all material respects with the terms and conditions of the RFP Documents;
- (iv) if the Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 5.3 (*Stipend Payment*), including delivering an invoice and documentation of out-of-pockets costs pursuant to Section 5.3(a) (*Maximum Stipend Amount*) within the time periods specified herein and the waiver and release as described herein;
- (v) if the Proposer has filed a protest of, or otherwise challenges, the procurement process, award or cancellation of the procurement process and such protest or challenge is dismissed or otherwise is unsuccessful; or
- (vi) if the Proposer (A) proceeds to the Commercial Closing Date and Financial Close or (B) fails to proceed to the Commercial Closing Date or Financial Close for any reason other than failure of one or more express closing contingencies that are set forth in the RFP Documents or the PPA, the failure of which does not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Proposer.

(c) **Work Product**

The Proposer agrees that the Department shall be entitled to use Proposer's intellectual property and work product contained in its Proposal (including written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, patents, inventions, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications and other graphic and visual aids generated by or on behalf of Proposer) except for Proprietary IP. Such work product is not required to be returned to the Proposer under this RFP when received by the Department prior to the cancellation and/or contained in the Proposal, in consideration for the Department's agreement to make payment as provided herein and in the Stipend Agreement, without any further compensation or consideration to the Proposer.

(d) **Stipend Agreement**

The Proposer accepting the foregoing terms in this Section 5.3 (*Stipend Payment*) and the Stipend Agreement shall acknowledge such acceptance by executing the Stipend Agreement and submitting a copy of such executed Stipend Agreement with its Financial Proposal. Once executed, the Stipend Agreement shall constitute the irrevocable election by the Proposer to accept the stipend described therein and under this Section 5.3 (*Stipend Payment*).

5.4 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before the Commercial Closing Date, including costs incurred for any interviews, costs associated with Post-Selection Deliverables and costs relating to finance process and achieving the Commercial Closing Date, shall be borne by the Proposer, except for any costs paid in accordance with Section 5.3 (*Stipend Payment*).

6. PROTESTS

This Section 6 (*Protests*) sets forth the exclusive remedies for protests and claims related to the selection of the Proposal available with respect to the RFP.

6.1 Protests and Claims against a Commonwealth Agency

Pursuant to 74 Pa.C.S. § 9101(m), the Proposer must file any protest or claim against the Department or any other Commonwealth agency in accordance with the procedures set forth in in 62 Pa.C.S. Ch. 17, including 62 Pa.C.S. § 1711.1(b) (*Filing of Protest*).

6.2 Protests and Claims against Non-Commonwealth Entities

Pursuant to 74 Pa.C.S. § 9101(n), the Proposer must file any protest or claim against a public entity other than a Commonwealth agency in a court of common pleas where that entity is located.

7. DEPARTMENT RIGHTS AND DISCLAIMERS

7.1 Department Rights

The Department may investigate the qualifications and the Proposal under consideration, may require confirmation of information furnished by the Proposer and may require additional evidence of qualifications to perform the Development Entity's obligations under the Project Documents. The Department reserves the right, in its sole discretion, to:

- (a) develop the Project in any manner that it, in its sole discretion, deems necessary;
- (b) reject the Proposal;
- (c) modify any dates set or projected in this RFP and extend any deadlines;
- (d) cancel, modify or withdraw the RFP in whole or in part at any time prior to the execution by the Department of a PPA, without incurring any cost obligations or liabilities, except as otherwise provided in Section 5.3 (*Stipend Payment*), *provided that* the Department's right to modify the evaluation process and scoring criteria set forth in Section 4 (*Evaluation and Post-Selection Process*) shall be limited as provided therein;
- (e) terminate this procurement and commence a new procurement for part or all of the Project;

- (f) terminate evaluations of the Proposal received at any time;
- (g) suspend or terminate negotiations at any time, recommence negotiations with the Proposer after negotiations have been suspended, elect not to commence PPA negotiations with the Proposer, or engage in negotiations with other than the Proposer;
- (h) modify the procurement process (with appropriate notice to the Proposer);
- (i) waive or permit corrections to data submitted with any response to this RFP until such time as the Department declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (j) permit submittal of addenda and supplements to data and information previously provided in the Proposal pursuant to a request for clarification issued by the Department until such time as the Department declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (k) appoint evaluation committees to review the Proposal, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (l) disclose information contained in the Proposal to the public as described herein;
- (m) approve or disapprove changes in the Key Personnel identified in the SOQ;
- (n) approve or disapprove changes in the Proposer's organization;
- (o) waive deficiencies, informalities and irregularities in the Proposal, accept and review the Proposal if it is non-conforming or seek clarifications or modifications to the Proposal;
- (p) request Proposal Revisions as specified herein;
- (q) offer the Proposer the opportunity to cure its failure to meet any requirement of this RFP that the Department determines (in its sole discretion) to be immaterial;
- (r) offer the Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the PPA by a third party;
- (s) develop some or all of the Project itself (including financing some or all of the Project itself);
- (t) disqualify the Proposer if he Proposer violates the terms of the RFP; and
- (u) exercise any other right reserved or afforded to the Department under this RFP or applicable Law.

7.2 Department Disclaimers

This RFP does not commit the Department to enter into a contract. Except as expressly set forth in the Stipend Agreement and Section 5.3 (*Stipend Payment*) above and for the return of the Proposal Security to the Proposer in accordance with the terms of this ITP, the Department assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by the Proposer.

By submitting its Proposal in response to this ITP, the Proposer agrees to (a) comply with each of the instructions set forth herein and (b) the terms and conditions set forth in the RFP.

In no event shall the Department be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Project Documents have been authorized and executed by the Department and, then, only to the extent set forth therein; *provided, however,* that the foregoing disclaimer in this sentence shall not apply to the obligations of the Department to the Proposer during the procurement process, which obligations are expressly set forth in these RFP Documents. In submitting the Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

EXHIBIT 1

DEFINITIONS AND ACRONYMS

Capitalized terms used in the RFP but not defined in this Exhibit 1 shall have the meaning given to them in the PPA.

Addenda/Addendum means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

Amtrak shall have the meaning set forth in ITP Section 1.3 (*Stakeholders*).

Assumptions Book means the data book the Proposer must submit with its Financial Model, which must fully describe all assumptions underlying the financial projections within the Financial Model.

Authorized Department Representative shall have the meaning set forth in ITP Section 2.2(a) (*Authorized Department Representative*).

Authorized Proposer Representative shall have the meaning set forth in ITP Section 2.2(b) (*Identification of Authorized Proposer Representative*).

Borough shall have the meaning set forth in ITP Section 1.3 (*Stakeholders*).

Business Day shall have the meaning set forth in Schedule 1 (*Definitions*) to the PPA.

Category 1 shall have the meaning set forth in ITP Section 2.3(a) (*Questions and Responses Regarding the RFP*).

Category 2 shall have the meaning set forth in ITP Section 2.3(a) (*Questions and Responses Regarding the RFP*).

Category 3 shall have the meaning set forth in ITP Section 2.3(a) (*Questions and Responses Regarding the RFP*).

Category 4 shall have the meaning set forth in ITP Section 2.3(a) (*Questions and Responses Regarding the RFP*).

Change in Law shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Collaboration Portal shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Commercial Closing Date shall have the meaning as the term “Closing Date” set forth in Schedule 1 (*Definitions*) of the PPA.

Commercial Closing Deadline shall have the meaning set forth in ITP Section 1.7(c) (*Commercial Closing Deadline*).

Commercialization Activities shall have the meaning set forth in ITP Section 1.4(b)(ii) (*Commercialization Activities*).

Commercialization Proposal means that part of the Proposal described in Exhibit 3 (*Commercialization Proposal Instructions*) of the ITP.

Commercialization Proposal Score means the score for evaluation of the Proposal as calculated in accordance with ITP Section 4.3(b) (*Commercialization Proposal Score*).

Commercialization Review Panel means the committee that performs the review and evaluation of the Commercialization Proposal as set forth in ITP Section 4.1(a) (*Review Panels*).

Commercialization Schedule means the schedule for the implementation of the Commercialization Proposal required to be submitted with the Proposal and meeting the requirements set forth in Section 3.2 of Exhibit 3 to the ITP.

Commonwealth shall have the meaning set forth in ITP Section 1.1 (*Introduction*).

Conflict of Interest Disclosure Statement means the certificate, executed by or on behalf of Proposer, delivered with its Proposal and conforming to Form G (*Conflict of Interest Disclosure Statement*) to the ITP.

Contractor Responsibility Program means Management Directive 215.9 of the Commonwealth of Pennsylvania.

D&C Price shall have the meaning set forth in ITP Section 4.3(a) (*Final Proposal Score*).

D&C Work shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

DE Conditions Precedent means each of conditions set forth in subsections (a), (b), (c), (e), (f), (h) and (j) of Section 2.2 (*Conditions Precedent to the Commercial Closing Date*) of the PPA.

Department shall have the meaning set forth in ITP Section 1.1 (*Introduction*).

Design-Build Technical Solutions means the technical solutions submitted pursuant to Section 4.6 (*Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records and Submittals necessary for, or related to, the design of the Project. Design Documents include the Final Design Documents.

Development Entity shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Director of the Public Private Partnerships Office means the Person who is currently in charge of the Department's Public Private Partnerships Office.

Disclosed Information shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Diverse Business or **DB** means a disadvantageded business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization and is both an ECMS Business Partner and pre-qualified, if required.

ECMS means the Department’s Engineering and Construction Management System.

ECMS Business Partner means an individual, firm, partnership, or corporation that has a valid Registered Business Partner Identification issued by the Department through ECMS.

Eligible Security Issuer means (a) in respect of a letter of credit, any Person and (b) in respect of a demand guarantee, any surety bond provider licensed to do business in the Commonwealth, which in each case has a credit rating for long-term, unsecured debt of not less than “A-/A3” from one of the Rating Agencies, and has an office in the Commonwealth at which the letter of credit or demand guarantee (as applicable) can be presented for payment (unless, in the case of a letter of credit, presentment by facsimile or by electronic means is permitted without the requirement to subsequently present in person).

Evaluation and Scoring Committee means the committee that scores the Proposal as set forth in ITP Section 4.1(b) (*Evaluation and Scoring Committee*).

Final Design Document shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Financial Plan means the information that the Proposer must provide pursuant to Section 5 of Exhibit 4 (*Financial Proposal Instructions*) of the ITP.

Financial Proposal means that part of the Proposal described in Exhibit 4 (*Financial Proposal Instructions*) of the ITP.

Financial Proposal Score means the score calculated according to the formula set forth in ITP Section 4.3(c) (*Financial Proposal Score*).

Financial Review Panel means the committee that performs the review and evaluation of the Financial Proposal as set forth in ITP Section 4.1(a) (*Review Panels*).

Good Industry Practice shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Governmental Approval shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Governmental Entity shall have the meaning set forth in Schedule 1 (*Definitions*) to the PPA.

Handback Requirements shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

HVAC means heating, ventilation and air conditioning.

IFRS means International Financial Reporting Standards.

Instructions to Proposer or **ITP** means those documents, including exhibits and forms in Exhibit 4, included in the RFP containing directions for the preparation and submittal of information by the Proposer in response to the RFP.

Key Personnel means those personnel identified in Section 3.2(b) (*Key Personnel*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP and Form E to the ITP, which shall include the D&C Contractor.

Law shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Major Team Member means the Proposer and, solely to the extent the Proposer will not itself perform the Work in whole or in part, any entity specifically identified in its SOQ or its Proposal as being an entity that will (by way of subcontract) perform such Work. For the avoidance of doubt, equipment suppliers shall not be considered Major Team Members for the purposes of this Agreement.

Maintenance Performance Requirements shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Maintenance Work shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

MEP means mechanical, electrical and plumbing.

Maximum Stipend Amount shall have the meaning set forth in ITP Section 5.3(a)(i).

NEPA shall have the meaning set forth in ITP Section 1.4(f) (*Environmental Matters*).

Non-Collusion Affidavit means the affidavit, executed by or on behalf of Proposer and its Major Team Members, delivered with its Proposal and conforming to Form F (*Non-Collusion Affidavit*) to the ITP.

P3 Records Provision shall have the meaning set forth in ITP Section 1.8(d) (*Ownership of Proposal; Applicability of Right-to-Know Law and P3 Records Provision*).

PA 230 shall have the meaning set forth in ITP Section 1.4(a) (*Project Background*).

Parking Facility shall have the meaning set forth in ITP Section 1.4(b)(i) (*Required Project Services*).

Pass/Fail Review Panel means the committee that performs the review and evaluation of the Pass/Fail criteria as set forth in ITP Section 4.1(a) (*Review Panels*).

Pennsylvania Secretary of Transportation shall mean the Pennsylvania Secretary of Transportation or Acting Pennsylvania Secretary of Transportation, as the case may be.

Person or **Persons** shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Post-Selection Deliverables means the deliverables to be submitted in accordance with ITP Section 4.12 (*Department Review of Post-Selection Deliverables*).

PPA shall have the meaning set forth in ITP Section 1.1 (*Introduction*).

Preliminary Operations and Maintenance Management Plan means the plan submitted pursuant to Section 4.4 (*Preliminary Operations and Maintenance Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Preliminary Project Baseline Schedule means the Project schedule for design and construction required to be submitted with the Proposal and meeting the requirements set forth in Section 4.1 (*Preliminary Project Baseline Schedule*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Preliminary Project Management and Administration Plan means the plan submitted pursuant to Section 4.2 (*Preliminary Management and Administration Plan*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Preliminary Project Management Plan or **PPMP** shall have the meaning set forth in Section 4 (*Preliminary Project Management Plan and Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Preliminary Quality Management Plan means the plan submitted pursuant to Section 4.3 (*Preliminary Quality Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Preliminary Safety Plan means the plan submitted pursuant to Section 4.5 (*Preliminary Safety Plan*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP.

Pre-Proposal Submittal means the submittals submitted pursuant to ITP Section 2.4 (*Pre-Proposal Submittals*).

Project shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Project Completion shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Project Facility Completion Deadline shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Project Documents shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Project Facilities shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Project Site shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Proposal means the Technical Proposal, the Commercialization Proposal and the Financial Proposal.

Proposal Due Date means the deadline for submission of the Proposal identified in ITP Section 1.7(a) (*Procurement Schedule*).

Proposal Information means the description or narrative of approaches that the Proposer will use to perform the Work.

Proposal Letter means the letter, executed by or on behalf of Proposer, delivered with its Proposal and conforming to Form A (*Proposal Letter*) to the ITP.

Proposal Price Date means the Proposal Due Date (as of which all dollar amounts set forth in the Proposal shall be expressed).

Proposal Revisions shall have the meaning set forth in ITP Section 4.9 (*Requests for Proposal Revisions*).

Proposal Security shall have the meaning set forth in ITP Section 3.4(d)(i) (*Proposal Security*).

Proposal Validity Period shall have the meaning set forth in ITP Section 3.6(b)(i) (*Withdrawal and Proposal Validity Period*).

Proposed Guarantor means any entity providing a guarantee in support of the Development Entity's obligations under the PPA.

Proposer shall have the meaning set forth in ITP Section 1.1 (*Introduction*).

Proprietary IP shall have the meaning set forth in ITP Section 1.8(d) (*Ownership of Proposal; Applicability of Right-to-Know Law and P3 Records Provision*).

Rating Agencies means any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Dominion Bond Rating Service, Inc. or Fitch Investors Service, Inc.

Renewal Work shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Request for Proposal or **RFP** means the set of documents identifying the Project and its Work to be performed and materials to be furnished in response to which the Proposal may be submitted by the Proposer/Development Entity. The RFP includes the ITP and the Project Documents. The RFP is issued only to the Proposer that has been shortlisted following RFQ review.

Request for Qualifications or **RFQ** shall have the meaning set forth in ITP Section 1.1 (*Introduction*).

Required Project Services shall have the meaning set forth in ITP Section 1.4(b)(i) (*Required Project Services*).

RFP Documents shall have the meaning set forth in ITP Section 1.5 (*Documents in the Request for Proposal*).

Right-to-Know Law shall have the meaning set forth in ITP Section 1.8(d) (*Ownership of Proposal; Applicability of Right-to-Know Law and P3 Records Provision*).

Scope of Work means the scope of the Work required to be furnished, performed and provided by the Development Entity.

Stakeholder shall have the meaning set forth in ITP Section 1.3 (*Stakeholders*).

Stakeholder Representatives shall have the meaning set forth in ITP Section 2.7(a)(ii) (*Confidentiality of Proposer Information*).

State Adverse Interest Act shall have the meaning set forth in ITP Section 2.10(b) (*Conflicts of Interest*).

Statement of Qualification or **SOQ** shall have the meaning set forth in ITP Section 1.1 (*Introduction*).

Station shall have the meaning set forth in ITP Section 1.2 (*Department Objectives and Goals*).

Stakeholders shall have the meaning set forth in ITP Section 1.3 (*Stakeholders*).

Stipend Agreement means the agreement entered into between Department and Proposer and in the form of Form N (*Form of Stipend Agreement*) to the ITP.

Technical Proposal means that part of the Proposal described in Exhibit 2 (*Technical Proposal Instructions*) of the ITP.

Technical Proposal Score means the score for evaluation of the Proposal as calculated in accordance with ITP Section 4.3(a) (*Technical Proposal Score*).

Technical Provisions shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Technical Review Panel means the committee that performs the review and evaluation of the Technical Proposal as set forth in ITP Section 4.1(a) (*Review Panels*).

Total Proposal Score means the Proposal score calculated by the Evaluation and Scoring Committee pursuant to Section 4.7 (*Total Proposal Score*) of the ITP.

Utility shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

Work means all work and services required to be furnished, performed and provided by the Development Entity in order to design, construct, upgrade, implement, operate and maintain the Project in accordance with the Project Documents.

For definitions of other initially capitalized terms, see Schedule 1 (*Definitions*) of the PPA.

EXHIBIT 2

TECHNICAL PROPOSAL INSTRUCTIONS

1. GENERAL INSTRUCTIONS

This Exhibit 2 describes the submission format for the Technical Proposal and outlines the required information that will comprise the Technical Proposal.

The Proposer shall submit the information required by this Exhibit 2 in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit 5 (except for appendices that may be included in the appropriate volume), and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit 6 unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms. Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other individuals signing forms.

2. FORMAT

The Technical Proposal shall be limited to an aggregate of 100 pages if single-sided (or 50 pages if double-sided), plus the executive summary, resumes, appendices, and exhibits containing required forms, graphs, matrices, drawings, and other pertinent data. The materials required by Exhibit 2, Sections 3.1 and 3.2 shall not be included in the 100 page limit).

The Technical Proposal shall be contained in two volumes: Volume 1–Executive Summary, Administrative Materials and Forms, and Volume 2–Preliminary Project Management Plan and Design-Build Technical Solutions.

3. CONTENTS OF THE TECHNICAL PROPOSAL

The required contents and organization of the Technical Proposal are presented in this Exhibit 2 and summarized in the Proposal checklist provided in Exhibit 5. The Proposer must provide all the information set out in this Exhibit 2. A copy of the checklist for the Technical Proposal shall be included in each volume of the Technical Proposal. the Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal. The Technical Proposal shall not contain any information relating to the Project development costs or payments to be made by the Department to the Development Entity pursuant to the PPA.

The Technical Proposal shall consist of the following major elements:

- (a) Executive Summary (in Volume 1);

- (b) Proposer Information, Certifications, and Documents (including required Forms B through E) (in Volume 1 unless otherwise noted); and
- (c) Preliminary Project Management Plan and Design-Build Technical Solutions (in Volume 2).

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the Proposal and Proposer's ability to satisfy the financial and technical provisions of the Project. The Executive Summary shall not exceed 10 single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

- (a) an explanation of the organization and contents of the Proposal;
- (b) a summary of any material changes to the information submitted in the Proposer's SOQ;
- (c) a summary of any changes in Major Team Members, Proposed Guarantors (if any) and Key Personnel since submission of Proposer's SOQ;
- (d) a summary of the proposed management, decision making, and day-to-day operations structure of the Proposer, and a statement that each Major Team Member has committed to provide the specified people;
- (e) a summary of the Proposer's approach to delivering the Project;
- (f) a summary of the Preliminary Project Management and Administration Plan;
- (g) a summary of the Proposer's approach to addressing environmental issues, safety, traffic management, and construction staging;
- (h) a summary of the Proposer's approach to satisfying the applicable DB requirements;
- (i) a summary of any innovative concepts included;
- (j) a summary describing the Proposer's approach for working with the Department and third parties, including the approach to resolving conflicts;
- (k) a summary of the Proposer's conceptual project schedule, key milestones, and anticipated milestones for delivery of the Project;
- (l) a summary of the Proposer's approach to assuring quality in design, construction and maintenance; and
- (m) a summary of the Proposer's approach to maintenance and capital improvements, replacements, and handback.

The Proposer shall attach to the Executive Summary the following two organization charts:

- (i) a table indicating the roles of each Major Team Member and their shares of ownership of any relevant joint venture or other entities; and
- (ii) a table showing the relationship between each of the Major Team Members and Proposed Guarantors (if any).

These charts will not be counted towards the page limit for the Executive Summary. The Executive Summary shall be contained in Volume 1.

3.2 Proposer Information, Certifications, and Documents

All materials in this Section 3.2 shall be contained in Volume 1 unless otherwise noted.

If a form required hereunder calls for execution or information concerning a Major Team Member and that Major Team Member is a joint venture, the form must be provided for the joint venture and the individual members of the joint venture; *provided, however*, that execution of the form, if required, on behalf of the joint venture need only be by an authorized signatory of the joint venture.

(a) Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each Major Team Member that will perform or supervise installation and/or construction associated with the Project. If any such entity does not have an industrial safety history for as long as indicated in Form D, Form D is required for such entity for the applicable years, but a statement shall be provided explaining why all years on the form are not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

(b) Key Personnel

The Proposal shall contain copies of resumes for each Key Personnel (which must contain the individual's qualifications and relevant work experience). Resumes shall be contained in an appendix in Volume 1.

The Proposal shall identify the Key Personnel and shall include Form E identifying personnel work assignments, as well as a statement signed by the Proposer and the employer of each designated key person, committing to maintain such individual's availability for and active involvement in the Project. Each individual filling a Key Personnel position will be required to dedicate the full amount of time necessary for the proper prosecution and performance of the Works.

Form E shall be signed by the Proposer and the employer of each of the Key Personnel. Form E shall be appended to the PPA as part of Appendix 1 (*Development Entity's Proposal Commitments*) thereof.

The Proposer may not make any changes in its Key Personnel identified in its SOQ except as provided in ITP Section 2.6(b) (*Changes in Key Personnel*).

(c) Letter Approving Pre-Proposal Submittals

The Proposal shall include the following:

- if the Proposer's organization or Key Personnel have changed since submission of the SOQ, the Proposer shall specifically describe such changes and, if applicable, include a copy of the Department's approval letter provided under sub-sections (a) or (b) (as applicable) of ITP Section 2.6 (*Changes in Proposer's Organization and Key Personnel*).

4. PRELIMINARY PROJECT MANAGEMENT PLAN AND DESIGN-BUILD TECHNICAL SOLUTIONS

The Technical Proposal shall include the following sections:

- (a) Preliminary Project Baseline Schedule;
- (b) Preliminary Management and Administration Plan;
- (c) Preliminary Quality Management Plan;
- (d) Preliminary Operations and Maintenance Management Plan;
- (e) Preliminary Safety Plan; and
- (f) Design-Build Technical Solutions.

The Technical Proposal shall describe the project management philosophy, the plan, and schedule for executing the Project and any related PPA administration, and how Proposer plans to achieve and satisfy the Project requirements.

The Project Management Plan (**PMP**) which will govern the execution of the work, will be consistent with and build upon the Technical Proposal. Each part of the PMP shall include details of internal and external auditing procedures. All commitments and requirements contained in the PMP shall be verifiable in accordance with ISO quality and audit standards.

4.1 Preliminary Project Baseline Schedule

The Technical Proposal shall include:

- (a) a narrative description of the overall approach to scheduling;
- (b) a description of the Proposer's strategy to minimize schedule delays and to minimize impacts of or recover from schedule delays;

- (c) a schedule of anticipated dates for the Project Facility Completion Date for the Parking Facility and each of the other Project Facilities (the **Preliminary Project Baseline Schedule**);
- (d) a summary level Preliminary Project Baseline Schedule and narrative describing (i) the Preliminary Project Baseline Schedule, including the timing of all Governmental Approvals, utility adjustments, design and construction portions of the Project and (ii) the anticipated date of Project Completion;
- (e) a description of Proposer's approach for preparing, controlling and updating the Project Baseline Schedule, for calculating progress performance on a monthly basis, and preparing monthly payment requests;
- (f) a description of Proposer's approach to integrating subcontractor's activities into Proposer's scheduling and reporting system and controlling the performance of the subcontractors; and
- (g) a description of Proposer's approach to managing resources and activities, both those of Proposer and subcontractors, in order to achieve the Project Baseline Schedule, and if necessary to recover schedule slippage.

The Preliminary Project Baseline Schedule shall use a high level critical path method and shall represent Proposer's plan for completing the Work between NTP1 and Project Completion. Proposer's Preliminary Project Baseline Schedule submission shall not limit, modify, or alter the Department's ability to review and approve the Preliminary Project Baseline Schedule in accordance with the Project Documents. The Proposer shall confirm its commitment to respecting the Project delivery timeline set out in the Preliminary Project Baseline Schedule.

The Preliminary Project Baseline Schedule shall include at least the following:

- (i) a narrative which describes the proposed execution of the Work for the Term; and
- (ii) a schedule of activities representing all Governmental Approvals, design, and construction during the design and construction phase for the Project.

The Preliminary Project Baseline Schedule will be appended to the PPA as part of Appendix 1 (*Development Entity's Proposal Commitments*) thereof.

4.2 Preliminary Management and Administration Plan

The Technical Proposal shall include the Preliminary Management and Administration Plan that will be used by the Proposer in connection with the Project. The Preliminary Management and Administration Plan shall describe the project management philosophy, plan, and schedule for executing the Project and any related PPA administration, and how Proposer plans to achieve and satisfy the requirements of the Project Documents. It shall include a description of Proposer's document, cost control, and schedule management systems to be used to control,

review and coordinate the cost and schedule of the Work during the Term, including during design, construction, and maintenance.

(a) **Project Management and Administration Approach**

The Technical Proposal shall provide a description of the proposed approach to managing all project activities during design, construction and maintenance of the Project. The following sections shall address all phases of the Project: design, construction and maintenance.

- (i) Management Structure and Staffing Plan. Describe the proposed overall project management organization for the design, construction, and maintenance of the Project, identifying participating firms/organizations and individuals that will be used to execute the Work and manage the Project. It shall include:
 - (A) an organization chart outlining the structure of Proposer's project management organization for design, construction, and maintenance (including for quality assurance, quality control, and quality acceptance) and a description of the roles allocated, responsibilities, interrelations and Work to be accomplished by each member of the management team and each quality sub-organization, including identified material subcontractors and suppliers (at all tiers); the Project Manager shall oversee all design and construction Work and personnel during the design and construction phase and shall report to the Project Executive (if different from the Project Manager), the Maintenance Manager shall oversee all maintenance Work and personnel and shall report to the Project Manager (or the Project Executive if different from the Project Manager);
 - (B) information describing how each of the Key Personnel involved with design, construction, maintenance will fit into the organization, including a description of each key person's function and responsibility relative to the Project, and indicating the anticipated percent of time that he/she will devote to the Project;
 - (C) qualification and experience required for task managers in each quality sub-organization reporting to the Key Personnel involved with design, construction, and maintenance;
 - (D) information regarding the current and projected workload and backlog of the Proposer's team (including all Major Team Members), and a description of Proposer's plan and overall ability to provide the experienced personnel, equipment, and facilities required to successfully complete all aspects of the Project on a timely basis and within any applicable time frames set forth in the Project Documents.
- (ii) Internal Organization Systems Plan. Describe the organizational systems that will be used by Proposer, and how these systems address the needs of the Project. The description of the internal organization systems shall include:

- (A) a detailed description of how Proposer’s Major Team Members and Key Personnel will work together to provide a unified design, construction, maintenance, and quality approach to all elements of the Work;
- (B) a description of Proposer’s team decision-making process, how internal disputes between team members will be resolved, and how the Proposer will avoid adverse impacts to the Project (cost, schedule, or quality) in the event of such disputes;
- (C) a description of the methods to be used to establish lines of communication and documentation within Proposer’s team, and between the Proposer’s team and the Department, including communication among the quality sub-organizations and management personnel;
- (D) a description of how Proposer intends to interface with the Department, its respective consultants, applicable third parties, and relevant federal, state, and local agencies, including the Stakeholders, and emergency management agencies, including local police, fire departments and ambulance services, as well as school bus services, on all matters including planned transportation and utility infrastructure in the Project area; and
- (E) a description of the quality process for the Project, and how the quality process will function independently of design, construction, and maintenance.

(b) Preliminary Comprehensive Environmental Protection Plan

Describe the management approach to environmental approvals, compliance and permitting that will be used by the Proposer. The Proposer shall:

- (i) confirm the Proposer’s commitment to respecting and complying with NEPA;
- (ii) describe Proposer’s methods aimed to meet its environmental obligations including securing NEPA approvals to the extent required by the PPA, ensuring permits, issues, and commitments associated with Governmental Approvals are integrated into maintenance;
- (iii) identify the environmental commitments, permits, mitigation, potential re-evaluations, and documentation necessary to complete the Project; and
- (iv) identify potential environmental risk and describe the approach to mitigate, eliminate, or reduce those environmental risks.

(c) Preliminary Document and Data Management Plan

The Technical Proposal shall describe the electronic data management approach and systems that will be used for the Project and include at least the following:

- (i) a description of the Proposer's approach to storing, cataloging, maintaining, controlling, accessing, searching, and retrieving all Project-related documents and records in an electronic format;
- (ii) a description of the electronic format that the Proposer will use to maintain and control the Project documents;
- (iii) a description of the Proposer's approach for security and backup of the project documents; and
- (iv) transfer of the data to the Department at the end of the Term.

(d) **Preliminary Risk Management Plan**

The Technical Proposal shall describe the approach to identify, assess, manage, mitigate, and allocate project-specific risks relating to design, construction, delivery, logistics, and maintenance that will be used by the Proposer. The Technical Proposal shall include at a minimum:

- (i) identification of significant risk categories, such as Governmental Approvals including NEPA, resources and resource management, planning, design, utilities, logistics and supply chain management, traffic management, construction, geological conditions, hazardous materials, asset performance management over the Term, maintenance and residual value, inflation, and financing;
- (ii) description of the potential consequences of the identified risks;
- (iii) description of the probability of identified risks;
- (iv) proposed procedures and tools to conduct a risk sensitivity analysis;
- (v) risk-mitigation strategies to eliminate or reduce specific risks; and
- (vi) proposed or desirable allocation of risks among Proposer and its other Major Team Members (if any).

4.3 Preliminary Quality Management Plan

The Technical Proposal shall describe Proposer's approach that will be used for the Project to meet the quality objectives described in the Project Documents, with respect to design, fabrication, construction, and maintenance for the Project, including at least the following:

- (a) For the design quality component, the Technical Proposal shall include:
 - (i) the quality control, quality assurance and quality acceptance activities and procedures in the Project delivery process and how the quality process will be integrated into the design process to effect changes, as necessary;

- (ii) a description of the approach for ensuring the minimization of impacts to Utility Owners;
 - (iii) a description of the approach for all Final Design Documents prepared by Development Entity for Development or Development Entity-Related Entities to be independently reviewed, verified for constructability, completeness, clarity and accuracy, and back-checked;
 - (iv) a description of the design deliverables and a description of the internal process for design reviews;
 - (v) a description of the process for stopping Design Work or elevating an issue;
 - (vi) the procedure for submitting Design Documents;
 - (vii) a description of quality assurance and quality control functions;
 - (viii) the approach to reporting, including relationships;
 - (ix) a description of how the Department's comments will be integrated into the design;
 - (x) a description of how the program will integrate with the Department's oversight and how the Proposer will conform with federal oversight requirements;
 - (xi) a description of how changes will be made to correct design deficiencies;
 - (xii) a description of the approach for incorporating audit findings; and
 - (xiii) a description of how design quality management will be documented.
- (b) For the construction quality component, the Technical Proposal shall include:
- (i) the quality control, quality assurance and quality acceptance activities and procedures in the Project delivery process and how the quality process will be integrated into construction inspections to effect changes, as necessary in construction procedures and performance;
 - (ii) a description of the approach for integrating with design, the control of materials, acceptance testing, inspection and monitoring of construction and fabrication activities, including reporting organization and procedures, methodologies, hold points, rejection procedures, and corrective actions;
 - (iii) a description of the internal processes for preparing and reviewing incident reports, non-conformance reports and noncompliance reports, and how non-compliance issues will be documented and corrected;

- (iv) how the program will integrate with the design activities, the Department's oversight, and all quality-related activities;
 - (v) a description of how the program will integrate with the Department's oversight and how the Proposer will conform with federal oversight requirements; and
 - (vi) a description of how construction quality management will be documented.
- (c) For the maintenance quality component, the Technical Proposal shall include:
- (i) the quality control, quality assurance and quality acceptance activities and procedures in the Maintenance Work and how the quality process will be integrated into the self-monitoring and self-reporting program and inspection and certification program to effect changes, as necessary;
 - (ii) a description of the approach to the self-monitoring and self-reporting program in order to ensure a safe and reliable system while complying with the Maintenance Performance Requirements;
 - (iii) a description of the internal process for preparing and reviewing monthly maintenance reports, incident reports, non-conformance reports, traffic reports and maintenance work reports, how maintenance quality management will be documented, and how non-compliance issues will be documented and corrected;
 - (iv) a description of how the quality process will be integrated into remedial and preventative maintenance inspections and action plans to effect changes, as necessary, in maintenance procedures and performance; and
 - (v) a description of how the Department will be involved and how the Proposer will conform with federal oversight requirements.

4.4 Preliminary Operations and Maintenance Management Plan

The Technical Proposal shall describe the Proposer's technical solutions during the maintenance period and the Proposer's approach to maintenance for the Project, including Proposer's approach to maintenance quality management which will be used by the Proposer.

(a) Internal Organization System

- (i) a description of the proposed overall project management organization relating to maintenance, identifying participating firms/organizations and individuals, which shall include:
 - (A) an organization chart outlining the structure of Proposer's project management organization during the Maintenance Period of the Project. Include a description of the roles allocated, responsibilities, interrelation, and Work to be accomplished by each member of the Proposer's team; and

- (B) details and locations of maintenance contractors, facilities and offices;
- (ii) a description of how Proposer's team members will work together (and how the Proposer will coordinate subcontractors) to provide all aspects of the Maintenance Work; and
- (iii) a description of Proposer's team decision-making process, how internal disputes between team members will be resolved during the Maintenance Period.

(b) Maintenance Management Plan

The Technical Proposal shall include the Preliminary Operations and Maintenance Management Plan that will be used by the Proposer. The Preliminary Operations and Maintenance Management Plan will demonstrate, at a minimum, compliance with the relevant requirements of the PPA with a particular emphasis on how asset performance and maintenance work will be managed, and including in particular:

- (i) a description of the approach for monitoring, inspecting, and evaluating the condition of the Project and self-monitoring and self-reporting processes for identifying and tracking Noncompliance Events and curing Noncompliance Events;
- (ii) a description of the approach for establishing performance target metrics, measurement procedures, threshold values at which Maintenance Work is required, inspection procedures and frequencies and subsequent Maintenance Work to address deficiencies noted in such inspections, for each Element of the Project;
- (iii) a description of the approach for corrective and preventative actions to eliminate or minimize future occurrences of Noncompliance Events;
- (iv) a description of the approach for coordination with the Department and third parties following Emergencies, Incidents, and extreme weather events;
- (v) a description of approach to minimize the risk of harm to the general public and minimize the risk of damage, disturbance, or destruction of Department property and third party property;
- (vi) a description of Proposer's training program for maintenance personnel;
- (vii) a description of the approach used to minimize the environmental impact of proposed maintenance activities;
- (viii) a preliminary list of specialized maintenance equipment proposed for use throughout the life of the Project;
- (ix) a description of the approach to supply and management of maintenance spare parts; and
- (x) a description of the approach for incorporation of audit findings.

(c) Routine and Preventive Maintenance Program

The Technical Proposal shall describe the Proposer's approach to maintenance, including at a minimum:

- (i) a description of the Proposer's approach to preventive maintenance; and
- (ii) a description and schedule of planned maintenance and preventative maintenance that the Proposer will conduct to meet the Performance Requirements.

(d) Renewal Work Program

The Technical Proposal shall describe the approach to Renewal Work, which shall include at a minimum:

- (i) a description of the processes that will be employed for developing a rolling program of major maintenance repairs and replacements, including to the extent anticipated in order to meet the Handback Requirements of the Project Documents; and
- (ii) a preliminary Renewal Work schedule.

The schedule shall be accompanied by a narrative explaining the Proposer's approach to scheduling the Renewal Work and the timing of periodic maintenance activities, rehabilitation activities, and other Renewal Work.

4.5 Preliminary Safety Plan

The Technical Proposal shall include:

- (a) a preliminary Safety Plan that will be used by the Proposer in meeting the requirements of the PPA;
- (b) an industrial safety record on Form D for each Major Team Member that will perform or supervise installation and/or construction Work for the Project, including information for any entity in which such team member holds a controlling interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture and have a controlling interest in such joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D. As used herein, "controlling interest" means the possession, directly or indirectly, of the power to cause the direction of the management of the entity, whether through voting securities, by contract, family relationship or otherwise;
- (c) a description of how Proposer proposes to coordinate with Governmental Entities on issues related to fire, security, and life safety;
- (d) a description of how Proposer will track, document and report safety compliance; and

- (e) a description of how Proposer will incorporate audit findings.

4.6 Design-Build Technical Solutions

The Technical Proposal shall include the Design-Build Technical Solutions that will be used by the Proposer. The Design-Build Technical Solutions will demonstrate, at a minimum, compliance with the design and construction requirements of the Project Documents. The Technical Proposal shall include a narrative presenting the Proposer's overall approach to delivering the Project and more specifically the approach to designing and constructing the Project and its technical solutions.

- (a) The Proposal shall describe in narrative form the proposed conceptual plan for each Project Facility and shall further illustrate such modifications in conceptual designs and schematic drawings, including plan and elevation views and details as necessary to describe the proposed conceptual plan.
- (b) The Technical Proposal shall be based on the designs used to complete Form J (*Cost Breakdown for Design and Construction by Major Component*).

EXHIBIT 3

COMMERCIALIZATION PROPOSAL INSTRUCTIONS

1. GENERAL INSTRUCTIONS

This Exhibit 3 describes the submission format for the Commercialization Proposal and outlines the required information that will comprise the Commercialization Proposal.

The Proposer shall submit the information required by this Exhibit 3 in the organization and format specified herein. The Commercialization Proposal shall be organized in the order listed in Exhibit 5 (except for appendices that may be included in the appropriate volume), and shall be clearly indexed. Each component of the Commercialization Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit 6 unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms. Additional Information to be Provided with Proposal Letter on page 4 of Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other individuals signing forms.

2. FORMAT

The Commercialization Proposal shall be limited to an aggregate of 20 pages if single-sided (or 10 pages if double-sided), plus the executive summary, resumes, appendices, and exhibits containing required forms, graphs, matrices, drawings, and other pertinent data.

3. CONTENTS OF THE COMMERCIALIZATION PROPOSAL

The required contents and organization of the Commercialization Proposal are presented in this Exhibit 3 and summarized in the Proposal checklist provided in Exhibit 5. The Proposer must provide all the information set out in this Exhibit 3. A copy of the checklist for the Commercialization Proposal shall be included in each volume of the Commercialization Proposal. The Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

The Commercialization Proposal shall consist of an Executive Summary and each of the major elements identified in Section 3 below.

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers to become familiar with the Commercialization Proposal. The Executive Summary shall not exceed 5 single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

- (a) a summary of the Commercialization Strategy Plan;
- (b) a summary of the Commercialization Marketing Plan; and
- (c) a summary of the Management Plan, Implementation and Tracking of Sales.

3.2 Commercialization Strategy Plan

The Proposer shall provide a detailed Commercialization Strategy Plan which will include, at a minimum, a detailed narrative discussing the overall strategy for the Commercialization Activities including the mix of retail, lodging and/or other services and/or facilities to be development and managed by the Development Entity, its strategy for phasing various elements of the Commercialization Activities and projected revenue and costs for the Commercialization Activities. The Commercialization Strategy Plan shall also note any potential tenants and/or sublessees that the Proposer has initiated discussions with regarding the Commercialization Activities and any commitments that the Proposer has received from such potential tenants and/or sublessees.

The Commercialization Strategy Plan will also include the Proposer's overall approach to planning the Commercialization Activities, a description of the Proposer's strategy to minimize impacts or recover from schedule delays and a description of Proposer's approach to managing resources and activities, both those of Proposer and subcontractors, in order to achieve the schedule for the Commercialization Activities (the **Commercialization Schedule**). The Proposer shall also provide a summary Commercialization Schedule including the timing of all milestone events.

3.3 Commercialization Marketing Plan

The Proposer shall provide a detailed Commercialization Marketing Plan which will include the Proposer's plan to market the Commercialization Activities to potential tenants and/or sublessees based on the mix of Commercialization Activities set forth in the Commercialization Strategy Plan. The Commercialization Marketing Plan shall also set forth a narrative and analysis of the viability and potential for future Commercialization Activities during the Term.

3.4 Management Plan, Implementation and Tracking of Sales

The Proposer shall describe how it plans to actively manage, implement, and track third-party sales efforts. In this narrative, the Proposer will discuss the following at a minimum:

- (a) Sales plan;
- (b) Sales staffing levels and organization;
- (c) Sales tracking relative to plan; and
- (d) Reporting of third party sales to the Department.

EXHIBIT 4

FINANCIAL PROPOSAL INSTRUCTIONS AND ADMINISTRATIVE MATERIALS

1. GENERAL INSTRUCTIONS

This Exhibit 4 describes the submission format for the Financial Proposal and outlines the required information that will comprise the Financial Proposal.

The Proposer shall submit the information required by this Exhibit 4 in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit 5, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit 6 unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms unless expressly requested by the Proposer and approved by the Department; *provided that* alterations or additions to complete missing information and conforming the forms to the Project Documents shall not be deemed to be substantive.

Evidence of signature authority shall be provided for all individuals signing forms. Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other individuals signing forms.

1.1 Format of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts shall be clearly identified as real or nominal dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between the sum of individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial capacity are to be included in the Financial Proposal.

The required contents and organization of the Financial Proposal are presented in this Exhibit 4 and summarized in the Proposal checklist provided in Exhibit 5. The Proposer is to provide all the information set out in this Exhibit 4. A copy of the checklist for the Financial Proposal shall be included in the Financial Proposal. The Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

The Financial Proposal shall consist of the following components:

- (a) Volume 1 – containing all information and materials required under Section 2 of this Exhibit 4;
- (b) Proposal Security in accordance with Section 3 of this Exhibit 4; and
- (c) Volume 2 – containing all information and materials required under Sections 4 through 8 of this Exhibit 4.

2. ADMINISTRATIVE MATERIALS AND FORMS

All materials in this Section 2 shall be contained in Volume 1 unless otherwise noted.

If a form required hereunder calls for execution or information concerning a Major Team Member and that Major Team Member is a joint venture, the form must be provided for the joint venture and the individual members of the joint venture; *provided, however*, that execution of the form, if required, on behalf of the joint venture need only be by an authorized signatory of the joint venture.

(a) Proposal Letter

The Financial Proposal shall include the Proposal Letter (Form A). The Proposer shall attach to the Proposal Letter evidence of authorization to execute and deliver the Proposal, the PPA and all other documents required to be executed by the Proposer or Development Entity in connection with the PPA and award of the PPA, and shall identify its authorized representative(s). To the extent that the Proposer's team includes a Proposed Guarantor, the Proposal Letter shall also be executed by the Proposed Guarantor.

(b) Non-Collusion Affidavit

The Financial Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion.

Form F shall be signed by the same individual(s) who sign the Proposal Letter.

(c) Conflict of Interest Disclosure

Attention is directed to ITP Section 2.10(b) (*Conflicts of Interest*). The Proposer's attention is also directed to the State Adverse Interest Act and 49 CFR § 18.36(b)(3).

The Proposer, on behalf of itself and all of its Major Team Members, shall voluntarily disclose to the Department, in writing, any fact that may provide it with an unfair competitive advantage and/or potential or actual conflict of interest prior to the Proposal Due Date. The Financial Proposal shall include a certification on Form G by Proposer, on behalf of itself and all entities on the Proposer's team, describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. The Proposer, on behalf of itself and all entities on the Proposer's team, shall complete and deliver a certification on Form G even if

Proposer, on behalf of itself and all entities on the Proposer's team, has nothing to disclose, in which case, Proposer shall so indicate on Form G.

If Proposer made a disclosure regarding conflicts of interest in its SOQ, Proposer shall complete and deliver the Form G certification, appending its RFQ response to Form G.

The Department may preclude or disqualify the Proposer from participation in the procurement if the Proposer is deemed to have an unfair competitive advantage or a conflict of interest under applicable Commonwealth or federal law.

(d) Debarment and Suspension Certification

The Financial Proposal shall include an executed copy of Form K, regarding debarment and suspension of Major Team Members and Proposed Guarantors (if any). The form is to be signed by the Authorized Proposer Representative as defined in ITP Section 2.2(b) (*Identification of Authorized Proposer Representative*).

(e) Confidential Contents Index

A page executed by the Proposer that sets forth the specific items (and the Section and page numbers within the Proposal at which such items are located) that the Proposer deems confidential, trade secret or proprietary information protected by applicable Law. Blanket designations that do not identify the specific information shall not be acceptable and shall be cause for the Department to treat the entire Proposal as public information. Notwithstanding the foregoing, the list required under this Exhibit 4, Section 2(e) is intended to provide input to the Department as to the confidential nature of the Proposer's Proposal, but in no event shall such list be binding on the Department, determinative of any issue relating to confidentiality or a request under the Right-to-Know Law or the P3 Records Provision, or override or modify the provisions of the Right-to-Know Law, the P3 Records Provision or the Department's responsibilities thereunder.

(f) Insurance

Proposer shall submit:

- (i) an executed letter in the form of Form O (with such modifications as shall be necessary to complete missing information or conform to the internal policies and procedures of such consultant or broker) from its independent insurance consultant or broker; and
- (ii) confirmation from an insurance company(ies), broker(s) or agent(s) that it has read the insurance requirements set forth in the PPA and that the entities required to obtain insurance under the PPA have the capability, as of the Proposal Due Date, of obtaining such insurance on the terms required under the PPA.

(g) Information About Major Team Members and Proposed Guarantors

The Proposal shall include a completed chart on Form B-1, including the names, contact information, role in organization, licensing information, and description of work (if applicable) for the Proposer.

The Proposal shall include completed Form B-2 providing information about the Proposer and its team as specified therein.

The Proposal shall include a completed Form B-3 providing information regarding each Major Team Member and Proposed Guarantor (if any), including those included in the Proposer's SOQ.

(h) Responsible Team Member Questionnaire

The Proposal shall include Form C, the Responsible Major Team Member Questionnaire, signed by the Proposer. As noted on the form, it may be provided by the Proposer on its own behalf and on behalf of any other Major Team Members or Proposed Guarantors (if any), or it may be provided by the Proposer on its own behalf, and the other Major Team Members or Proposed Guarantors (if any) may provide their own form individually. The form executed by the Proposer or any Proposed Guarantor shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed individually by any other Major Team Members shall be signed by an authorized representative of such Major Team Member, as applicable, and the Proposal shall include evidence of signature authorization for such individual(s).

(i) Lobbying Certification

The Financial Proposal shall include an executed copy of Form P, regarding lobbying activities of Major Team Members and Proposed Guarantors (if any). The form is to be signed by the Authorized Proposer Representative as defined in ITP Section 2.2(b) (*Identification of Authorized Proposer Representative*).

3. PROPOSAL SECURITY; LIQUIDATED DAMAGES

(a) The Financial Proposal shall include the Proposal Security.

(b) By submitting its Proposal, the Proposer agrees and acknowledges that any draw by the Department on the Proposal Security shall constitute liquidated damages and that such liquidated damages are reasonable in order to compensate the Department for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Project, the Department and the Department's transportation improvement program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, the Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the efforts required to receive and evaluate

proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the Department would incur as a result of the Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, the Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer. The right of the Department to draw on the Proposal Security as provided in this RFP shall be the sole and exclusive remedy of the Department for the damages the Department incurs as a result of the Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal.

- (c) For the avoidance of doubt, the Proposer confirms by submitting its Proposal that, to the extent the Proposer has secured its commitments herein with Proposal Security in the form of Form I-2 (a **Demand Guarantee**), (i) the Proposer has the obligation to pay to the Department the amount specified therein, in cash upon demand by the Department, in the event that the Department would be entitled to draw on Proposal Security pursuant to ITP Section 3.7 (*Forfeiture of Proposal Security*), and (ii) the payment of such amount is guaranteed in accordance with the terms of such Demand Guarantee.

4. FINANCIAL CAPACITY INFORMATION

The Proposer shall clearly identify any material differences between the financial capacity information submitted in the Proposal and the information submitted in the SOQ.

The Financial Proposal shall include the following information for the Proposer and each Proposed Guarantor (if any):

- Audited financial statements (in printed form and on a flash drive) for all periods subsequent to those included in the SOQ, audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS).
- In addition, interim unaudited statements (in printed form and on a flash drive) for the period since the most recent completed fiscal year for the above entities are to be provided.

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

- (a) Financial statement information must include:
- (i) Opinion Letter (Auditor's Report);
 - (ii) Balance Sheet;
 - (iii) Income Statement;

- (iv) Statement of Changes in Cash Flow; and
 - (v) Footnotes audited by a certified public accountant in accordance with GAAP or IFRS.
- (b) Financial statements must meet the following requirements:
- (i) GAAP/IFRS. Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (**U.S. GAAP**) or International Financial Reporting Standards (**IFRS**). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.
 - (ii) U.S. Dollars. Financial statements must be provided in **U.S. dollars**. If financial statements are not available in U.S. dollars, the Proposer must include summaries of the income statements and balance sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.
 - (iii) Audited. Fiscal year-end financial statements must be audited by an independent party qualified to render audit opinions (e.g., Certified Public Accountant). If audited financials are not available for the Proposer and each Proposed Guarantor (if any), the Proposal shall include unaudited financial statements for such entity, certified as true and correct by the chief financial officer or treasurer of the entity (or if neither position exists for the entity, an individual who serves in an equivalent capacity and whose title shall be specified in the certification).
 - (iv) English. Financial Statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be accompanied with the original financial statement information.
- (c) Other information and requirements:
- (i) Proposed Guarantor Letter of Support. If financial statements of a Proposed Guarantor are provided to demonstrate financial capability of the Proposer, a letter from the Proposed Guarantor must be provided confirming that it will guarantee all the obligations of the Proposer under the PPA.
 - (ii) SEC Filings. If the team or any other entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their latest annual report on Form 10-K. For all subsequent quarters, provide a copy of any report filed on Form 10-Q or Form 8-K which has been filed since the latest filed 10-K.

- (iii) Credit Ratings. Appropriate credit ratings must be supplied for Proposer and each Proposed Guarantor (if any), but only to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.
- (iv) Materially Adverse Changes in Financial Condition. A letter from the chief executive officer, chief financial officer or treasurer (or, if neither a chief financial officer nor treasurer exists for an entity, an individual who serves in an equivalent capacity and whose title shall be specified in the certification) for the Proposer and each Proposed Guarantor (if any), either (i) providing information on any materially adverse changes in financial condition since submission of the SOQ and those that are pending, or (ii) certifying that no such materially adverse changes have occurred. Additionally, the Proposer shall be required to provide updated information following the Proposal Due Date about such entities as such information becomes public.

The following list identifies certain items that the Department would consider a materially adverse change in financial condition. This list is intended to be indicative only. At the discretion of the Department, any failure to disclose a prior or pending materially adverse change may result in disqualification from further participation in the selection process. In instances where a materially adverse change has occurred, or is anticipated, the affected entity shall provide a statement describing each materially adverse change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each materially adverse change as certified by the chief financial officer or treasurer (or, if neither position exists for the entity, an individual who serves in an equivalent capacity and whose title shall be specified in the certification). References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of materially adverse changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a materially adverse change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Materially Adverse Changes

- (A) An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;

- (B) A decrease in tangible net worth of 10% or greater of shareholder equity;
 - (C) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;
 - (D) A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;
 - (E) Inability to meet material conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or expects to require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
 - (F) The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either:
 - (i) incurred a net operating loss;
 - (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or
 - (iii) implemented a restructuring/reduction in salaried personnel exceeding 10% of its workforce or involving the disposition of assets exceeding 10% of the then shareholder equity; and
 - (G) Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition since submission of the SOQ or may be pending for the next reporting period.
- (v) Off-Balance Sheet Liabilities. A letter from the certified public accountant, chief financial officer, or treasurer (or, if neither a chief financial officer nor treasurer exists for an entity, an individual who serves in an equivalent capacity and whose title shall be specified in the letter) for each entity for which financial information is submitted, identifying all off-balance sheet liabilities in excess of \$25 million dollars in the aggregate.

The information required under this Exhibit 4, Section 4 shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposal (i.e. Proposer or Proposed Guarantor). Financial statements shall be provided in electronic, searchable PDF or Microsoft Word format, in addition to “hard-copy” submissions as part of the Financial Proposal. In the event that financial statements

are provided in a PDF format, the PDF files may not be secured, locked, or password-protected.

5. FINANCIAL PLAN

(a) Executive Summary

The executive summary (**Executive Summary**) shall be written in a non-technical style and shall contain sufficient information for reviewers with both financial and non-financial backgrounds to become familiar with Proposer's Financial Proposal and its ability to satisfy the financial requirements of the Project. The Executive Summary shall not exceed 5 single-sided pages. It shall, at a minimum, include an outline of the Proposer's plan of finance and overall financial strategy for the Project and a summary of the Financial Plan.

(b) Range of Financing Sources

The Proposer shall describe its Financial Plan and provide supporting evidence of the commitments from the Equity Members.

(c) Details of Equity Source and Equity Member Letters

For each equity source (if any), the Proposer shall provide:

- (i) Identity of the investors. In cases where the equity is contributed by a fund please identify fund managers and general characteristics of the fund investors and the percentage of participation;
- (ii) The amount of funds the equity provider is to commit (e.g., shareholder capital, shareholder loans), the source/type of the funds, the timing of such subscription and any potential risks due to other equity commitments; and
- (iii) The terms and conditions of the subscription, including dividend rights attaching to shares, the extent to which funds are committed and the length of time funds will remain in the project vehicle.

Sufficient documentation must be submitted that provides assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding. The Proposal shall include certified copies of the board minutes or other written evidence of approval of the contents of the Financial Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval.

(d) Schedule for Commercial and Financial Close

The Financial Plan shall include a detailed schedule for completing activities and deliverables necessary to reach commercial and financial close. The schedule shall reflect the Proposer's estimated date for commercial and financial close.

(e) **Revenue Management Information**

The Proposer shall provide information with respect to the management of revenues for the Project including detailed supporting information with respect to Proposer's projections for its base case revenues.

6. FINANCIAL MODEL

(a) **General Financial Model Requirements**

The Proposer shall submit a Financial Model for the Project. The format of the Financial Model is at the discretion of the Proposer, but must comply with the requirements set out in this Section 6.

(b) **Financial Model Structure and Supporting Documents**

(i) Financial Model Format Requirements

The Financial Model shall be compatible with Microsoft Excel Version 2007 for Windows XP or later. The file name of each Financial Model shall clearly identify the Financial Model version and shall change with each successive version of the Financial Model issued. Where an additional Financial Model based on the same version is issued (i.e. where the additional Financial Model is generated by changing input cells only) the file name shall reflect that the same version is being used.

The Financial Model shall contain as a minimum the following on a title page in a separate worksheet:

- (A) Model name;
- (B) Proposer's name;
- (C) Model author;
- (D) Version;
- (E) Date (Financial Model date and run date);
- (F) Key to formats (e.g. yellow for inputs); and
- (G) Key to sheet names (e.g., "Inputs" for input sheets, "Calculations" for calculation sheets etc.).

Each output sheet of each Financial Model shall identify the Financial Model version and the date of issue.

No password protection may be included in the Financial Model (including password protected macros, or hidden rows columns, cells or sheets). Each Financial Model shall be formatted to facilitate printing.

(ii) Financial Model Consistency

Each Financial Model shall have time periods across the columns and calculations down the rows. This shall be consistent in all sheets of such Financial Model. There are two areas where consistency is most important:

- (A) Columns – a column shall be used for the same period in each of its occurrence in model worksheets; and
- (B) Rows – a row shall contain only one formula, copied across all columns. Exceptions may only be made when appropriate according to modeling best practices, in which case such cells should be marked in a manner noting them as unique formulae.

(iii) Financial Model Integrity

All calculations shall be coded to provide exactly what they purport to represent, i.e. no balancing figures. Use of a macro is acceptable provided it is appropriately documented in the model and the Assumptions Book.

(iv) Financial Model Linearity

Each Financial Model shall calculate in one pass (i.e., no circular references).

(c) **Financial Model Organization**

(i) Elements of Financial Model. Each Financial Model shall have three distinct elements:

- (A) **Inputs** – which shall include data and assumptions but no calculations;
- (B) **Calculations** – individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculations sheets; and
- (C) **Outputs** – no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

(ii) Financial Model Inputs and Specifications. The Financial Model shall be developed with reference to the following key inputs and assumptions:

- (A) **Project Facility Completion Dates**. The Project Facility Completion Dates set in the RFP shall be met and coordinated with the schedule provided in the Technical Proposal;

- (B) **Currency.** Each Financial Model shall be in U.S. dollars;
- (C) **Periods.** Each Financial Model shall be constructed to include key financial statements and ITP-required outputs to conform to monthly periods until the end of construction and semi-annual or quarterly periods from the end of construction until two years after the end of the Term;
- (D) **Revenues.** All parking rate assumptions shall be clearly stated in each Financial Model, with supporting detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual revenue assumptions. While aggregate revenue estimates may be used as an input within the Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between demand and revenues;
- (E) **Expenditure.** All cost assumptions shall be clearly stated in each Financial Model, with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual cost assumptions. The costs should be in real dollar values. Where aggregate costs are used as an input within a Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between costs and the price of the service to the Department;
- (F) **Contingencies and Profit Margins.** Each Financial Model shall make clear where contingencies and profit margins have been included so that the financial evaluation can be based on an appropriate understanding of the levels of risk assumed by the Proposer;
- (G) **Macroeconomic Assumptions.** All macroeconomic assumptions used within each Financial Model shall be clearly stated;
- (H) **Inflation.** If inflation indices other than CPI are used within the model (e.g., to inflate wages) then these shall be clearly stated as separate inputs;
- (I) **U.S. GAAP or IFRS.** Each Financial Model shall be compliant with U.S. GAAP or IFRS;
- (J) **Taxation Rates.** Each Financial Model shall use the appropriate rates for tax in force at the submission date; and
- (K) **Tax Allowances.** Each Financial Model shall clearly show the assumptions regarding tax allowances being claimed.

- (iii) Financial Model Outputs. Each Financial Model shall be provided and will include:
- (A) Outputs of each Financial Model that must identify the Financial Model version and the date of issue.
 - (B) A summary sheet which includes a sources and applications of funds statement, graphs of cover ratios, and a profile of cash balances confirming the financial feasibility of the Project;
 - (C) Financial statements (cash flow, sources and uses of funds, balance sheet and profit and loss) in nominal terms for each period;
 - (D) A schedule outlining calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;
 - (E) Cash cascade in order of seniority (consistent with the PPA);
 - (F) Internal rate of return on a committed and cash basis on pre- and post-tax equity and quasi-equity/subordinated debt in both real and nominal terms and a blended equity return, incorporating all sub-senior debt finance;
 - (G) Weighted average cost of capital over the term of the PPA; and
 - (H) The impact of all claims for tax allowances made by the Proposer.
- (iv) Financial Model Functionality and Sensitivity Analysis. Each Financial Model is to provide the ability to run sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:
- (A) gross revenue;
 - (B) net revenue;
 - (C) inflation rates;
 - (D) interest rates;
 - (E) costs during construction;
 - (F) operating costs;
 - (G) routine maintenance costs; and
 - (H) life cycle maintenance costs.

Running a sensitivity analysis only shall require change to a single model input. The Department anticipates that when an input variable is changed, the effect will flow through the model to all

relevant outputs (subject to re-optimization of the Financial Model through the use of a macro, if applicable). Major variable cost items must dynamically adjust when running sensitivities.

Additional sensitivities/scenarios:

- Breakeven case scenarios (Senior DSCR or Global DSCR of 1.00x) for the following sensitivities:
 - Decrease in revenues;
 - Increase in operating costs;
 - Increase in routine maintenance costs;
 - Increase in life cycle maintenance costs; and
- A sensitivity that reflects a cash-only view of the Financial Model that conforms to applicable general accepted accounting principles in the United States of America, consistently applied with no non-cash adjustments included. For purposes of the sensitivity, cash shall be defined as (1) cash on hand, (2) demand deposits with banks or financial institutions, (3) other kinds of accounts that have the general characteristics of demand deposits, and (4) short-term, highly liquid investments that are both readily convertible to known amounts of cash and are within three months of their maturity and that present insignificant risk of changes in value because of changes in interest rates within the three months. For purposes of the sensitivity, the cash date shall be defined as the last date of each calendar year quarter or year ending June 30.

(d) Financial Model Assumptions Book

The Proposer shall submit an Assumptions Book describing fully all the assumptions underlying the financial projections within each Financial Model and at a minimum include the items listed below:

- (a) Dates as listed in the RFP documents;
- (b) Assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs and revenue for each year;
- (c) Forecast expenditures during construction;
- (d) Forecast routine maintenance costs and operations costs, presented in prices at the Proposal Due Date;
- (e) Forecast life cycle maintenance costs, presented in prices at the Proposal Due Date;

- (f) Depreciation assumptions – split between the various categories of fixed asset; and
- (g) All financing assumptions, including but not limited to drawdowns, capital repayment moratoria, repayment schedules and maturity, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).

Any third-party reports developed to support the revenue and cost estimates used in developing the financial offer shall be appended to the Assumptions Book.

(e) **Financial Model Instructions Guide**

The Proposer shall provide details of how each Financial Model operates. Such details shall include identifying all worksheets and describing their respective functions.

The instructions shall include step by step instructions on the procedure to run and to optimize each Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions shall also explain how to print the Financial Model.

7. FINANCIAL PRICE PROPOSAL

Proposer shall complete Form H (*Financial Price Proposal*) in accordance with the instructions therein.

8. COST BREAKDOWN BY MAJOR COMPONENT

The Proposer shall also provide Form J (*Cost Breakdown for Design and Construction by Major Component*) populated with the design and construction costs by major component.

9. VERIFICATION

The Proposer shall satisfy itself as to the revenues, payments, costs and tax consequences of entering into a PPA and becoming the Development Entity. The Department makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, payments, costs or the consequences of federal, state, local or other income tax treatment of Development Entity under the PPA.

EXHIBIT 5

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Section 1 -Technical Proposal Components		
The Proposer shall follow the order of this Technical Checklist in its submission. A referenced copy of this document shall be submitted with the Technical Proposal.		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
Volume 1		
A. Executive Summary		
Executive Summary (Exclude price information)	No forms are provided	Exhibit 2, Section 3.1
B. Proposer Information, Certifications and Documents		
Authorization Documents	Form A	Exhibit 2, Section 1
Industrial Safety Record for Proposer and Major Team Members and Key Personnel Resumes	Form D	Exhibit 2, Section 3.2(a)
Personnel Work Assignment Form and Commitment of Availability	Form E	Exhibit 2, Section 3.2(b)
Letter(s) Approving Pre-Proposal Submittals	No forms are provided	Exhibit 2, Section 3.2(c)
C. Volume 1 Appendices		
Key Personnel Resumes	No forms are provided	Exhibit 2, Section 3.2(b)
Volume 2		
D. Preliminary Project Management Plan		
Preliminary Project Baseline Schedule	No forms are provided	Exhibit 2, Section 4.1
Preliminary Management and Administration Plan	No forms are provided	Exhibit 2, Section 4.2
Preliminary Quality Management Plan	No forms are provided	Exhibit 2, Section 4.3
Preliminary Operations and Maintenance Management Plan	No forms are provided	Exhibit 2, Section 4.4
Preliminary Safety Plan	No forms are provided	Exhibit 2, Section 4.5
Design-Build Technical Solutions	No forms are provided	Exhibit 2, Section 4.6
E. Volume 2 Appendices		
Conceptual Designs for Project	No forms are provided	Exhibit 2, Section 4.6

Section 2 -Financial Proposal Components

The Proposer shall follow the order of this Financial Checklist in its submission. A referenced copy of this document shall be submitted with the Financial Proposal.

Financial Proposal Component	Form (if any)	ITP Section Cross-Reference
A. Documents and Forms		
Proposal Letter	Form A	Exhibit 4, Section 2(a)
Stipend Agreement	Form N	Section 5.3(b)(i)
Waiver and Release re: Stipend	Form L	Section 5.3(a)(iii)
Non-Collusion Affidavit	Form F	Exhibit 4, Section 2(b)
Conflict of Interest Disclosure Statement	Form G	Exhibit 4, Section 2(c)
Debarment and Suspension Certification	Form K	Exhibit 4, Section 2(d)
Lobbying Certification	Form P	Exhibit 4, Section 2(i)
Independent Insurance Broker/Consultant Letter	Form O	Exhibit 4, Section 2(f)(i)
Insurance	No forms are provided	Exhibit 4, Section 2(f)(ii)
Identification of Major Team Members and Proposed Guarantors (if any)	Form B-1	Exhibit 4, Section 2(g)
Information About Proposer's Organization	Form B-2	Exhibit 4, Section 2(g)
Information About Major Team Members and Identified Contractors	Form B-3	Exhibit 4, Section 2(g)
Responsible Proposer and Major Team Member Questionnaire	Form C	Exhibit 4, Section 2(h)
Confidential Contents Index	No forms are provided	Exhibit 4, Section 2(e)
B. Financial Capacity Information for the Proposer and each Proposed Guarantor (if any)		
Audited Fiscal Financial Statements for All Periods Subsequent to SOQ and Unaudited Interim Financial Statements	No forms are provided	Exhibit 4, Section 4
Proposed Guarantor Letters of Support (as required)	No forms are provided	Exhibit 4, Section 4(c)(i)
Most Recent SEC 10-K and 10-Q reports and any 8-Ks filed since the SOQ (For Publicly Held Companies)	No forms are provided	Exhibit 4, Section 4(c)(ii)
Credit Ratings	No forms are provided	Exhibit 4, Section 4(c)(iii)
Letter Regarding Materially Adverse Changes in Financial Condition	No forms are provided	Exhibit 4, Section 4(c)(iv)

Letter Disclosing All Material Off-Balance Sheet Liabilities	No forms are provided	Exhibit 4, Section 4(c)(v)
C. Financial Plan		
Executive Summary	No forms are provided	Exhibit 4, Section 5
Equity Information and Equity Commitment Letters	No forms are provided	Exhibit 4, Section 5
D. Financial Model		
Financial Model	No forms are provided	Exhibit 4, Section 6
E. Financial Price Proposal		
Financial Price Proposal	Form H	Exhibit 4, Section 7
F. Cost Breakdown by Major Component		
Cost Breakdown by Major Component	Form J	Exhibit 4, Section 8
G. Proposal Security		
Proposal Letter of Credit	Form I-1	Section 3.4(d)
Proposal Demand Guarantee	Form I-2	Section 3.4(d)
Section 3 -Commercialization Proposal Components		
The Proposer shall follow the order of this Commercialization Checklist in its submission. A referenced copy of this document shall be submitted with the Commercialization Proposal.		
Commercialization Proposal Component	Form (if any)	ITP Section Cross-Reference
A. Executive Summary		
Executive Summary	No forms are provided	Exhibit 3, Section 3.1
B. Commercialization Strategy Plan		
Commercialization Strategy Plan	No forms are provided	Exhibit 3, Section 3.2
Commercialization Schedule	No forms are provided	Exhibit 3, Section 3.2
C. Commercialization Marketing Plan		
Commercialization Marketing Plan	No forms are provided	Exhibit 3, Section 3.3
D. Management Plan, Implementation and Tracking of Sales		
Management Plan, Implementation and Tracking of Sales	No forms are provided	Exhibit 3, Section 3.4

EXHIBIT 6

REQUIRED FORMS

Form A	Proposal Letter
Form B-1	Identification of Major Team Members and Proposed Guarantors (if any)
Form B-2	Information About Proposer's Organization
Form B-3	Information About Major Team Members and Identified Contractors
Form C	Responsible Team Member Questionnaire
Form D	Industrial Safety Record for Major Team Members
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	Conflict of Interest Disclosure Statement
Form H	Financial Price Proposal Form
Form I-1	Form of Proposal Security – Irrevocable Standby Letter of Credit
Form I-2	Form of Proposal Security – Proposal Demand Guarantee
Form J	Cost Breakdown for Design and Construction by Major Component
Form K	Debarment and Suspension Certification
Form L	Form of Waiver and Release re: Stipend
Form M	RFP Comment Form
Form N	Form of Stipend Agreement
Form O	Letter from Independent Insurance Broker/Consultant
Form P	Lobbying Certification

FORM A

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

**AMTRAK STATION IMPROVEMENT PROJECT
KEYSTONE CORRIDOR – MIDDLETOWN STATION
INSTRUCTIONS TO PROPOSER**

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: [●]

The undersigned (**Proposer**) submits this proposal (this **Proposal**) in response to that certain Request for Proposal (as amended, the **RFP**) issued by the Pennsylvania Department of Transportation (the **Department**), an agency of the Commonwealth of Pennsylvania, dated July 27, 2018 relating to the Amtrak Station Improvement Project – Keystone Corridor – Middletown Station (the **Project**), as more specifically described herein and in the documents provided with the RFP (the **RFP Documents**). Capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for the Department supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertake(s), subject to Section 3.6(b) (*Withdrawal and Proposal Validity Period*) of the ITP, to keep this Proposal open for acceptance initially for 120 days after the Proposal Due Date, without unilaterally varying or amending its terms and without any Major Team Member withdrawing or any other change being made in the composition of the Major Team Members forming part of the Proposal, without first obtaining the prior written consent of the Department, in the Department’s sole discretion

If the Department properly draws on Proposer’s Proposal Security in accordance with the terms, and subject to the conditions of the RFP Documents, and the financial institution or surety providing the Proposal Security refuses to honor the Department’s proper draw thereon, by its signature(s) below, the undersigned assumes liability to the Department for the entire stated amount of the Proposal Security.

If selected by the Department, Proposer agrees to do the following:

- (i) enter into negotiations with the Department solely as provided in Section 4.11 (*Finalization*) of the ITP;
- (ii) enter into the PPA without varying or amending its terms (except to fill in blanks and include information that the form PPA indicates is required or includable by the Department from the Proposal or to include modifications mutually agreed to by the Department and the Proposer pursuant to such negotiations) and satisfy all other conditions to award of the PPA; and

- (iii) perform its obligations as set forth in the ITP and PPA, including compliance with all commitments contained in this Proposal.

The following individual(s) is/are authorized to enter into negotiations with the Department on behalf of the Proposer in connection with this RFP, the Project and the PPA: _____.

Our Proposal comprises the following:

- (A) Technical Proposal enclosed herewith;
- (B) Commercialization Proposal enclosed herewith; and
- (C) Financial Proposal enclosed herewith.

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by Development Entity, and (after reasonable investigation), Proposer has not identified in the RFP Documents any internal inconsistencies, errors or omissions; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted a reasonable investigation in preparing this Proposal (without prejudice to any rights of the Development Entity under the Project Documents); and that it has notified the Department in writing of any deficiencies or errors in or omissions from any RFP Documents or other documents provided by the Department and of any unusual site conditions observed by the Proposer prior to the date hereof.

Proposer represents that all statements made in the SOQ previously delivered to the Department (as amended and resubmitted) are true, correct and accurate in all material respects as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that the Department is not bound to award the PPA to the Proposer.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer except for the amount of any stipend that the Department may be requested to pay Proposer in accordance with the Stipend Agreement and ITP Section 5.3 (*Stipend Payment*). Proposer acknowledges that if it has executed the Stipend Agreement (the form of which, for the avoidance of doubt, is set out in Form N (*Form of Stipend Agreement*) to the ITP), Proposer has, in doing so, irrevocably elected to accept the stipend offered for the right to use such work product.

Subject to Proposer's rights under the Right-to-Know Law and 74 Pa.C.S. § 9111, Proposer consents to the Department's disclosure of its Proposal pursuant to 74 Pa.C.S. § 9111 to any Persons in compliance therewith, after award and execution of the PPA by the Department. Proposer acknowledges and agrees to the disclosure terms of the ITP and that observers and

individuals may conduct reviews on behalf of any Stakeholder identified in Section 1.3 of the ITP with respect to the successful Proposal in accordance with the terms of the ITP. Proposer expressly waives any right to contest such disclosures other than for material breach of the ITP, the Project Documents, or applicable Law.

Proposer agrees that the Department will not be responsible for any errors, omissions, inaccuracies, inconsistencies or incomplete statements in this Proposal.

[Proposed Guarantor acknowledges receipt of a copy of the Department’s letter to Proposer dated [●] identifying the Proposed Guarantor, and agrees that it is the Proposed Guarantor for all purposes of this RFP. Proposed Guarantor acknowledges and agrees that it will be a condition precedent to the occurrence of the “Commercial Closing Date” under the PPA that Proposed Guarantor execute and deliver to the Department a guaranty substantially in the form attached as Schedule 22 to the PPA, and that Proposed Guarantor will execute and deliver to the Department such guarantee.]¹

Proposer acknowledges the procurement protest procedures set forth in Section 6 (*Protests*) of the ITP and agrees that if it files a protest of this procurement or award of a PPA hereunder and that protest is denied or is otherwise unsuccessful, Proposer shall be liable to the Department for the Department’s reasonable and documented costs incurred to defend against or resolve the protest, including reasonable legal and consultant fees and costs, and any unavoidable damages sustained by the Department as a consequence of the protest.

This Proposal shall be governed by and construed in all respects according to the laws of the Commonwealth of Pennsylvania.

Proposer’s business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

*[insert appropriate signature block from following pages]*²

¹ **Note to Proposer:** To be included if a Proposed Guarantor is named.

² **Note to Proposer:** Insert a signature block for the Proposer and an additional signature block for each Proposed Guarantor.

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for attorney-in-fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney-in-Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

With respect to authorization of execution and delivery of the Proposal and validity thereof, if Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information.

FORM B-1

IDENTIFICATION OF MAJOR TEAM MEMBERS AND PROPOSED GUARANTORS

Name of Major Team Member/Proposed Guarantor (address, representative, phone, fax, email)	Role in Proposer's team	Description of Work/Services To Be Performed By Major Team Member or Proposed Guarantor (as applicable)

The above information is true, correct and accurate.

Executed _____, 2018.

_____ (Signature)

_____ (Name Printed)

_____ (Title)

_____ (Proposer)

FORM B-2

INFORMATION ABOUT PROPOSER'S ORGANIZATION

1. Name of Proposer: _____
 Name of Development Entity: _____
2. Type of entity: Proposer: _____
 Development Entity: _____
3. Proposer's address: _____

 Telephone _____ Facsimile _____

4. How many years has Proposer, Development Entity, Proposed Guarantor (if any) and each Major Team Member been in its current line of business and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5. Under what other or former names have Proposer, Development Entity, Proposed Guarantor (if any) and Major Team Members operated?

Proposer: _____ : _____
 _____ : _____
 _____ : _____
 _____ : _____
 _____ : _____

6. Proposer shall review its SOQ previously submitted to the Department and list below any Key Personnel and other key staff members and their relevant experience that have been approved by the Department since the submission of the SOQ. Except as updated by the following information, Proposer's SOQ is hereby incorporated as if set forth in full and Proposer represents and warrants to the Department that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information or omit to state a material fact necessary in order to make the information not misleading. Attach separate sheets if necessary.

7. List all Pennsylvania licenses held by Proposer, Development Entity and any Major Team Member. Attach copies of all Pennsylvania licenses. Attach a separate sheet if necessary.

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing declaration is true, correct and accurate.

Executed _____, 2018.

(Signature)

(Name Printed)

(Title)

(Proposer)

Name of Major Team Member/Contractor/Proposed Guarantor	Form of Entity (partnership, joint venture, LLC, corporation, etc.)	Entities with Ownership Interest	Percentage of Ownership Interest
<i>Ex: Contractor AB, JV</i>	<i>Joint venture</i>	<i>Contractor A</i>	<i>60%</i>
		<i>Contractor B</i>	<i>40%</i>

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Team Members resulting in an agreement to enter into any contracts with respect to the Project, except for those listed above. Proposer agrees that it will follow applicable Project Documents requirements with respect to Contractors.

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing declaration is true, correct and accurate.

Executed _____, 2018.

 (Signature)

 (Name Printed)

 (Title)

 (Proposer)

FORM C

RESPONSIBLE TEAM MEMBER QUESTIONNAIRE

PROPOSER'S NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. QUESTIONS

Each Major Team Member and each Proposed Guarantor (if any) shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Additional documentation should be attached as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the Proposal and require its rejection.

The term **affiliate** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the relevant Major Team Member or Proposed Guarantor as a joint venturer or partner and not to activities of other joint venturers or partners not involving the relevant Major Team Member or Proposed Guarantor), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate that has a proprietary interest in such entity:

- (a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- (b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- (c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- (d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- (e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Pennsylvania governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e *et seq.*); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Pennsylvania law.

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- (f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Pennsylvania Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- (g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

Explain the circumstances underlying any “yes” answers for the aforementioned questions on separate sheets attached hereto.

2. VERIFICATION/DECLARATION

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing declaration is true, correct and accurate.

Executed _____, 2018.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

FORM D

**INDUSTRIAL SAFETY RECORD
FOR MAJOR TEAM MEMBERS**

PROPOSER’S NAME: _____

NAME OF MAJOR TEAM MEMBER: _____

ROLE OF MAJOR TEAM MEMBER: _____

This form shall be filled out separately and provided for each Major Team Member of Proposer’s team that has undertaken work in the United States and will perform or supervise construction and installation Work for the Project, and including information for any entity affiliated with such team member that has undertaken work in the United States. Information must be provided with regard to all construction, installation and integration work undertaken in the United States (including the Commonwealth of Pennsylvania) by the entity, with separate statistics relative to the Commonwealth of Pennsylvania. For Major Team Members that are members of joint ventures, information as to the joint venture shall be provided as though 100% of the results were for the listed participant. Proposer may be requested to submit additional information or explanation of data that the Department may require for evaluating the safety record.

The term affiliate means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the relevant Major Team Member as a joint venturer or partner and not to activities of other joint venturers or partners not involving the relevant Major Team Member) with respect to such entity, that within the past five years have engaged in business or investment in the United States. The information sought for affiliates is limited to the projects and matters that have occurred within the current calendar year (2018) and within the past five calendar years in the United States.

	2013	2014	2015	2016	2017	2018
1. Total Hours Worked (in thousands): Nationwide: Pennsylvania:						
2. Number of fatalities: * Nationwide: Pennsylvania:						
3. Number of lost workdays: * Nationwide: Pennsylvania:						

4.	Number of lost workdays* cases: Nationwide: Pennsylvania:						
5.	Number of injury/illness* cases: Nationwide: Pennsylvania:						
6.	Number of days of* restricted work activity due to injury/illness: Nationwide: Pennsylvania:						
7.	Incidence Rate** Lost Workday Cases Nationwide: Pennsylvania: Days Lost Nationwide: Pennsylvania:						
8.	Worker's Compensation Experience Modifier: Nationwide: Pennsylvania:						

* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000/Total Hours Worked.

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the information is true and accurate within the limitation of those records.

_____ Name of Company (Print)		_____ Signature
_____ Address		_____ Title
_____ City	_____ State and ZIP Code	_____ Telephone Number

(or international address, if applicable)

Date:

FORM E

PERSONNEL WORK ASSIGNMENT FORM AND COMMITMENT OF AVAILABILITY

Name of Proposer: _____

Key Personnel Assignment	Name of Individual Assigned and Employer

Proposer's Name: _____ (the Proposer)

Proposer's Signature: _____

Employer's Name: _____ (the Employer)

Employer's Signature: _____ *[Note: duplicate as necessary to ensure all employers execute]*

COMMITMENT OF AVAILABILITY

Understanding the Department's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the Project, Proposer and Employer commit that if Proposer is awarded the PPA, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the Project Documents.

Proposer's Name: _____

Signed: _____

Printed Name: _____

Title: _____

Date: _____

Employer's Name: _____

Signed: _____

Printed Name: _____

Title: _____

Date: _____

FORM F

NON-COLLUSION AFFIDAVIT

STATE OF _____)
)SS:
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

- (a) _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.
- (b) The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly colluded, conspired, connived or agreed with anyone to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer, or to fix any overhead, profit or cost element included in the Proposal, , or to secure any advantage against the Department or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.
- (c) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
- (d) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- (e) [*Name of Firm*], its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows: []

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ____ day of _____, 2018.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

[Duplicate or modify this form as necessary so that it accurately describes the Proposer.]

FORM G

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer's attention is directed to the Pennsylvania State Adverse Interest Act, codified at 71 P.S. § 776.1 *et seq.*, and 49 CFR 18.36(b)(3) regarding conflicts of interest.

The Proposer is advised that in accordance with Section 2.10(b) (*Conflicts of Interest*) of the Instructions to Proposer, certain firms will not be allowed to participate on the Proposer's team for the Project because of their work with the Department in connection with the Project procurement and document preparation.

1. Disclosure

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of each Major Team Member, each Proposed Guarantor (if any) and their respective consultants and proposed subcontractors, chief executives, directors, and key project personnel) that may result in, or could be viewed as, a conflict of interest, as described in 49 CFR 18.36(b)(3), in connection with this RFP. If no disclosure is necessary, indicate "None."

For the avoidance of doubt, Proposer should disclose (a) any current contractual relationships with the Department, (b) any past, present, or planned contractual or employment relationships with any Department member, officer, or employee and (c) any other circumstances that might be considered to create a financial interest in the contract by any Department member, officer, or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2018
Date

FORM H
FINANCIAL PRICE PROPOSAL FORM

[Please see separate document for the form.]

FORM I-1

FORM OF PROPOSAL SECURITY – IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:	[●]
PLACE FOR PRESENTATION OF DRAFT IN PROGRESS:	(Name and Address of Bank/Branch—MUST be a Bank/Branch in Philadelphia, Pennsylvania, unless draws by fax are permitted without subsequent presentation in person)
APPLICANT:	[●]
BENEFICIARY:	PENNSYLVANIA DEPARTMENT OF TRANSPORTATION 400 North Street – 5 th Floor, Harrisburg, PA 17120-3643 Attention: [●]
LETTER OF CREDIT NUMBER:	[●]
PLACE AND DATE OF ISSUE:	[●]
AMOUNT:	\$1,000,000
EXPIRATION DATE:	<u><i>[Must be 120 days following the Proposal Due Date, or if such date is not a Business Day, the next succeeding Business Day]</i></u>

Issuer hereby issues this Irrevocable Standby Letter of Credit (this **Letter of Credit**) in favor of the Pennsylvania Department of Transportation for any sum or sums in the sum of up to **One Million United States Dollars (\$1,000,000)** pursuant to the Request for Proposal for the Pennsylvania Department of Transportation Amtrak Station Improvement Project – Keystone Corridor – Middletown Station (RFP Solicitation No. [●]) (such amount, the **Stated Amount**). Funds under this Letter of Credit are available by draft at sight drawn on Issuer. Any draft under this Letter of Credit shall identify this Letter of Credit by the name of Issuer, and the Letter of Credit number, amount, and place and date of issue, and the Department shall certify to Issuer that the Department is entitled to draw on this Letter of Credit.

This Letter of Credit shall be honored by Issuer if presented at [[●]—Name & Address of Bank/Branch—MUST be a Bank/Branch in Philadelphia, Pennsylvania, unless draws by fax are permitted without subsequent presentation in person] on or before [*120 days following the Proposal Due Date or if such date is not a Business Day, the next succeeding Business Day*] (the **Expiration Date**). The obligations of Issuer hereunder are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by [*Name of Applicant*] under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against [*Name of Applicant*]. [*Name of Applicant*] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. This Letter of Credit shall terminate on the earlier of (i) the close of business on the Expiration Date and (ii) the date on which Issuer has honored one or more draws in the full amount of the Stated Amount. This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a **Fax Drawing**) *provided, however*, that a Fax Drawing will not be effectively presented until

Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary’s presentment by electronic mail to the electronic mail address provided to Issuer in the Fax Drawing.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 (**ISP98**), as interpreted under the laws of the Commonwealth of Pennsylvania, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Letter of Credit (**Proceedings**), we irrevocably:

- (a) submit to the exclusive jurisdiction of any Commonwealth of Pennsylvania court or U.S. federal court sitting in the Commonwealth of Pennsylvania; and
- (b) waive any objection that we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

Issuer:	
By:	
Name:	[●]
Title:	[●]
	(Authorized Signatory of Issuer)

*** Please instruct your bank to have the Letter of Credit issued in the above format in “Draft” form and emailed to the Authorized Department Representative (at the contact information provided in Section 2.2(a) (*Authorized Department Representative*) of the ITP) for approval **PRIOR** to issuance in “Original” form. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.** If you are in need of further assistance, please contact the Authorized Department Representative. ****

FORM I-2

FORM OF PROPOSAL SECURITY – PROPOSAL DEMAND GUARANTEE

PLACE OF ISSUANCE: [Name and Address of Bank/Branch—MUST be a Bank/Branch in Philadelphia, Pennsylvania (**the Place of Issuance**)].

NAME AND ADDRESS OF OBLIGEE: Pennsylvania Department of Transportation (Obligee), P.O. Box 3643, 400 North Street, 5th Floor, Harrisburg, PA 17120-3643.

Reference is made to that certain Request for Proposal for the Pennsylvania Department of Transportation Amtrak Station Improvement Project – Keystone Corridor – Middletown Station Through a Public-Private Partnership, issued by the Pennsylvania Department of Transportation (RFP Solicitation No. P318R02), as amended (the **Request for Proposal**). Capitalized terms used but not defined herein shall have their respective meanings set forth in the Request for Proposal.

We have been informed that [NAME OF PROPOSER OR DEVELOPMENT ENTITY] (the **Principal**) is submitting a Proposal in response to the Request for Proposal and that such Proposal is required by such Request for Proposal to be supported by Proposal Security (which may be in the form of this demand guaranty (this **Guarantee**)).

At the request of the Principal, we, [NAME OF GUARANTOR], (**Guarantor**) hereby irrevocably undertake to pay you, as Obligee, at the Place of Issuance any sum or sums not exceeding in total the amount of **One Million United States Dollars (\$1,000,000)** (the **Guaranteed Sum**) upon receipt by us of your demand in writing and your written statement (in the demand) stating the Principal is in breach of one or more of its commitments made pursuant to its Proposal and the respect in which the Principal is in breach of such commitments.

Any demand of payment must contain your signature(s), which must be authenticated by your lawyers or by a notary public. The authenticated demand and statement must be received by us at the Place of Issuance on or before the occurrence of any of the following events, upon which this Guarantee shall expire, be null and void and shall be returned to us; otherwise this Guarantee shall remain in full force and effect, and the Guaranteed Sum shall be forfeited to the Obligee as liquidated damages, and not as a penalty, upon receipt by the Guarantor of said demand and statement:

- (a) Principal's receipt of written notice from the Obligee that the Commercial Closing Date has occurred or that the procurement of the Project pursuant to the Request for Proposal has been cancelled; or
- (b) except as expressly provided otherwise in the Request for Proposal or agreed by the Obligee and the Principal in writing, Principal's performance of its obligations set forth in Section 1.7(c) of the ITP of the Request for Proposal.

To the extent not inconsistent with the express provisions hereof, this Guarantee is subject to the Uniform Rule for Demand Guarantees, published as number 458 by the International Chamber of

Commerce (URDG 458), as interpreted under the laws of the Commonwealth of Pennsylvania, and shall, as to matters not governed by URDG 458, be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

Dated _____ Dated _____

PRINCIPAL [Insert Name of Development] GUARANTOR [Insert Name of Guarantor]
Entity]

By: _____ By: _____

Title: _____ Title: _____

FORM J
COST BREAKDOWN FOR DESIGN AND CONSTRUCTION BY MAJOR COMPONENT

[Please see separate document for the form.]

FORM K

DEBARMENT AND SUSPENSION CERTIFICATION

The undersigned Proposer certifies the following on behalf of itself, its Proposed Guarantors (if any) and all other Major Team Members as described in the Proposal:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) 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;
- (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) 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.

Where Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its Proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

Date: _____

Proposer: _____

Signature: _____

Title: _____

FORM L

FORM OF WAIVER AND RELEASE RE: STIPEND

WORK PRODUCT TRANSFER OF RIGHTS AND RELEASE OF CLAIMS

The undersigned certifies and agrees on behalf of Proposer, its Major Team Members and all other members of the Proposer's team, that:

[check ALL of the following boxes]

- It has reviewed the provisions set forth in this Work Product Transfer of Rights and Release of Claims and expressly recognizes and agrees to be bound by the provisions set forth herein.
- It (a) has received and agreed to an offer from the Pennsylvania Department of Transportation (the **Department**) for the payment of a stipend in an amount, under certain circumstances, and subject to the terms and conditions of the Stipend Agreement and the Instructions to Proposer issued by the Department on [●] (as amended, the **ITP**), in respect of the Project, and (b) is eligible to receive all or a portion of the total amount available for a stipend from the Department for work product received by the Department pursuant to the Stipend Agreement and the ITP.
- It has reviewed the provisions set forth in this Work Product Transfer of Rights and Release of Claims and hereby, upon receipt of the amount of the stipend as prescribed under the Stipend Agreement and Sections 1.8(d) (*Ownership of Proposal; Applicability of Right-to-Know Law and P3 Records Provision*) and 5.3 (*Stipend Payment*) of the ITP, (a) grants to the Department the non-exclusive, non-revocable, worldwide right to make or use Proposer's intellectual property and work product submitted by or on behalf of Proposer to the Department during the procurement and in connection with the Proposal (including all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, patents, inventions, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer for the purpose of developing its Proposal during this procurement process), but excluding any patents or trademarks of the Proposer developed independently of the procurement or the Proposal (including any Proprietary IP), (b) waives all rights to protest the procurement of the Project; and (c) fully, unconditionally and irrevocably releases and waives all claims against the Department arising out of or relating to the use of the Proposer's intellectual property and work product (excluding any Proprietary IP).

Upon Proposer's receipt of any stipend amount, and in consideration thereof, the Department shall have all right to, and be entitled to use, all intellectual property and work product submitted by Proposer to the Department during the procurement (including concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) and any intellectual property and work product contained in its Proposal (but excluding any patents or trademarks of the Proposer developed independently of the procurement or the Proposal), if submitted, without

any further compensation or consideration to Proposer. The foregoing rights of the Department shall not apply to intellectual property and work product that is expressly required to be returned to the Proposer under the RFP (including any Proprietary IP). Upon Proposer's receipt of any stipend amount, this right shall extend to allow the Department to use such intellectual property and work product in the performance of its functions; *provided, however*, that no representation or warranty is made as to fitness for particular purpose. Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

Proposer: _____

Date: _____

Signature: _____

Title: _____

FORM M
RFP COMMENT FORM

Proposer: _____

Comment Sheet _____ of _____ Sheets

No.	Document and Section Number	Category	Comment(s)	Reserved for the Department Response

FORM N

FORM OF STIPEND AGREEMENT

THIS STIPEND AGREEMENT is made and entered into as of this _____ day of 2018, by and between the Pennsylvania Department of Transportation, a state administrative department of the Commonwealth of Pennsylvania (**the Department**) and _____, a _____ (**Proposer**), with reference to the following facts:

- (A) Proposer has been shortlisted to submit a Proposal for the Pennsylvania Department of Transportation Amtrak Station Improvement Project – Keystone Corridor – Middletown Station (**the Project**), and wishes to submit a Proposal in response to the Request for Proposal for the Project issued by the Department on July 27, 2018 (as amended, the **RFP**). Capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.
- (B) The RFP provides for the execution and delivery of a Stipend Agreement between the Department and the Proposer.

NOW, THEREFORE, the Proposer hereby agrees as follows:

1. SERVICES AND PERFORMANCE

- (a) By executing this Stipend Agreement, Proposer has irrevocably elected to accept payment of a stipend subject to the terms hereof and as set forth in the RFP.
- (b) The Department hereby retains Proposer to actively participate in good faith in the procurement process and to prepare a responsive and compliant Proposal in response to the RFP. Responsiveness and compliance shall be determined pursuant to the ITP.
- (c) Subject to the provisions of the RFP Documents, the Department shall have an unrestricted right to use all intellectual property and work product submitted by or on behalf of Proposer to the Department during the procurement and in connection with the Proposal (including all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, patents, inventions, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer for the purpose of developing its Proposal during this procurement process) but excluding any Proprietary IP. The right of the Department to make or use the Proposer's intellectual property and work product shall be royalty-free. The Proposer acknowledges that the Stipend Agreement contains sufficient consideration for the Department's manufacture and use of Proposer's intellectual property and work product. The foregoing rights of the Department shall not apply to work product that is expressly required to be returned to the Proposer under the RFP (including any Proprietary IP).
- (d) The foregoing right of the Department shall not apply to patents or trademarks developed by the Proposer independently of the procurement or the Proposal.

2. TERM

Unless otherwise provided herein, the provisions of this Stipend Agreement shall remain in full force and effect until the later to occur of (a) 12 months from the date of the execution of this Stipend Agreement or (b) the date payment due and payable hereunder is received by Proposer. Work pursuant to this Stipend Agreement is authorized to commence effective upon the execution date of this Stipend Agreement, and the work product is due and must be delivered to the Department no later than the earlier of (i) 15 days after delivery to Proposer of notice by the Department of the cancellation by the Department of this procurement or (ii) the Proposal Due Date.

3. COMPENSATION AND PAYMENT

- (a) Except as set forth in this Stipend Agreement and Section 5.3 (Stipend Payment) of the ITP, the Proposer (the Proposer) shall be eligible to receive a stipend in an amount not to exceed \$200,000 (the **Maximum Stipend Amount**) if:
- (i) the Department cancels the procurement after the issuance of this RFP but on or before the Proposal Due Date; or
 - (ii) the Proposer has submitted a timely and responsive Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents but the Proposer and the Department do not execute the PPA.
- (b) If the Proposer shall be eligible to receive a stipend as a result of:
- (i) any event described in Section 3(a)(i) hereof, then the Proposer shall be eligible to receive the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid or outstanding to be paid by the Proposer, in preparing a Proposal and otherwise participating in the procurement in an amount not to exceed the Maximum Stipend Amount; *provided that* the Proposer submits to the Department an invoice, waiver and release and the documentation of out-of-pocket development costs as further described in Section 3(c) hereof (which shall be subject to the Department's reasonable review and concurrence) (x) no earlier than the date of notice from the Department that the procurement has been cancelled on or before the Proposal Due Date and (y) no later than 90 days after the date of such notice; provided further that amounts that may be considered for payment under this Section 3(b)(i) may include such amounts that were incurred from and after the notification of the shortlisted Proposer following the RFQ; or
 - (ii) any event described in Section 3(a)(ii) hereof, then the Proposer shall receive 100% of the Maximum Stipend Amount; *provided that* (A) a timely and responsive Proposal shall be considered unsuccessful if the Department cancels the procurement without award after the Proposal Due Date and (B) the Proposer submits to the Department an invoice, waiver and release and the documentation of out-of-pocket development costs as further described in Section 3(c) hereof

(which shall be subject to the Department's reasonable review and concurrence) (x) no earlier than the earlier of: (I) the date of notice from the Department that the Commercial Closing Date has occurred and (II) the date of notice from the Department that the Commercial Closing Date has not occurred and that the procurement has been cancelled, and (y) no later than 90 days after the date of such notice; *provided that* in no event shall the Proposer that becomes the Development Entity be entitled to receive any payment pursuant to this Section 3(b)(ii).

- (c) Any invoice to be submitted by the Proposer shall be in the form as set forth in Exhibit 1 hereto and shall be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against the Department, in the form attached to the ITP as Form L.
- (d) Any stipend payable pursuant to this Stipend Agreement and Section 5.3 (*Stipend Payment*) of the ITP shall become due and payable 60 days after the date the Proposer submits to the Department the invoice, waiver and release described in Section 3(c) hereof.
- (e) Except as provided in this Stipend Agreement and Section 5.3 (*Stipend Payment*) of the ITP, the Proposer shall not be entitled to reimbursement of any of its costs in connection with this RFP.
- (f) If the Department awards the PPA to Proposer and the Commercial Closing Date occurs, Proposer will not be entitled to compensation hereunder, including, without limitation, payments under Section 3(a) hereof.
- (g) Proposer shall be eligible to receive a stipend hereunder only to the extent permitted by this Stipend Agreement and Section 5.3 (*Stipend Payment*) of the ITP.

4. INDEMNITIES

- (a) Proposer agrees that it will indemnify, defend, and hold harmless the Department and all of the Department's board members, officers, agents, representatives, employees, successors and assigns from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including reasonable and documented attorneys' fees and costs) asserted, incurred, suffered or awarded as a result of or that relate to any third-party claims, suits, actions, allegations or proceedings arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law or breach of contract by Proposer, its Proposed Guarantors (if any), Major Team Members, other team members or their respective agents, employees, or representatives arising out of or relating to the work product performed hereunder or in connection with or contained in the Proposal, whether direct or indirect, and whether to any person or property to which the Department or said parties may be subject, except that the Proposer shall not be liable under this Section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence or willful misconduct of the Department or any of its board members, officers, agents, representatives or employees.

The foregoing indemnity shall survive the expiration or termination of this Stipend Agreement and shall expressly apply to and include all third-party claims, suits, actions or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights and unauthorized use. Notwithstanding the foregoing, except for such matters covered by the preceding sentence, the indemnity shall not cover use by the Department of such work product performed under this Stipend Agreement after award of the PPA.

- (b) Proposer's obligation to indemnify, defend, and pay for the defense or, at the Department's option, to participate and associate with the Department in defense of any claim and any related settlement negotiations, shall be triggered by the Department's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding sole negligence or willful misconduct of the Department or any of its board members, officers, agents, representatives or employees shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by the Department. The Department's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.
- (c) For purposes of this Section 4, **third party** means any Person (as defined in the PPA) other than an Indemnified Party (as defined in the PPA) and Proposer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

5. COMPLIANCE WITH LAWS

- (a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to the Department during this procurement process, are, upon their receipt by the Department, the property of the Department and are subject to the Right-to-Know Law.
- (b) Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Stipend Agreement.
- (c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Stipend Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Stipend Agreement.

6. ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement without the Department's prior written consent, in its sole discretion;

provided that this Stipend Agreement may be assigned to the special purpose vehicle formed by the Proposer for purposes of the Project without the prior written consent of the Department but upon written notice to the Department. Any assignment of this Stipend Agreement without the required consent of the Department shall be null and void and may, in the Department's sole discretion, disqualify Proposer from further consideration for the procurement process and the Project.

The Department may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement (a) without the Proposer's consent, to any Person that succeeds to the governmental powers and authority of the Department, and (b) to others with the prior written consent of Proposer. Where consent is required but not given, any assignment of this Stipend Agreement shall be null and void.

7. RIGHT-TO-KNOW LAW; P3 RECORDS PROVISION

- (a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (the **Right-to-Know Law**) and 74 Pa.C.S. § 9111 (the **P3 Records Provision**, and collectively, with Right-to-Know Law, the **Disclosure Law**) applies to this Stipend Agreement.
- (b) If the Department needs the Proposer's assistance in any matter arising out of the Disclosure Law related to this Stipend Agreement, it shall notify the Proposer.
- (c) Upon written notification from the Department that it requires the Proposer's assistance in responding to a request under the Disclosure Law for information related to this Stipend Agreement that may be in the Proposer's possession constituting, or alleged to constitute, a public record in accordance with the Right-to-Know Law (**Requested Information**), the Proposer shall:
 - (i) provide the Department, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Proposer's possession arising out of this Stipend Agreement that the Department reasonably believes is Requested Information and may be a public record under the Disclosure Law; and
 - (ii) provide such other assistance as the Department may reasonably request, in order to comply with the Disclosure Law with respect to this Stipend Agreement.
- (d) If the Proposer considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the Disclosure Law or any other applicable Law, or other information that the Proposer considers exempt from production and/or disclosure under the Disclosure Law or any other applicable Law, the Proposer must notify the Department and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Proposer explaining why the requested material is exempt from public disclosure under the Disclosure Law or any other applicable Law.

- (e) The Department will rely upon the written statement from the Proposer in denying a Disclosure Law request for the Requested Information unless the Department determines that the Requested Information is clearly not protected from disclosure under the Disclosure Law. Should the Department determine that the Requested Information is clearly not exempt from disclosure, the Proposer shall provide the Requested Information within five (5) business days of receipt of written notification of the Department's determination.
- (f) If the Proposer fails to provide the Requested Information within the time period required by these provisions, the Proposer shall indemnify and hold the Department harmless for any damages, penalties, costs, detriment or harm that the Department may incur as a result of the Proposer's failure, including any statutory damages assessed against the Department.
- (g) The Department will reimburse the Proposer for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the Disclosure Law if the fee schedule is inapplicable.
- (h) The Proposer may file a legal challenge to any Department decision to release a record to the public with the Office of Open Records, or in the Pennsylvania courts; however, the Proposer shall indemnify the Department for any legal expenses incurred by the Department as a result of such a challenge and shall hold the Department harmless for any damages, penalties, costs, detriment or harm that the Department may incur as a result of the Proposer's failure, including any statutory damages assessed against the Department, regardless of the outcome of such legal challenge. As between the parties, the Proposer agrees to waive all rights or remedies that may be available to it as a result of the Department's disclosure of Requested Information pursuant to the Disclosure Law.
- (i) The Proposer's duties relating to the Disclosure Law are continuing duties that survive the expiration of this Stipend Agreement and shall continue as long as the Proposer has Requested Information in its possession.

8. PROPOSER RESPONSIBILITY

- (a) The Proposer certifies, in writing, for itself and its Contractors required to be disclosed or approved by the Commonwealth, as of the date of its execution of this Stipend Agreement, that neither the Proposer, nor any such Contractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Proposer cannot so certify, then it agrees to submit, along with the Stipend Agreement, a written explanation of why such certification cannot be made.
- (b) The Proposer also certifies, in writing, that as of the date of its execution of this Stipend Agreement it has no known tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

- (c) The Proposer's obligations pursuant to these provisions are ongoing from and after the effective date of the Stipend Agreement through the termination date thereof. Accordingly, the Proposer shall have an obligation to inform the Commonwealth if, at any time during the term of the Stipend Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Proposer, any of its Contractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) days of the date of suspension or debarment.
- (d) The failure of the Proposer to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Stipend Agreement with the Commonwealth.
- (e) The Proposer agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Proposer's compliance with the terms of this or any other agreement between the Proposer and the Commonwealth that results in the suspension or debarment of the Proposer. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. The Proposer shall not be responsible for investigative costs for investigations that do not result in the Proposer's suspension or debarment.
- (f) The Proposer may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
Fax No: (717) 787-9138

9. MISCELLANEOUS

- (a) Proposer and the Department agree that Proposer, its Proposed Guarantors (if any), Major Team Members and other team members and their respective employees are not agents or representatives of the Department as a result of this Stipend Agreement.
- (b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- (c) This Stipend Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Stipend Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

- (d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Stipend Agreement is by the courts held to be illegal or in conflict with any law of the Commonwealth, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Stipend Agreement did not contain the particular part, term, or provisions to be invalid.
- (e) This Stipend Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Proposer consents to the jurisdiction of any court of the Commonwealth and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Proposer agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
- (f) The Proposer agrees that the Department may set off the amount of any state tax liability or other obligation of the Proposer or its subsidiaries to the Commonwealth against any payments due to the Proposer under any agreement with the Department.
- (g) This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- (h) Proposer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the Department or the State, as set forth in Public Official and Employee Ethics Act, codified at 65 Pa.C.S. § 1101 *et seq.*, and 62 Pa.C.S. § 2301 *et seq.* If Proposer is not familiar with these ethical requirements, Development Entity should refer any questions to the Pennsylvania State Ethics Commission, or visit the Pennsylvania State Ethics Commission website at <http://www.ethics.state.pa.us/portal/server.pt/community/home/8992>. If Proposer or its agents violate any applicable ethical standards, the Proposer may be subject to penalties under applicable Laws.
- (i) The parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Stipend Agreement shall be the Commonwealth Court of Pennsylvania sitting in the City of Harrisburg, Pennsylvania.
- (j) During the term of this Stipend Agreement, the Proposer understands and agrees that, pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 *et seq.*, no individual with a disability shall, on the basis of the disability, be excluded from participation in this Stipend Agreement or from activities provided for under this Stipend Agreement. As a condition of accepting and executing this agreement, the Proposer agrees to comply with the “General Prohibitions Against Discrimination,” 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors. The Proposer shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands,

suits, and actions brought by any party against the Commonwealth as a result of the Proposer's failure to comply with the provisions of this clause (j).

- (k) The Department's exposure to liability (other than Workers' Compensation Liability) is governed by the dictates of Act 1978-152, as amended, commonly known as the Sovereign Immunity Tort Claims Act. Under said Act, sovereign immunity was reaffirmed but waived in nine (9) specific areas of liability. Eligible claims or suits against the Department, its officials or employees within the waived areas may be settled up to \$250,000, each person and/or \$1,000,000, each occurrence. The Department has established a tort claims self-insurance program to handle these claims or suits that is administered by the Bureau of Risk and Insurance Management, Department of General Services in close relationship with the Office of the Attorney General.

IN WITNESS WHEREOF, this Stipend Agreement has been executed and delivered as of the day and year first above written.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

[PROPOSER]

By: _____

Name: _____

Title: _____

EXHIBIT 1

FORM OF INVOICE

Reference is made to that Instructions to Proposer related to the Request for Proposal for the Pennsylvania Department of Transportation Amtrak Station Improvement Project – Keystone Corridor – Middletown Station (**Project**) through a Public-Private Transportation Partnership Agreement issued on July 27, 2018 (as amended, the **ITP**) by the Pennsylvania Department of Transportation (**the Department**).

Reference is also made to that certain Stipend Agreement (the **Stipend Agreement**) dated as of _____, 2018, by and between the Department and [_____] (**Proposer**).

Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

[Proposer to select, as appropriate, from the two paragraphs below]

Paragraph 1

Pursuant to Section 5.3(a)(ii)(A) (*Maximum Stipend Amount*) of the ITP and the Stipend Agreement, Proposer hereby requests payment of [_____] U.S. dollars (\$[_____]), reflecting the lesser of (a) \$[_____] and (b) the full amount of Proposer’s actual, reasonable and documented out-of-pocket development costs actually incurred and paid by the Proposer with respect to preparing Proposer’s Proposal. Attached to this invoice are (i) an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against the Department, in the form of Form L to the ITP, and (ii) supporting documentation for such costs. Proposer represents and warrants to the Department that Proposer is eligible for payment pursuant to Section 5.3(b) (*Eligibility*) of the ITP.

Paragraph 2

Pursuant to Section 5.3(a)(ii)(B) (*Maximum Stipend Amount*) of the ITP and the Stipend Agreement, Proposer hereby requests payment of 100% of the Maximum Stipend Amount. Attached to this invoice are (a) an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against the Department, in the form of Form L to the ITP, and (b) supporting documentation for out-of-pocket development costs actually incurred and paid by the Proposer with respect to preparing Proposer’s Proposal. Proposer represents and warrants to the Department that (i) Proposer submitted to the Department a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents and (ii) Proposer represents and warrants to the Department that Proposer is eligible for payment pursuant to Section 5.3(b) (*Eligibility*) of the ITP.

Proposer acknowledges that submission of this invoice, and payment by the Department of any amount in response to this invoice, is in all respects subject to the terms and conditions of the ITP, Stipend Agreement and the other RFP Documents.

CERTIFICATION

The undersigned Proposer hereby certifies that (a) the Proposer is entitled to payment of the stipend pursuant to the terms of the ITP and the Stipend Agreement, (b) the irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against the Department, in the form of Form L to the ITP, has been executed and delivered to the Department and is in full force and effect, and (c) that this entire invoice and all other supporting documentation are each, and collectively, true, correct and complete.

PROPOSER: _____

By: _____

Name: _____

Title: _____

EXHIBIT 2
REQUIRED WORK PRODUCT

FORM O

LETTER FROM INDEPENDENT INSURANCE BROKER/CONSULTANT

[●], 2018

Attn: [●]
Director, Office of Policy and Public Private Partnerships
Pennsylvania Department of Transportation
P.O. Box 35345
400 North Street, 5th Floor
Harrisburg, PA 17120-3643

Re: [_____][*Insert Proposer Name*] Proposal with respect to Insurance Policies, Amtrak Station Improvement Project – Keystone Corridor – Middletown Station (the **Project**)

Dear Mr. [●],

Reference is made to that certain Request for Proposal for the Project issued by the Pennsylvania Department of Transportation (**the Department**) on July 27, 2018 (as amended, the **RFP**, and its “Instructions to Proposer,” the **ITP**). Capitalized terms not otherwise defined herein shall have the meanings set forth in the current RFP version of the Public-Private Transportation Partnership Agreement, to be entered into between [_____] (as **Development Entity**) and the Department (the **PPA**), in accordance with the RFP.

As part of the Proposal by [_____][*Insert Proposer Name*] (**Proposer**), and with respect to Section 4.2(c)(v) of the ITP, Section 2(f) (*Insurance*) of Exhibit 4 (*Financial Proposal Instructions*) to the ITP, and this Form O to the ITP, I hereby confirm that:

- (a) the Proposal (with respect to Insurance Policies) conforms to the requirements of the PPA;
- (b) I am a licensed insurance [**broker**]/[**consultant**] [*Proposer to use correct term for signatory’s role/title*] in the Commonwealth of Pennsylvania. I have been retained by Proposer to serve as its independent insurance [**broker**]/[**consultant**] with respect to the Project and for the purposes of making this confirmation. I have been duly authorized by Proposer and my firm to make such confirmation to the Department, recognizing that the Department intends to rely on the same for purposes of evaluation of the Proposal and for application under the PPA.

Very truly yours,

[_____] [*Title-Insurance Broker/Consultant*]

FORM P

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

SIGNATURE: _____

TITLE: _____

DATE: _____