

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

RFP SOLICITATION #: 5315R1

REQUEST FOR PROPOSALS

**CNG FUELING FOR TRANSIT AGENCIES PARTNERSHIP PROJECT
THROUGH A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT**

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

December 14, 2015

Addendum #1: January 11, 2016

Addendum #2: January 22, 2016

Addendum #3: January 29, 2016

**Pennsylvania Department of Transportation
400 North Street
Harrisburg, Pennsylvania 17120**

ALLEN & OVERY

Allen & Overy LLP

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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: CNG Fueling for Transit Agencies Partnership Project)

1. INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (**RFP**) is issued by the Pennsylvania Department of Transportation (the **Department**), an administrative department of the Commonwealth of Pennsylvania (the **Commonwealth**), to seek competitive proposals (each, a **Proposal** and collectively, **Proposals**) to enter into a Public-Private Transportation Partnership Agreement (**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 those proposers shortlisted on January 16, 2015 (each, a **Proposer** and collectively, the **Proposers**), based on the Department's evaluation of Statements of Qualification (**SOQs**) delivered to the Department on or before December 23, 2014, in response to the Request for Qualifications for the Project issued on November 24, 2014 (as amended, the **Request for Qualifications** or **RFQ**).

Proposers must comply with these Instructions to Proposers during the procurement and in their Proposals. Proposals 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):

- (a) make CNG fuel and fueling infrastructure conveniently accessible to Transit Agencies in a cost effective manner that complies with all applicable federal, state and local law requirements and does not negatively impact transit operations;
- (b) reduce Transit Agencies' cost of fuel and risk of supply interruptions, and mitigate cost fluctuations;
- (c) make safety upgrades to existing CNG Maintenance and Storage Facilities that will need to accommodate CNG vehicles;
- (d) train Transit Agency employees in the safe, efficient and reliable operation of the CNG Fueling Station Facilities and enable Transit Agencies to benefit from the Development Entity's proven CNG expertise;
- (e) obtain access to current, reliable technology to support the Project, with periodic upgrades;
- (f) stimulate non-Transit Agency demand for CNG from other governmental and private fleets; and

- (g) establish consistencies in operational and safety requirements for CNG Fueling Station Facilities across the Transit Agencies participating in the Project.

1.3 The 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:

- (a) Federal Transit Administration (**FTA**);
- (b) United States Department of Transportation (**USDOT**) Secretary's Office;
- (c) each Transit Agency
- (d) any political subdivision of the Commonwealth or local government body or locality within the Commonwealth that has an interest in the Project; and
- (e) environmental, regulatory or permitting agency.

1.4 Project Overview

(a) Scope of Work

The Scope of Work for the Project includes:

- Designing, demolishing, constructing, financing, operating, and maintaining the CNG Fueling Station Facilities;
- Upgrading the CNG Maintenance and Storage Facilities to ensure they are CNG Ready;
- Receiving CNG supplied by the Department at each Project Site or each Mother Station from which CNG tanks will be delivered to the relevant Project Sites;
- Performing the CNG Commercialization Activities (sales of CNG to Third Party Customers through CNG Fueling Station Facilities on Transit Agency owned properties);
- Providing back office services in connection with the operations and maintenance of the CNG Fueling Station Facilities and CNG Commercialization Activities; and
- Financing each of the foregoing.

Each Proposer will submit a fixed price for the Scope of Work described above at the Proposal Due Date.

At all Project Sites, the CNG Fueling Station Facilities will consist of one or more CNG Fueling Islands including protective weather canopy and lighting, screening of CNG storage tanks, fuel management and tracking system, fencing and all ancillary-support systems.

At certain locations additional infrastructure (the **CNG Equipment Compound**) will be required. This CNG Equipment Compound may contain gas dryer(s), particulate filter(s), CNG compressor skid(s), CNG-buffer and dispensing systems, CNG piping, electrical distribution and motor control, programmable control system and related equipment,

At locations where a CNG Equipment Compound is not required, CNG may be supplied to the CNG Fueling Islands by mobile fueling units trucked in periodically from a Mother Station.

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

- *Vehicle Replacement Schedule and Estimated Fuel Use* – Spreadsheet with each transit agency vehicle replacement schedule to CNG vehicles. Spreadsheet also includes fuel use estimated per year starting in 2015 and continuing for 20 years;
- *Conceptual Site Plans* – Site layouts illustrating conceptual level compressor station, agency fueling island and public fueling island with possible traffic circulation;
- *Site Environmental Summary* – summary of previous environmental findings and compliance;
- *Utility Contact Information* – A list of natural gas and electrical utility provider for each site. This table also includes preliminary utility information related to estimated distance to gas and electric from site and basic utility size and capacity.

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

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

Four Transit Agencies, Centre Area Transit Authority (**CATA**), York Area Transit Authority (**YORK**), Crawford Area Transportation Authority (**CRATA**) and the Erie Metropolitan Transit Authority (**EMTA**), are currently renovating their CNG Maintenance and Storage Facilities to make them CNG compliant. In addition, Capital Area Transit (**CAT**), Port Authority of Allegheny County (**PAAC**) and Dubois, Falls Creek, Sandy Township Joint Transportation Authority (**DuFast**) will construct new CNG compliant facilities at new sites. Therefore, modifications to the CNG Maintenance and Storage Facilities at these agencies are not part of the Scope of Work.

(b) **Environmental Matters**

Important environmental and permitting matters related to the Project are set forth in the PPA and the Technical Provisions. In general, and without limitation of terms set forth in the PPA, the Technical Provisions, or any other Project Document, the Work at each Project Site (other than the Project Sites in respect of the Port Authority of Allegheny County in Pittsburgh and Capita Area Transit in Harrisburg) is expected to have been qualified by the Department prior to

the Commercial Closing Date for a “categorical exclusion” set forth in 23 CFR Part 771.18(c) for purposes of the National Environmental Policy Act of 1969, as amended (NEPA).

(c) **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 Financial 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 Financial 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) The Proposer MEP bid process:
 - (A) Proposers are advised that the Development Entity will be required to follow the below process in bidding its MEP subcontracts for the Project.
 - I. 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 Deputy Secretary for Public Works for Department review and approval within ten (10) days of final design approval. The Proposer may not pre-qualify HVAC, plumbing and electrical subcontractors.
 - II. 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 proposals must be included in these subcontracts.

- III. At a minimum, the Development Entity's bidding process will be required to include the following for each HVAC, plumbing, and electrical package:
1. 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' web page for the Project.
 2. The Development Entity shall hold a public pre-bid meeting where all interested parties are invited.
 3. There shall be question/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.
 4. 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.
 5. 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.
 6. 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.
- IV. 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 again 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.

- V. 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.
- VI. 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.
- VII. 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.
- VIII. 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 Proposals

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 Proposers. Except as may be expressly provided otherwise in the Project Documents, (a) the Disclosed Information is not mandatory or binding, and (b) Proposers are 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 any 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 a Proposer's design solutions, technical solutions or construction means and methods. Proposers shall use or not use the Disclosed Information at their 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, structures or bridge design with respect to any Project Site, (y) the preparation of their Proposals, 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, proposers 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
First One-on-One Meeting	February 2 and 3, 2015

Second One-on-One Meeting	March 11 and 12, 2015
Third One-on-One Meeting (Commercial)	April 14 and 15, 2015
Fourth One-on-One Meeting (Technical)	April 28 and 29, 2015
Pre-Proposal Technical Solutions Submittal	May 29, 2015
One-on-One Meetings re: Pre-Proposal Technical Solutions	July 8 and 9, 2015
Issuance of First Industry Review Draft of RFP Documents	July 27, 2015
Deadline for Proposer Comments/Questions on Draft of RFP Documents	August 21, 2015
Commercial/Technical One-on-One Meetings	September 8 through 10, 2015
Department responses to Proposer Comments/Questions on Draft RFP Documents	September 10
Commercial/Technical One-on-One Meetings	October 14 through 15, 2015
Last date for Issuance of Draft Final RFP	October 30, 2015
Last date for submittal of Pre-Proposal Submittals contemplated by Section 2.11(a) (<i>Changes in Proposer's Organization</i>) and Section 2.11(b) (<i>Changes in Key Personnel</i>)	November 9, 2015
Commercial/Technical One-on-One Meeting	December 1 through 3, 2015
Last date for submittal of Pre-Proposal Submittals not required to be submitted by earlier date hereunder	December 4, 2015
Last date for Proposers Comments/Questions regarding Draft Final RFP	December 9, 2015
Issuance of Final RFP	December 14, 2015
Last Date for Proposers to ask questions or seek clarification regarding the Final RFP	January 9, 2016
Issuance of Final RFP Addendum #1	January 11, 2016
Technical Proposal Due Date	January 14, 2016
Issuance of Final RFP Addendum #2	January 22, 2016
Financial Proposal Due Date	February 4, 2016

Anticipated Announcement of Preferred Proposer	February 19, 2016
Commercial Closing Deadline (unless extended pursuant to Section 1.7(c) (<i>Commercial Closing Deadline</i>))	90 days after announcement of Preferred Proposer

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 completed Technical Proposal shall be submitted and delivered in a sealed container no later than 11am on Thursday January 14, 2016. The completed Financial Proposal and completed Commercialization Proposal shall each be submitted and delivered in sealed containers no later than 11am on Thursday February 4, 2016. The Proposals are to be delivered to the Department at the following address:

Public Private Partnerships Office
 Pennsylvania Department of Transportation
 P.O. Box 35345
 400 North Street, 8th Floor
(5th floor reception if hand delivered)
 Harrisburg, PA 17120-3545
 Attention: Dale Witmer

(c) **Commercial Closing Deadline**

If any Proposer is selected as the Preferred Proposer for negotiation, finalization and execution of the PPA, such 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 Preferred Proposer pursuant to Section 5.1(b) (*Documents To Be Delivered by Preferred 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 Proposals

(a) **Proposal Contents**

As used in this procurement, the term Proposal means a 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 Minimum Guaranteed Revenue and 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 a 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**

Proposers should note that portions of the Preferred 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 Preferred 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**

Each 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 their patents, inventions, concepts, ideas, processes, methods or know-how used by the Proposer or its affiliates in the course of their 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). In the event that the Proposer is unsuccessful, no representation or warranty is made as to fitness for particular purpose.

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 they are unsuccessful and such intellectual property shall not become the property of the Department.

Subject to the exceptions specified herein and such 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 any 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.

Proposers 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 Proposers 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 any Proposer or any Proposer team member for the disclosure of any materials or information submitted in response to this RFP.

1.9 Certain Policy Requirements

- (a) Each Proposer is advised that it will be required to comply with the requirements set forth in Schedule 15 (*Commonwealth DB Requirements*) to the PPA to submit documentation to demonstrate good faith efforts to solicit subcontractors that are DBs.

If the Preferred Proposer will self-perform 100% of the D&C Work, the Preferred Proposer shall submit paper documentation by 3:00 P.M. prevailing local time within 7 calendar days (or the next business day, if such 7th day is a day on which Department offices are closed) after the date of the Department's announcement of the Preferred Proposer. Submit paper documentation by email to minorityparticipation@pa.gov or by fax to (717) 705-1504. The paper documentation

of good faith efforts must include the business name and business address of each DB that is not an ECMS Business Partner, as well as all good faith efforts to solicit other DBs that are not ECMS Business Partners. Supporting documentation must also include a DB acknowledgment for each DB providing construction or professional services, proof of certification for DBs that are not ECMS Business Partners, and any explanation of good faith efforts the bidder would like the Department to consider. Any services to be performed by a DB are required to be readily identifiable to the project.

- (b) Proposers 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.

1.10 Insurance

Proposers should note that the PPA contains certain minimum insurance requirements which must be reflected in Proposals. 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 responsible Proposer offering a Proposal that meets the standards set by the Department and that 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 Proposals for the Project only from those Proposers that the Department has shortlisted for the procurement based on their responses to the RFQ. 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 Proposers in electronic format on the secure file transfer site for the Project, located on the FTP Site. The FTP Site's URL is <https://spportal.dot.pa.gov/Inner%20Model/cngrfp/SitePages/Home.aspx>.

- (a) **Authorized Department Representative**

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

Dale Witmer

Public Private Partnerships Office
400 North Street, 8th Floor
Harrisburg, PA 17120-3545
Telephone: (717)705-4235
Email: RA-PDCNGP3@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 each 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 a 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 5.1 of the RFQ are applicable to such Proposer. From the date of such written commitment until the issuance of the final RFP, the terms of such written commitment are applicable to such 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 all Proposals by the Department, or (z) cancellation of the RFP:

- (i) No Proposer nor any of its team members may communicate with another Proposer or its team members through their employees, agents or representatives with regard to the RFP or either team's Proposal, except that (A) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams, and (B) this prohibition does not apply to public discussions regarding the RFP at any of the Department-sponsored informational meetings.
- (ii) Each Proposer's Authorized Proposer Representative shall be responsible for contacts with the Department on behalf of such Proposer, and, except at one-on-one meetings and other group discussions with the Department, each Proposer may only communicate with the Department regarding the RFP through its Authorized Proposer Representative.

- (iii) No Proposer or 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. Any Proposer engaging in such prohibited communications may be disqualified from the procurement at the sole discretion of the Department.
- (iv) Communication by or on behalf of any 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 Proposers or facilitate delivery of responses to such questions by a Stakeholder.
- (v) Any communications in breach of the foregoing clauses (i) through (iv) may result in disqualification from the procurement.
- (vi) Any official information regarding the Project will be in writing, on Department letterhead, and signed by the Authorized Department Representative or designee.
- (vii) 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*).

Proposers 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)(vi).

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

Proposers 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. Proposers 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 such 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) or such 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 a Proposer to the Authorized Department Representative, by electronic mail in the prescribed format.

Such comments/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 Addendum and shall:

- (i) be submitted in writing in Word using the form set forth in Form M;
- (ii) be sequentially numbered;
- (iii) identify the document (*e.g.*, the PPA, Technical Provisions, etc.);
- (iv) identify the relevant Section number and page number (*e.g.*, Technical Provisions, 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 and Category 2 issue. **Category 4** means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

No telephone or oral requests will be considered. Proposers are 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 all Proposers, except that the Department intends to respond individually to those questions identified by a Proposer or deemed by the Department as containing confidential or proprietary information. If a 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 a 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 independent of the Proposers. 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 Preferred Proposer prior to award.

Proposers may, at their option, elect to submit revised drafts, in redline, of this ITP and PPA (but not the Technical Provisions) in connection with the submission of their comments/questions per RFP version issued. Subject to the Right-to-Know Law, the Department will not circulate any 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 Proposers as it deems necessary pursuant to Section 2.5 (*Pre-Proposal Meetings*), and Proposers 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 Financial 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 shortlisted Proposers 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 Financial 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.

Each Proposer shall acknowledge in its Proposal Letter receipt of all Addenda and question-and-answer responses issued by the Department prior to the Financial Proposal Due Date. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and be rejected. The Department reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each 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 Financial 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 Financial Proposal Due Date determined necessary by the Department, in its sole discretion.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as follows:

- (a) pursuant to Section 2.6 (*Approval of Pre-Proposal Technical Solutions*) (regarding Technical Solutions for the CNG Maintenance and Storage Facilities); and
- (b) pursuant to Section 2.11 (*Changes in Proposer's Organization and Key Personnel*) (regarding changes in a 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 Proposers are required by this ITP to make a Pre-Proposal Submittal on a certain date (or at a certain time), Proposers are 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 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 all Proposers at any time prior to the Financial 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 all Proposers and the Department. The Department will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

Each 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 each 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 Proposers, to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by the Department or the Proposers (including the RFP). The Department reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that such disclosure would reveal a Proposer's confidential or proprietary information not otherwise required to be disclosed by applicable Law or permitted to be disclosed pursuant to this ITP. Participation at such meetings by the Proposers shall be mandatory. Representatives of any Stakeholder identified in Section 1.3(a) through (e) 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 Proposers 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 any Proposer any information submitted as part of this procurement other than its own.
- (iii) Proposers shall not seek to obtain commitments from the Department in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- (iv) No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, material information about the Project or procurement that the Department reveals or discusses in response to questions raised in a one-on-one meeting will, except as provided in this ITP, be revealed to the other Proposers.
- (v) The discussions or any statements made by either party in one-on-one meetings shall not be binding on such entity.

- (vi) No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.
- (vii) 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, Proposers 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 all Proposers, except to the extent such questions contain confidential or proprietary information relating to a particular 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 Approval of Pre-Proposal Technical Solutions

- (a) Each Proposer shall submit its Pre-Proposal Technical Solutions for review and written approval or comment by the Department, in its sole discretion. Each Proposer will be assigned a vendor number to be included as part of the *Pre-Proposal Technical Solutions* submittal. The purpose of the vendor number is to allow confidentiality and fairness during review process. Company logos or names should not be listed on any submittals of the *Pre-Proposal Technical Solutions*. The Pre-Proposal Technical Solutions shall be delivered to the address set forth in ITP Section 1.7(b) (*Address for Proposal Delivery*) no later than 12:00pm (noon) on the date specified in ITP Section 1.7(a) (*Procurement Schedule*).

The purpose of this report is to allow the Department to determine whether a Proposer's technical approach to the CNG Maintenance and Storage Facilities, the CNG Fueling Station Facilities and the CNG Equipment Compounds is responsive to the minimum requirements specified in Exhibit 2 (the **Minimum Requirements**) prior to submittal of a Proposal. The Department does not intend to rate or grade each Proposer's Pre-Proposal Technical Solutions as set forth in Section 4.4(g) (*Design-Build Technical Solutions*).

- (b) The Pre-Proposal Technical Solutions shall meet all requirements specified in Section 4.10 of the Technical Provisions and Section 4.7 (*Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*) to this ITP. This report shall address all proposed solutions for upgrading each of the CNG Maintenance and Storage Facilities, CNG Fueling Station Facilities and CNG Equipment Compounds.
- (c) Upon receipt of the *Pre-Proposal Technical Solutions*, the Department will begin its internal review and begin discussing the *Pre-Proposal Technical Solutions* with the applicable transit agencies. The Department will schedule a one-on-one meeting with each Proposer to discuss their Pre-Proposal Technical Solutions. The Department reserves the right to ask questions of

the Proposer's to clarify any element of that Proposer's Technical Solutions. No later than fourteen (14) days following the last *Pre-Proposal Technical Solutions* one-on-one meetings,, the Department will respond to each Proposer with a statement indicating that the Pre-Proposal Technical Solutions are either responsive to the Minimum Requirements or the extent to which they are not.

- (d) A determination that a Pre-Proposal Technical Solution is non-responsive to the Minimum Requirements will not, of itself, result in any subsequent Proposal being deemed non-responsive to the requirements of the Technical Provisions or the relevant Proposer being disqualified, but each Proposal will be expected to be responsive to the Minimum Requirements as part of the responsiveness and pass/fail evaluation pursuant to Section 4.3 (*Pass/Fail Review*).
- (e) The Pre-Proposal Technical Solutions will not be considered during Proposal evaluations by the Department. Any Proposer whose Pre-Proposal Technical Solutions are deemed non-responsive may revise the technical solutions submitted in its Proposal. Each Proposer must submit all Proposal Information to be included in its Proposal as provided in ITP Exhibits 2 through 6 and as specified in ITP Section 3 (*Requirements for Submittal of Proposals and Acceptance of Delivery by the Department*), whether or not its Pre-Proposal Technical Solutions was deemed responsive.

2.7 Confidentiality

(a) Confidentiality of Proposer Information

- (i) If a 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 such 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. A Proposer asserting that certain information is confidential under this Section 2.7(a)(i) 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. Such Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that 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.

- (ii) Notwithstanding Section 2.7(a)(i), the Department may disclose the Proposal of the Preferred Proposer to the representative of any Stakeholder identified in Sections 1.3(a) through (e) (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 Departments 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)(ii).

(b) **Request for Disclosure**

If a request is made for disclosure of the Proposals or other materials pursuant to the Right-to-Know Law or the P3 Records Provision, the Department will comply with its obligations under the Right-to-Know Law, the P3 Records Provision, and other applicable Laws. Each 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. 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 Law; *provided, however,* that prior to disclosing any information or otherwise taking any action under such applicable Law, the Department will notify the relevant Proposer and give such 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 a 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 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 any Proposal, portion thereof or other materials, the relevant Proposers 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 whose Proposal or other materials are the subject thereof.

2.8 Examination of RFP

(a) **Examination of RFP**

Each 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. Each Proposer also 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 a 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 Proposers may rely on the Disclosed Information, if any, shall be as expressly set forth in the PPA.

(b) **Access to Project Sites and Site Investigations**

As indicated in Section 1.7(a) (*Procurement Schedule*) above, the Department has scheduled visits at each Transit Agency site. Proposers are prohibited from arranging additional site visits without the Department's prior written approval. Requests for additional 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 a Proposer 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 a Proposer 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 a Proposer team. The Authorized Proposer Representative for a 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 such 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. Proposer teams seeking such exception shall submit such written request as soon as possible because the Department does not intend to extend the Technical Proposal Due Date nor will the Department be responsible for any inability or failure to respond prior to the Technical 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, each 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:

- Allen & Overy LLP;
- Ames & Gough;
- Pace Global, a Siemens Business;
- CDM Smith;
- Gannet Fleming;
- NTM Engineering, Inc;
- Michael Baker International;

- Summers Nagy Law Offices;
- Public Financial Management, Inc.; 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 a Proposer team as a Major Team Member, contractor, subcontractor, consultant or subconsultant.

By submitting its response to this RFP, each 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 an immediate and 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. If a conflict of interest that the Proposer knew, or should have known about, 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.

Proposers are 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 Proposer teams and teaming and may preclude certain firms and their entities from participating on a Proposer team.

(c) **Equitable Treatment of Proposers**

Proposers are assured that, during the procurement process, the Department will make every reasonable effort to treat Proposers equitably.

2.11 Changes in Proposer's Organization and Key Personnel

(a) **Changes in Proposer's Organization**

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, 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 a 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 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 sole discretion. Except as provided herein and in the PPA, a 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 sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

(b) **Changes in Key Personnel**

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, 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 a 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 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 sole discretion; *provided that* it shall do so within 15 Business Days of receiving such requests. Except as provided herein and in the PPA, a 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 sole discretion, will consider requests by Proposers to make changes in the Proposers' Key Personnel based only on unusual circumstances beyond the Proposer's control.

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

3.1 General Submittal Requirements

Each 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) **Technical Proposal Due Date**

The completed Technical Proposal shall be delivered in a sealed container no later than 11am on January 14, 2016.

(b) **Financial Proposal Due Date**

The completed Commercialization Proposal and completed Financial Proposal shall each be delivered in sealed containers no later than 11am on February 4, 2016.

(c) **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.

(d) **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.

(e) **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. Technical Proposals received after the time due on the Technical Proposal Due Date, and Financial Proposal or Commercialization Proposals received after the time due on the Financial Proposal Due Date, shall be rejected without consideration or evaluation.

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.

Proposals 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;
- (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 a 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

Each 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

Proposals are 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 Proposals 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 Performance Plans 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 container, clearly addressed to the Department as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the CNG Fueling for Transit Agencies Partnership Project." Proposers shall provide one original and 10 certified copies of 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 "Copies of Technical Proposal for the CNG Fueling for Transit Agencies Partnership Project." "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) Proposal Security

(i) As security for its commitment to enter into the Project Documents in accordance with its Proposal commitments if it becomes the Preferred Proposer, each 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 labelled "[Proposer Name]: Proposal Security for the CNG Fueling for Transit Agencies Partnership Project." The original of the Proposal Security shall be stamped "original."

- (ii) Each Proposer shall provide Proposal Security in an amount equal to \$5,000,000. 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 \$5,000,000 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.

(c) **Commercialization Proposal**

One original and 10 certified copies of the Commercialization Proposal, together with one electronic copy on a CD ROM, DVD, or flash drive in either Adobe or Word format. The documents shall be included in a sealed container labeled "[Proposer Name]: Commercialization Proposal for the CNG Fueling for Transit Agencies Partnership Project."

(d) **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 (except for the Proposal Security (for which certified copies must be provided in accordance with paragraph (b) above) 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 CNG Fueling for Transit Agencies Partnership Project."

3.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2016 dollars, such pricing shall be as of the Financial Proposal Due Date.

3.6 Modifications, Withdrawals and Late Submittals

(a) **Modifications to a Proposal**

The Proposer may modify its Technical Proposal in writing prior to 11am on January 14, 2016 and may modify its Financial Proposal or Commercialization Proposal in writing prior to 11am on February 4, 2016. The modification shall conform in all respects to the requirements for

submission of a 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 Financial 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 a 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 Financial Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Financial Proposal Due Date and any attempt to do so will result in a draw by the Department upon the Proposal Security. Proposals shall be valid for a period of 120 days after the Financial Proposal Due Date (as such period may be extended pursuant to Section 3.6(b)(ii), the **Proposal Validity Period**). No Proposer shall 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, (B) the Department has awarded the PPA to another Proposer and has received the executed PPA and other required documents, (C) the Department does not intend to award the PPA to the Proposer, or (D) such Proposer is not notified during the Proposal Validity Period that the Department has selected the Proposer as the Preferred Proposer to negotiate and finalize the PPA.
- (ii) Any Proposer may elect, in its sole discretion, to extend its Proposal Validity Period; *provided that* such 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 Proposals**

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

3.7 **Forfeiture of Proposal Security**

By submitting its Proposal, each Proposer understands and agrees that the Department shall be entitled to draw on such 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 such Proposer is the Preferred Proposer:
 - (i) the Preferred Proposer fails to negotiate in good faith as expressly defined in Section 4.11(a) (*Finalization of Project Documents*);
 - (ii) the Preferred 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 Preferred Proposer*) and Section 5.1(b) (*Documents To Be Delivered by Preferred 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(b)(iii), (ii) the Proposer fails to deliver replacement Proposal Security pursuant to Section 3.4(b)(ii) five days prior to the expiration of the Proposal Security then in effect, or (iii) the Department determines that the Proposal Security submitted by such 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 Proposals that are 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 Proposals in compliance with all applicable Laws governing this procurement. Pursuant to Section 2.3(b) (*Addenda*) (and without limitation thereof), and except for any revision, modification or change required by FTA, at any time prior to the Financial 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 each Proposal satisfies the "pass/fail" requirements set forth in Section 4.3 (*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 each Proposal satisfies the responsiveness and "pass/fail" requirements set forth in Section 4.3 (*Pass/Fail Review*);
- (ii) score 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) score each 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 each 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 Proposals 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. Except for FTA which reserves the right to observe the evaluation process without limitation, 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 **Best Value Determination**

The best value determination will be based on the following 100-point scale. The Financial Proposal Score will represent up to 75 points of the Total Proposal Score, the Commercialization Proposal Score will represent up to 5 points of the Total Proposal Score and the Technical Proposal Score will represent up to 20 points of the Total Proposal Score. A Proposer achieving 100% of the points available for the Financial Proposal Score will score 75 points, a Proposer achieving 100% of the points available for the Commercialization Proposal Score will score 5 points and a Proposer achieving 100% of the points available for the Technical Proposal Score will score 20 points. The determination of apparent highest-ranked Proposal shall be based on the highest Total Proposal Score computed as follows:

Total Proposal Score (max. 100 points) = Financial Proposal Score (max. 75 points) + Commercialization Proposal Score (max. 5 points) + Technical Proposal Score (max. 20 points).

(a) **Financial Proposal Score**

The Financial Proposal Score shall be a maximum of 75 points relating to the following factors:

- (i) the sum of the net present values (**NPVs**) of Infrastructure Fees (as set forth on Form H) to be paid to the Development Entity by the Department;
- (ii) the NPVs of the Milestone Payments (as set forth on Form H) to be paid to the Development Entity by the Department;
- (iii) the minimum guaranteed CNG commercial sales volume that the Proposer commits to sell to third parties (as set forth on Form H) and the royalty fee amount per GGE of CNG (as set forth in Form H);
- (iv) the Energy Consumption Targets (as set forth on Form H); and

- (v) the NPVs of the Compression Fees (as set forth on Form H) to be paid to the Development Entity by the Department.

Proposers will calculate the amounts to be included in Form H in accordance with the requirements of Exhibit 4 (*Financial Proposal Instructions*) of this ITP and Schedule 8 (*Payment Mechanism*) of the PPA.

The Department's calculation of the Financial Proposal Score will include the following calculations:

- (i) Payments to or from the Development Entity for all amounts referred to in Form H made during any calendar year will be assumed to be made on December 31 of that calendar year for purposes of the calculation in Form H.
- (ii) A discount factor for each period will be applied to the Milestone Payments, Infrastructure Fees and the estimated electrical costs based on the Energy Consumption Target set forth in Form H in year of expenditure paid dollars to arrive at the NPVs of such amounts as of January 1, 2016. The discount factor to be used is included on Form H.

(b) **Commercialization Proposal Score**

The Commercialization Proposal Score shall be a maximum of 5 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;
- (ii) Leadership Team; and
- (iii) Management Plan, Implementation and Tracking of Third Party Customers

(c) **Technical Proposal Score**

The Technical Proposal Score shall be a maximum of 20 points.

The Technical Proposal Score will be calculated based on the Evaluation and Scoring Committee's evaluation score for the Preliminary Performance Plans 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 Performance Plans and Design-Build Technical Solutions for technical scoring purposes will be divided into seven parts: (i) the Preliminary Project Baseline Schedule elements as further described in Section 4.4(a) (*Preliminary Project Baseline Schedule*), (ii) the Preliminary Project Management and Administration Plan elements as further described in Section 4.4(b) (*Preliminary Project Management and Administration Plan*), (iii) the Preliminary Quality Management Plan elements as further described in Section 4.4(c) (*Preliminary Quality Management Plan*), (iv) the

Preliminary Operations and Maintenance Management Plan elements as further described in Section 4.4(d) (*Preliminary Operations and Maintenance Management Plan*), (v) the Preliminary Safety Plan as further described in Section 4.4(e) (*Preliminary Safety Plan*), (vi) the Preliminary Training Plan as further described in Section 4.4(f) (*Preliminary Training Plan*), and (vii) 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. The Technical Proposal Score will be calculated using the following formula:

$$\text{Technical Proposal Score} = \text{Evaluation and Scoring Committee's evaluation score of the Technical Proposal} \times 0.20$$

4.3 Pass/Fail Review

Upon receipt, the Technical Proposals, the Commercialization Proposals and the Financial Proposals 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. Any Proposal that fails to achieve a passing score on any of the pass/fail portions of the evaluation 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 a Proposal contains or omits information that may potentially result in a "fail" determination, the Authorized Department Representative may request additional or clarifying information from Proposer prior to a final pass/fail determination.

Those Proposals that do not pass the pass/fail criteria, 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 any Proposer whose Proposal 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 Proposals.

(a) Technical Proposals

Technical Proposals 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 Technical Provisions;

- (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 Financial 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 Proposals**

Commercialization Proposals will be evaluated on a pass/fail basis on whether the Commercialization Proposal contains the required materials as listed in Section 3 (*Contents of the Commercialization Proposal*) of Exhibit 3 (*Commercialization Proposal Instructions*).

(c) **Financial Proposals**

Financial Proposals 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 design, build, finance and maintain a project of the nature and scope of the Project. 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 a 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 Completion Deadline 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(b) (*Proposal Security*);
- (iv) 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).
- (v) The Proposer has provided a letter from its independent insurance consultant or broker in accordance with the requirements of Section 2(f) (*Independent Insurance Broker/Consultant Letter*) 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).

4.4 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 Baseline Schedule (maximum 10 Technical Proposal Score points)

Objective: A plan that complies with Section 2.2 (*Project Baseline Schedule*) of the Technical Provisions and defines the timeframe for completion of the design and construction elements of

the Project and achievement of milestones, and be used to monitor progress and denote changes that occur during design, construction, operations and maintenance. The Preliminary Project Baseline Schedule evaluation subfactors include:

- (i) Overall approach to scheduling considering the multi-asset and multi-location nature of the Project;
- (ii) Strategy to minimize schedule delays and to minimize impacts of or recover from schedule delays;
- (iii) CNG Readiness Dates of each facility;
- (iv) Approach to obtaining all required governmental and third-party approvals;
- (v) Approach for preparing, controlling and updating Project Baseline Schedule;
- (vi) Methods of integrating subcontractors' performances into the Project Baseline Schedule; and
- (vii) Approach to managing resources and activities and during schedule slippage.

The Preliminary Project Baseline Schedule subfactors listed above will reflect the solutions and approaches as set forth in Section 4.1 (*Preliminary Project Baseline Schedule*) of Exhibit 2 (*Technical Proposal Instructions*).

- (b) Preliminary Project Management and Administration Plan (maximum 10 Technical Proposal Score points)

Objectives: A plan that complies with Section 2.3 (*Management and Administration of the Project*) of the Technical Provisions; 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*).

(c) Preliminary Quality Management Plan (maximum 15 Technical Proposal Score points)

Objective: A plan that complies with Section 2.4 (*Quality Management*) of the Technical Provisions and will be used to meet the quality objectives with respect to design, fabrication, construction, operations and maintenance for the Project with a particular emphasis on the multi-asset, multi-site nature of the Project. 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*).

(d) Preliminary Operations and Maintenance Management Plan (maximum 10 Technical Proposal Score points)

Objective: A plan that complies with Section 2 (*Project Management Plan*) of the Technical Provisions and 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*).

(e) Preliminary Safety Plan (maximum 10 Technical Proposal Score points)

Objective: A plan that demonstrates a culture of safety and that complies with Section 2.5 (*Safety Plan*) of the Technical Provisions 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*).

(f) Preliminary Training Plan (maximum 10 Technical Proposal Score points)

Objective: A plan that describes the training activities which comply with the requirement of Section 8 (*Training*) of the Technical Provisions and other obligations of the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

The Preliminary Training Plan subfactors are as follows:

- I. Initial Training
- II. On-going Training

The Preliminary Training Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.6 (*Preliminary Training Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(g) Design-Build Technical Solutions (maximum 35 Technical Proposal Score points)

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

- I. CNG Maintenance and Storage Facilities (maximum 15 Technical Proposal Score points).

Objective: A set of technical solutions for the design and construction of the CNG Maintenance and Storage Facilities that addresses the unique characteristics of the Project, meets the quality objectives of the Project Documents, minimizes the lifecycle cost of the CNG Maintenance and Storage 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.

II. CNG Fueling Station Facilities and Fuel Management System (maximum 20 Technical Proposal Score points).

Objective: A set of technical solutions for the design and construction of the Project, exclusive of the CNG Maintenance and Storage Facilities, that addresses the unique characteristics of the Project, meets the quality objectives of the Project Documents, minimizes the lifecycle cost of the Project, including Renewal Work, 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 4.7 (*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 each 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 individual Proposers requesting additional information or clarification from a Proposer, or may request that a Proposer verify or certify certain aspects of its Proposal. Proposers 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 Proposals 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 Proposals and prior to the Commercial Closing Date, determine that it is appropriate to request changes to the Proposals (**Proposal Revisions**). Only Proposers that submitted responsive Proposals will be permitted to submit Proposal Revisions. 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 such Proposer's Proposal Security and the Department shall promptly return such Proposer's previously-provided Proposal Security in its entirety.

4.10 Identification of the Preferred Proposer

- (a) Once the Director of the Public Private Partnerships Office has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions) and, thereafter, recommends to the Pennsylvania Secretary of Transportation the designation of the Proposer whose Proposal has the highest Total Proposal Score as the Preferred Proposer, then the Pennsylvania Secretary of Transportation may authorize the Authorized Department Representative to:
 - (i) select such Proposer as the Preferred Proposer for contract negotiation pursuant to 74 Pa.C.S. § 9109(j) and finalize the Project Documents with such Preferred 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 Preferred Proposer shall be preliminarily selected as the Development Entity under the PPA, and the Pennsylvania Secretary of Transportation preliminarily selects the Preferred Proposer as the Development Entity under the PPA, the Authorized Department Representative will select such Proposer as the Preferred Proposer for contract negotiation pursuant to 74 Pa.C.S. § 9109(j) and finalize the Project Documents with such 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 Preferred Proposer to negotiate and finalize the Project Documents. By submitting its Proposal, each 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 Preferred Proposer shall negotiate in good faith with the Department regarding (i) incorporation of work product from unsuccessful Proposers into the Project Documents and (ii) any other aspect of the Project Documents; *provided that* neither the Department nor the Preferred 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 Preferred Proposer and a PPA satisfactory to the Department, in its sole discretion, cannot be negotiated and finalized with the Preferred Proposer, the Department may formally suspend or end negotiations and finalization with that Preferred Proposer and take action consistent with the direction provided by the Authorized Department Representative. Such action may include (A) requiring the Preferred 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, (B) rejection of all Proposals, or (C) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate and finalize a PPA with that Proposer in accordance with this Section 4.11 (*Finalization*).

The Preferred Proposer will be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Security if the Preferred 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. Failure by a Preferred Proposer to agree to inclusion of work product from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle the Department to draw upon the Proposal Security.

4.12 Department Review of Post-Selection Deliverables

(a) Documents to be Submitted Following Notification of Preferred Proposer

Not later than 14 days prior to the Commercial Closing Deadline, and as a condition precedent to award of the PPA, the Preferred 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 Preferred Proposer with Executed PPA*).

(b) Department Comment 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) concurrence in award by FTA, (iii) receipt by the Department of all of the documents required to be provided pursuant to Section 5.1(b) (*Documents To Be Delivered by Preferred Proposer with Executed PPA*), (iv) 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 (v) satisfaction of any other conditions to award set forth in this ITP or required by Law.

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

Prior to the execution of the PPA by the Department, the Preferred 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 Preferred Proposer conducted in accordance with Section 4.11 (*Finalization*).

5.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest reasonable time after execution of the Project Documents. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and PPA award.

Debriefings shall:

- (a) be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;
- (b) be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and
- (c) provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the Evaluation and Scoring Committee, but may include a summary of the rationale for the selection decision and PPA award.

5.3 Stipend Payment to Unsuccessful Proposers

(a) Maximum Stipend Amount

- (i) Except as set forth in the Stipend Agreement and this Section 5.3 (*Stipend Payment to Unsuccessful Proposers*), each Proposer that has executed the Stipend Agreement (a **Stipend Eligible 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 this RFP but on or before the Financial Proposal Due Date; or
 - (B) the Department has not cancelled the procurement on or before the Financial Proposal Due Date, and such Stipend Eligible Proposer has submitted a timely and responsive, but unsuccessful, Proposal by the Financial Proposal Due Date in accordance with the terms and conditions of the RFP Documents.
- (ii) If any Stipend Eligible Proposer shall be eligible to receive a stipend as a result of:
 - (A) any event described in Section 5.3(a)(i)(A), then such Stipend Eligible 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 such Stipend Eligible Proposer in preparing a Proposal in an amount not to exceed the Maximum Stipend Amount; *provided that* such Stipend Eligible 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 on or before the Financial Proposal Due Date 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 Stipend Eligible Proposer shall receive 100% of 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 Financial Proposal Due Date or names another Proposer as the Preferred Proposer and (2) such Stipend Eligible 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 a

Stipend Eligible Proposer that becomes the Development Entity be entitled to receive payment pursuant to this Section 5.3(a)(ii)(B).

- (iii) Any invoice to be submitted by a Stipend Eligible 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 to Unsuccessful Proposers*) 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 to Unsuccessful Proposers*), no Proposer shall be entitled to reimbursement of any of its costs in connection with this RFP.

(b) **Eligibility**

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

- (i) if such Proposer has not submitted an executed and delivered Stipend Agreement with its Financial Proposal;
- (ii) if such Proposer withdraws from the procurement;
- (iii) if such Proposer has not complied in all material respects with the terms and conditions of the RFP Documents;
- (iv) if such Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 5.3 (*Stipend Payment to Unsuccessful Proposers*), 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 such 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 such Proposer was the Preferred Proposer and (A) it proceeds to the Commercial Closing Date and Financial Close or (B) it 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 Preferred Proposer; or the Department's election to cancel the procurement after the Financial Proposal Due Date, which election does not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Preferred Proposer.

(c) **Work Product**

Each 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 a 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.

Subject to the confidentiality provision of the RFP and applicable Law, the Department will have the right to inform the Preferred Proposer regarding the contents of the other Proposals (excluding Proprietary IP) after notification of the Preferred Proposer, and that the PPA may incorporate the above-described work product, ideas or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow the Department to use such work product, ideas and concepts in the performance of its functions. Payment of the stipend to the Proposer shall operate as a release and waiver by the Proposer of any and all claims challenging the procurement process, award and/or cancellation of the procurement process.

(d) **Stipend Agreement**

Proposers accepting the foregoing terms in this Section 5.3 (*Stipend Payment to Unsuccessful Proposers*) and the Stipend Agreement shall acknowledge such acceptance by executing the Stipend Agreement and submitting a copy of such executed Stipend Agreement with their 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 to Unsuccessful Proposers*).

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 to Unsuccessful Proposers*).

5.5 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 as to each Proposer will be returned to the respective Proposers 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.

6. PROTESTS

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

6.1 Protests and Claims against a Commonwealth Agency

Pursuant to 74 Pa.C.S. § 9101(m), Proposers 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), Proposers 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 Proposal of any Proposer under consideration, may require confirmation of information furnished by a 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 any or all of the Proposals;
- (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 to Unsuccessful Proposers*), *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 Proposals received at any time;
- (g) suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence PPA negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- (h) modify the procurement process (with appropriate notice to Proposers);

- (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 a 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 Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (l) disclose information contained in a 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 Proposals, accept and review a non-conforming Proposal, or seek clarifications or modifications to a Proposal;
- (p) request Proposal Revisions as specified herein;
- (q) offer a 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 a 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 any Proposer that 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 to Unsuccessful Proposers*) 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 each Proposer and Proposer team.

By submitting its Proposal in response to this ITP, each 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 Proposers during the procurement process, which obligations are expressly set forth in these RFP Documents. In submitting a 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.

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*).

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.

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

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

CNG Equipment Compound shall have the meaning set forth in ITP Section 1.4(a) (*Project Overview*).

CNG Fueling Island means the CNG dispensers, fuel management terminal and related infrastructure, including the canopy, lighting and other elements.

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

CNG Maintenance and Storage Facilities shall have the meaning set forth in Schedule 1 (*Definitions*) of the PPA.

CNG Ready means, with respect to Project Site, to be in a state of CNG Readiness.

CNG Readiness 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. The website will be located at <https://sportal.dot.pa.gov/sites/p3rbr/SitePages/Home.aspx>.

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

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 and Financial Closing Deadline*).

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 4.2(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*).

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

Compression Fee shall have the meaning set forth in Section 2 (*Monthly Compression Fees*) of Schedule 13 (*Monthly Performance Report*) of the PPA.

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.

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

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) and (f) 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*).

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

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

Design-Build Technical Solutions means the technical solutions submitted pursuant to Section 4.7 (*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.

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).

Energy Consumption Target means the volume of energy projected to be consumed by each CNG Fueling Facility during the production of one gasoline gallon equivalent of CNG, as set forth on Form H.

Evaluation and Scoring Committee means the committee that scores the Proposals 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 Price shall have the meaning set forth in ITP Section 4.2(a) (*Financial Proposal Score*).

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

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

Financial Proposal Score means the score calculated according to the formula set forth in ITP Section 4.2(a) (*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*).

FTP Site means <https://sportal.dot.pa.gov/sites/p3rbr/SitePages/Home.aspx>.

Fuel Management System means the automated system for measuring, recording and reporting volumes of CNG fuel dispensed by the CNG dispenser to the receiving vehicle.

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.

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

Infrastructure Fee shall have the meaning set forth in Section 1 (*Monthly Infrastructure Fee*) of Schedule 13 (*Monthly Performance Report*) of the PPA.

Instructions to Proposers 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 Proposers in response to the RFP.

Key Personnel means those personnel identified in Section 3.2(d) (*Key Personnel*) of Exhibit 2 (*Technical Proposal Instructions*) to the ITP and Form E to the ITP.

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 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).

Milestone Payment shall have the meaning set forth in the PPA.

Minimum Guaranteed Revenue shall have the meaning set forth in ITP Section 4.2(a) (*Financial Proposal Score*).

Minimum Requirements shall have the meaning set forth in ITP Section 2.6(a) (*Approval of Pre-Proposal Technical Solutions*).

Mobile CNG Solution means, with respect to a Transit Agency Site, the provision of CNG fuel by one or more mobile fueling unit(s) and corresponding Mother Station.

Mother Station means, with respect to a Mobile CNG Solution, the source of the CNG fuel that will be made available at the relevant Transit Agency Site by one or more mobile fueling station(s).

NEPA shall have the meaning set forth in ITP Section 1.4(b) (*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.

NPV shall have the meaning set forth in ITP Section 4.2(a) (*Financial Proposal Score*).

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*).

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*).

PA UCP means the Pennsylvania Unified Certification Program.

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*).

Preferred Proposer means the apparent highest scoring Proposer.

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.

Preliminary Training Plan means the plan submitted pursuant to Section 4.6 (*Preliminary Training 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*).

Pre-Proposal Technical Solutions means technical solutions submitted prior to the Technical Proposal Due Date in accordance with ITP Section 2.6 (*Approval of Pre-Proposal Technical Solutions*).

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 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 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 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 Financial 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(b)(i).

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

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 Agency 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.

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

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

Request for Proposals 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 a Proposal may be submitted by a Proposer/Development Entity. The RFP includes the ITP and the Project Documents. The RFP is issued only to Proposers that have been shortlisted following RFQ review.

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

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

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.

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

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

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.

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

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

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

Technical Proposal Score means the score for evaluation of the Proposal as calculated in accordance with ITP Section 4.2(c) (*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*).

Technical Solution means the proposed solutions for performing the Work in respect of each CNG Maintenance and Storage Facility, CNG Fueling Station Facility and CNG Equipment Compound, as applicable.

Third Party Customers means non-Transit Agency commercial customers.

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.

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

USDOT means the United States Department of Transportation.

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 Technical Proposals and outlines the required information that will comprise a Technical Proposal.

Proposers 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. Proposers 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. Proposers 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 given the multi-location nature of 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.

Each 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) **[Reserved]**
- (b) **[Reserved]**
- (c) **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.

- (d) **Key Personnel**

The Proposal shall contain copies of resumes for each Key Personnel listed in Section 2.3.1 of the Technical Provisions (which must contain the individual's qualifications and relevant work experience). Resumes shall be contained in an appendix in Volume 2.

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.

A Proposer may not make any changes in its Key Personnel identified in its SOQ except as provided in ITP Section 2.11(b) (*Changes in Key Personnel*).

(e) **Letter Approving Pre-Proposal Submittals**

The Proposal shall include the following:

- (i) if a 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 2.11 (*Changes in Proposer's Organization and Key Personnel*); and
- (ii) copies of letters to the Proposer from each Transit Agency either approving or disapproving of the Proposer's Pre-Proposal Technical Solutions.

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

The Technical Proposal shall include the following sections which will demonstrate, at a minimum, compliance with the relevant requirements of the Technical Provisions:

- (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
- (f) Preliminary Training Plan
- (g) 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, as described in Section 2 of the Technical Provisions will be consistent with and build upon the Technical Proposal. Each part of the PPMP 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:

- (i) a narrative description of the overall approach to scheduling in the context of the multi-asset, multi-location, multi-year nature of the Project;
- (ii) a description of the Proposer's strategy to minimize schedule delays and to minimize impacts of or recover from schedule delays in the context of the multi-asset, multi-location nature of the Project;
- (iii) a schedule of anticipated dates of CNG Readiness Dates of each CNG Maintenance and Storage Upgrade and each CNG Fueling Station Facility (the **Preliminary Project Baseline Schedule**); and
- (iv) a summary level Preliminary Project Baseline Schedule and narrative describing (A) the Preliminary Project Baseline Schedule, including the timing of all Governmental Approvals, utility adjustments, design and construction portions of the Project, and for each Maintenance and Storage Upgrade and Fueling Facility comprising the Project, (B) the anticipated date of Project Completion.
- (v) 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;
- (vi) 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
- (vii) 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 include key activities and milestones for the Project and each CNG Maintenance and Storage Upgrade and CNG Fueling Station Facility. 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, and selection of a Proposer as the Preferred Proposer shall not be deemed to be acceptance or approval of Proposer's Preliminary Project Baseline Schedule.

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 be in the form described in Section 2 of the Technical Provisions pertaining to the Project Baseline Schedule and shall otherwise include at least the following:

- (i) a narrative which describes the proposed execution of the Work for the Term;

- (ii) a schedule of activities representing all Governmental Approvals, design, and construction during the design and construction phase for each CNG Maintenance and Storage Upgrade and CNG Fueling Station Facility; and
- (iii) a schedule of anticipated dates of CNG Readiness of each CNG Maintenance and Storage Upgrade and CNG Fueling Station Facility.

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 will demonstrate, at a minimum, compliance with the relevant requirements of Section 2 (*Project Management Plan*) of the Technical Provisions. 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 Proposer 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 unique needs of the Project given its multi-asset, multi-location nature. 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;
- (iv) identify potential environmental risk and describe the approach to mitigate, eliminate, or reduce those environmental risks; and

(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 in the context of the multi-asset, multi-location, multi-year nature of the Project that will be used by the Proposer. The Proposal shall include at a minimum:

- (i) a description of the approach to identify, assess, manage, mitigate and allocate Project-specific risks. The Technical Proposal shall include at a minimum:
 - (A) 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;

- (B) description of the potential consequences of the identified risks;
- (C) description of the probability of identified risks;
- (D) proposed procedures and tools to conduct a risk sensitivity analysis;
- (E) risk-mitigation strategies to eliminate or reduce specific risks; and
- (F) 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, including without limitations in Section 2.4 (*Quality Management*) of the Technical Provisions, with respect to design, fabrication, construction, and maintenance for the Project with a particular emphasis on the multi-asset, multi-location, multi-year nature of 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 ensuring the minimization of impacts to Transit Agency facilities and operations;
 - (iv) 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, accuracy, and back-checked;
 - (v) a description of the design deliverables and a description of the internal process for design reviews;
 - (vi) a description of the process for stopping Design Work or elevating an issue;
 - (vii) the procedure for submitting Design Documents;
 - (viii) a description of quality assurance and quality control functions;
 - (ix) the approach to reporting, including relationships;

- (x) a description of how the Department's comments will be integrated into the design;
 - (xi) a description of how the program will integrate with the Department's oversight and how the Proposer will conform with federal oversight requirements;
 - (xii) a description of how changes will be made to correct design deficiencies;
 - (xiii) a description of the approach for incorporating audit findings; and
 - (xiv) 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, 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. Such approach shall demonstrate, at a minimum, compliance with the relevant requirements of the Technical Provisions.

(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;
 - (B) details and locations of maintenance contractors, yard(s), 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;
- (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 Section 10 (*Operation & Maintenance*) of the Technical Provisions with a particular emphasis on how asset performance and maintenance work will be managed in the context of the multi-asset, multi-location, multi-year nature of the Project, 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 achieving the Site Specific Performance Requirements in Table 2 of the Technical Provisions, 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 Proposer's approach for coordinating with Transit Agencies, including developing backup plans for fueling, in the event of an emergency or extended facility shutdowns;
 - (viii) a description of the approach used to minimize the environmental impact of proposed maintenance activities;
 - (ix) a preliminary list of specialized maintenance equipment proposed for use throughout the life of the Project;
 - (x) a description of the approach to supply and management of maintenance spare parts; and
 - (xi) 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:

- (i) a preliminary Safety Plan that will be used by the Proposer in meeting the requirements set forth in Section 2.5 (*Safety Plan*) of the Technical Provisions;
- (ii) 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;
- (iii) a description of how Proposer proposes to coordinate with Governmental Entities on issues related to fire, security, and life safety;
- (iv) a description of how Proposer will track, document and report safety compliance; and
- (v) a description of how Proposer will incorporate audit findings.

4.6 Preliminary Training Plan

The Technical Proposal shall describe approaches to both initial and on-going training for Transit Agency personnel for the basic operation of the Facility, including:

- i. Dispensers with fuel-management systems;
- ii. Manual and automatic operation of compressors, electrical switch gear and control panel, to include all shutdowns, indicator lights, alarms and resets as needed;
- iii. Defueling;
- iv. Emergency response in case of leak or malfunction; and,

- v. Emergency-shutdown system.

4.7 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.

- (i) **Maintenance and Storage Facilities:** The Proposal shall describe in narrative form the modifications proposed for each Maintenance and Storage Facility and shall further illustrate such modifications in conceptual drawings, including plan and elevation views and details as necessary to describe the proposed modifications. The Proposal shall address, as appropriate, gas detection, alarm equipment and systems, ventilation equipment and rates, NEC classified areas for CNG, standby and emergency power, spark-generating equipment, minor and major repair garages, bus storage, washing, etc.

Operating costs affected by the modifications, including but not limited to power and heating, shall be addressed. Operating costs as well as capital costs will be considered in scoring the Technical Proposals and substantial weight will be given to operating costs.

- (ii) **CNG Fueling Station Facilities:** The Proposal shall describe the approach to providing CNG fuel at each Transit Agency site, specifically including identification of those Transit Agency sites which will rely on a Mother Station and which will have an Equipment Compound on site. The Proposal shall include schematic drawings showing the locations and configuration of all facilities to be constructed on Transit Agency property, including facilities for Third Party Customers.
- (iii) **Fuel Management System:** the Proposal shall describe the Fuel Management System equipment and its operation.
- (iv) The Technical Proposal shall be based on the designs used to complete Form J (*Cost Breakdown for Design and Construction by Major Component*) which are the most representative of the Work.

4.8 PAAC and CAT Specifications

The Technical Proposal shall make the following assumptions regarding the site parameters with respect to the Project Sites for PAAC and CAT:

- (i) 2 acres flat grass parcel;
- (ii) Electric service within 200-feet of 2 acre perimeter boundary. 3-phase overhead service;
- (iii) Gas service within 200-feet of 2-acre perimeter boundary;
- (iv) 3-inch gas line with 50 psig pressure;

- (v) PAAC Fueling window 5-10pm Monday through Saturday;
- (vi) CAT fueling window per table 2; and
- (vii) Number of dispensers and hoses based on maximum vehicles at full fleet replacement using 8 GGE/minute fill time.

EXHIBIT 3

COMMERCIALIZATION PROPOSAL INSTRUCTIONS

1. GENERAL INSTRUCTIONS

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

Proposers 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. Proposers 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. Proposers 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 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 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 with both CNG industry and non- CNG industry backgrounds 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 Estimated CNG Commercialization Strategy and Marketing Plan;
- (b) a summary of the Leadership Team; and
- (c) a summary of Management Plan, Implementation and Tracking of Sales to Third Party Customers.

3.2 CNG Commercialization Strategy and Marketing Plan

The Proposer shall provide a detailed CNG Commercialization and Marketing Plan which will include, at a minimum, the following sections:

- (a) Estimated CNG Fuel Commercialization Volumes and Process

The Proposer shall provide its best estimate of the annual CNG commercialization volume the project should attain and the process by which it expects to achieve these results. The Proposer is expected to provide both a graphic and tabular listing of the annual CNG volume it expects to sell to third party customers in the state of Pennsylvania from this project.

Further, the Proposer shall provide a narrative discussing the process it will follow to achieve the estimated volume sales. This process should detail specific activities which will be undertaken and a Commercialization Schedule of when they should be completed to create new sales opportunities in private fleets and other private-sector fuel consumers. The Proposer shall confirm its commitment to respecting the commercialization timeline set out in the Commercialization Schedule. The Commercialization Schedule shall include the following:

- (i) a narrative description of the overall approach to planning commercialization;
- (ii) a summary Commercialization Schedule including the timing of all milestone events;
- (iii) a description of the Proposer's strategy to minimize impacts or recover from schedule delays; and
- (iv) a description of Proposer's approach to managing resources and activities, both those of Proposer and subcontractors, in order to achieve the Commercialization Schedule, and if necessary to recover schedule slippage.

- (b) Grant Application Support and Management/Administration

In the Grant Application Support and Management/Administration section, the Proposer shall review its specific experience leading/ supporting grant applications to federal, state, and local entities driving CNG fuel development. Further, the Proposer shall discuss its preferred approach to managing and administering state and federal grants which are available to fleet operators for conversion to CNG.

- (c) Pennsylvania Market Potential and Sector Plans

The Proposer shall provide a narrative and analysis defining what it expects is the overall CNG market potential in Pennsylvania. This narrative should discuss expected activity and potential in specific consumer sector (i.e. trucking, industry, etc.) and the Proposer's plan to commercialize CNG in those specific market sectors. Further, the Proposer shall discuss which sectors and perhaps firms are likely to be first movers in converting to CNG fuel and how the Proposer intends to earn their business. The Proposer is expected to detail its current business activities in Pennsylvania to substantiate its sector and first mover claims.

(d) Expected Competitive Advantages

The Proposer shall explicitly outline its competitive position in the CNG fuel provide marketplace and its unique competitive advantages which will allow it to achieve the estimate sales volumes.

(e) CNG Fuel Pricing Strategy

The Proposer shall provide its CNG fuel pricing strategy for this project. This narrative should discuss such items as:

- (i) Current and future local public access station pricing;
- (ii) Regional or Transit Agency local price differences;
- (iii) Current and projected fuel price spreads with diesel;
- (iv) Ability to sell at a discount to diesel vs. cost plus;
- (v) Potential discounts for large volume consumers; and
- (vi) Pricing for CNG delivered via alternative means (i.e. virtual pipeline).

3.3 Leadership Team

The Leadership team section should provide sufficient information for reviewers with both Commercialization and non-Commercialization backgrounds to understand the proposer's intended organizational structure and team for commercialization. The proposer shall address at a minimum the following topics:

(a) Organization Structure

The proposer shall provide an organizational chart defining key roles and personnel filling each of those roles.

(b) Major Team Members

The proposer shall provide the names of each Major Team Member contributing to the commercialization activities, their respective experience in commercializing CNG, and their experience in the role defined for them in the organization structure.

(c) Key Personnel

The proposer shall provide resumes for each of the personnel defined in the organizational structure and clearly identify the responsibilities of each person.

(d) Existing Commercialization Enablers

The Proposer shall identify key commercialization enablers which it believes will support their proposed commercialization plan. This should address, though is not limited to the following:

- (i) Current customers with operations within the state of Pennsylvania;
- (ii) Existing assets/ business interests within Pennsylvania available to support development; and
- (iii) Enabling technology and resources (i.e. funds and partners) available.

3.4 Management Plan, Implementation and Tracking of Sales to Third Party Customers

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

- (a) Sales plan;
- (b) Prioritization of target sectors and firms;
- (c) Sales staffing levels and organization;
- (d) Sales staff targets incentives to drive activity;
- (e) Sales tracking relative to plan;
- (f) Reporting of third party sales to the Department; and
- (g) Monthly Third Party CNG Sales Status Report.

The Proposer shall provide an outline of their proposed monthly CNG third party sales status report. The report should include, but not be limited to the following sections:

- (i) Brief narrative of major activities for the month;
- (ii) Third Party CNG volume sales;
- (iii) Comparison of CNG volume sales vs. CNG Commercialization Strategy and Marketing Plan;
- (iv) Discussion of New/ Lost customers, contract extensions, and expected net volume change resulting from New/ Lost customers;

- (v) Monthly royalty calculation and the Department payment resulting from third party CNG sales that month; and
- (vi) Sales detail (i.e. volume by dispenser and customer) for royalty confirmation.

3.5 Off-Site CNG Commercial Sales

The Department appreciates that the development of this Project can improve the potential market for CNG commercialization at locations in close proximity to the Project Sites. Consequently, Proposers are advised that commercial sales of CNG at locations in close proximity to the Project Sites will be deemed to be commercial sales at the relevant Project Site (as more particularly described in the PPA). Proposers should describe any current or prospective off-site commercial sales they are conducting, or are reasonably likely to conduct.

EXHIBIT 4

FINANCIAL PROPOSAL INSTRUCTIONS

1. GENERAL INSTRUCTIONS

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

Each 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. Proposers are 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 6 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). Proposers' attention is also directed to the State Adverse Interest Act and 49 CFR § 18.36(b)(3).

Each 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 Financial 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. Each 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 a 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 Proposer's authorized 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 2, Section 3.2(k) is intended to provide input to the Department as to the confidential nature of a 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 Financial 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 a 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 a 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 a 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).

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 unique nature of the Project and 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

Proposers 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 SOQs, 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 SOQs and those that are pending, or (ii) certifying that no such materially adverse changes have occurred. Additionally, Proposers shall be required to provide updated information following the Financial 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 SOQs 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 2 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 PRICE PROPOSAL

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

6. COST BREAKDOWN BY MAJOR COMPONENT

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

7. VERIFICATION

Each 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		
Proposers shall follow the order of this Technical Checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
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	No forms are provided	Exhibit 2, Section 1
Industrial Safety Record for Proposer and Major Team Members	Form D (as applicable)	Exhibit 2, Section 3.2(c)
Personnel Work Assignment Form and Commitment of Availability	Form E	Exhibit 2, Section 3.2(d)
Letter(s) Regarding Pre-Proposal Submittals	No forms are provided	Exhibit 2, Section 3.2(e)
C. Volume 1 Appendices		
Copies of Organizational Documents	No forms are provided	Exhibit 2, Section 3.2(a)
Proposer Teaming PPA or Key Terms	No forms are provided	Exhibit 2, Section 3.2(a)
Executed Contracts or Term Sheets/Heads of Terms	No forms are provided	Exhibit 2, Section 3.2(a)
E. Preliminary Performance Plans and Design-Build Technical Solutions		
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
Preliminary Training Plan	No forms are provided	Exhibit 2, Section 4.6
Design-Build Technical Solutions	No forms are provided	Exhibit 2, Section 4.7
F. Volume 2 Appendices		
Key Personnel Resumes	No forms are provided	Exhibit 2, Section 3.2(d)
Technical Drawings, Graphs and Data	No forms are provided	Exhibit 2, Section 4.3

Section 2 - Financial Proposal Components

Proposers shall follow the order of this Financial Checklist in their submissions. 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)
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 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)
A. 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 SOQs (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)
B. Financial Price Proposal		
Financial Price Proposal	Form H	Exhibit 4, Section 5
C. Cost Breakdown by Major Component		
Cost Breakdown by Major Component	Form J	Exhibit 4, Section 6
D. Proposal Security		
Proposal Letter of Credit	Form I-1	Section 3.4(b)
Proposal Demand Guarantee	Form I-2	Section 3.4(b)

Section 3 - Commercialization Proposal Components

Proposers shall follow the order of this Commercialization Checklist in their submissions. 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. CNG Commercialization Strategy and Marketing Plan		
Estimated CNG Fuel Commercialization Volumes and Process	No forms are provided	Exhibit 3, Section 3.2(a)
Grant Application Support and Management/Administration	No forms are provided	Exhibit 3, Section 3.2(b)
Pennsylvania Market Potential and Sector Plans	No forms are provided	Exhibit 3, Section 3.2(c)
Expected Competitive Advantages	No forms are provided	Exhibit 3, Section 3.2(d)
CNG Fuel Pricing Strategy	No forms are provided	Exhibit 3, Section 3.2(e)
C. Leadership Team		
Organization Structure	No forms are provided	Exhibit 3, Section 3.3(a)
Major Team Members	No forms are provided	Exhibit 3, Section 3.3(b)
Key Personnel	No forms are provided	Exhibit 3, Section 3.3(c)
Existing Commercialization Enablers	No forms are provided	Exhibit 3, Section 3.3(d)
D. Management Plan, Implementation and Tracking of Sales to Third Party Customers		
Management Plan, Implementation and Tracking of Sales to Third Party Customers	No forms are provided	Exhibit 3, Section 3.4
E. Off-Site CNG Commercial Sales		
Off-Site CNG Commercial Sales	No forms are provided	Exhibit 3, Section 3.5

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 A

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
CNG FUELING FOR TRANSIT AGENCIES PARTNERSHIP PROJECT
INSTRUCTIONS TO PROPOSERS

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: [●]

The undersigned (**Proposer**) submits this proposal (this **Proposal**) in response to that certain Request for Proposals (as amended, the **RFP**) issued by the Pennsylvania Department of Transportation (the **Department**), an agency of the Commonwealth of Pennsylvania, dated [●], 2015 relating to the CNG Fueling for Transit Agencies Partnership Project (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 Financial 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 submitted to the Department on [●];
- (B) Commercialization Proposal submitted to the Department on [●]; 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 best financial Proposal or any Proposal that the Department may receive.

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 to Unsuccessful Proposers*). 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(a) through (e) (inclusive) 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. Should Proposer be selected as the Preferred Proposer, 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)	
<hr/>			
(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 Proposers:** To be included if a Proposed Guarantor is named.

² **Note to Proposers:** 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 _____, 2016.

(Signature)

(Name Printed)

(Title)

(Proposer)

FORM B-2

INFORMATION ABOUT PROPOSER 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 _____, 2016.

(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 _____, 2016.

(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 _____, 2016.

(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 (2014) and within the past five calendar years in the United States.

	2009	2010	2011	2012	2013	2014
1. Total Hours Worked (in thousands): Nationwide: Pennsylvania:						
2. Number of fatalities: * Nationwide: Pennsylvania:						
3. Number of lost workdays: * Nationwide: Pennsylvania:						

	2009	2010	2011	2012	2013	2014
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)

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: _____

(Signature)

(Name Printed)

(Title)

(Signature)

(Name Printed)

(Title)

Subscribed and sworn to before me this day of , 2016.

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.

Proposers are advised that in accordance with Section 2.10(b) (*Conflicts of Interest*) of the Instructions to Proposers, certain firms will not be allowed to participate on any 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, an 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

_____, 2016
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 – 8th Floor, Harrisburg, PA 17120-3545 Attention: [●]
LETTER OF CREDIT NUMBER:	[●]
PLACE AND DATE OF ISSUE:	[●]
AMOUNT:	#[●]
EXPIRATION DATE:	<u>[Must be 120 days following the Financial Proposal Due Date, or if such date is not a Business Day, the next succeeding Business Day]</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 **Five Million United States Dollars (\$5,000,000)** pursuant to the Request for Proposals for the Pennsylvania Department of Transportation CNG Fueling for Transit Agencies Partnership Project (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 Financial 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 3545, 400 North Street, 8th Floor, Harrisburg, PA 17120-3545.

Reference is made to that certain Request for Proposals to Design, Build, Finance and Maintain the Pennsylvania Department of Transportation CNG Fueling for Transit Agencies Partnership Project Through a Public-Private Partnership, issued by the Pennsylvania Department of Transportation (RFP Solicitation No. [●]), as amended (the **Request for Proposals**). Capitalized terms used but not defined herein shall have their respective meanings set forth in the Request for Proposals.

We have been informed that [NAME OF PROPOSER OR DEVELOPMENT ENTITY] (the **Principal**) is submitting a Proposal in response to the Request for Proposals and that such Proposal is required by such Request for Proposals 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 **Five Million United States Dollars (\$5,000,000)** (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 Proposals has been cancelled;
- (b) except as expressly provided otherwise in the Request for Proposals 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 Request for Proposals; or
- (c) if the Obligee has not previously delivered said demand and statement hereunder, failure of the Obligee to notify Principal that it is the Preferred Proposer on or before that date that is 120 days after the Financial Proposal Due Date (or if such date is not a Business Day at the Place of Issuance, the next Business Day after such date).

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 Entity] GUARANTOR [Insert Name of Guarantor]

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 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 Proposers 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 to Unsuccessful Proposers*) 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 independent 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 independent 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 2016, by and between the Pennsylvania Department of Transportation, a state administrative department of the Commonwealth of Pennsylvania (the **Department**) and a _____, a _____ (**Proposer**), with reference to the following facts:

- (A) Proposer is one of the proposers shortlisted to submit Proposals for the Project portion of the Pennsylvania Department of Transportation CNG Fueling for Transit Agencies Partnership Project (the **Project**), and wishes to submit a Proposal in response to the Request for Proposals for the Project issued by the Department on [●] (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 each 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 Proposers independent 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 Financial Proposal Due Date.

3. COMPENSATION AND PAYMENT

(a) Except as set forth in this Stipend Agreement and Section 5.3 (*Stipend Payment to Unsuccessful Proposers*) of the ITP, each Proposer that has executed the Stipend Agreement (a **Stipend Eligible 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 Financial Proposal Due Date; or
- (ii) the Department has not cancelled the procurement on or before the Financial Proposal Due Date, and such Stipend Eligible Proposer has submitted a timely and responsive, but unsuccessful, Proposal by the Financial Proposal Due Date in accordance with the terms and conditions of the RFP Documents.

(b) If any Stipend Eligible Proposer shall be eligible to receive a stipend as a result of:

- (i) any event described in Section 3(a)(i) hereof, then such Stipend Eligible 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 such Stipend Eligible Proposer, in preparing a Proposal and otherwise participating in the procurement in an amount not to exceed the Maximum Stipend Amount; *provided that* such Stipend Eligible 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 Financial 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 shortlisted Proposers following the RFQ; or
- (ii) any event described in Section 3(a)(ii) hereof, then the Stipend Eligible 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 Financial Proposal Due Date or names another Proposer as the Preferred Proposer and (B) such Stipend Eligible 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 a Stipend Eligible 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 a Stipend Eligible 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 to Unsuccessful Proposers*) 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 to Unsuccessful Proposers*) of the ITP, no Proposer shall 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 to Unsuccessful Proposers*) 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 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, representation, 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 Proposers related to the Request for Proposals to Design, Build, Finance and Maintain the Pennsylvania Department of Transportation CNG Fueling for Transit Agencies Partnership Project (**Project**) through a Public-Private Transportation Partnership Agreement issued on [●] (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 _____, 2016, 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) \$200,000 and (b) the full amount of Proposer's actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such 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 such 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 Financial 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: _____

FORM O

LETTER FROM INDEPENDENT INSURANCE BROKER/CONSULTANT

[●], 2016

Attn: [●]
Director, Office of Policy and Public Private Partnerships
Pennsylvania Department of Transportation
P.O. Box 35345
400 North Street, 8th Floor
Harrisburg, PA 17120-3545

Re: [_____] [*Insert Proposer Name*] Proposal with respect to Insurance Policies, CNG Fueling for Transit Agencies Partnership Project (the **Project**)

Dear Mr. [●],

Reference is made to that certain Request for Proposals for the Project issued by the Pennsylvania Department of Transportation (**the Department**) on [●], 2015 (as amended, the **RFP**, and its "Instructions to Proposers," 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 the Preferred Proposer (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 4.3(c)(v) of the ITP], Section 2(f) (*Independent Insurance Broker/Consultant Letter*) 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 Proposals and for application under the PPA.

Very truly yours,

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