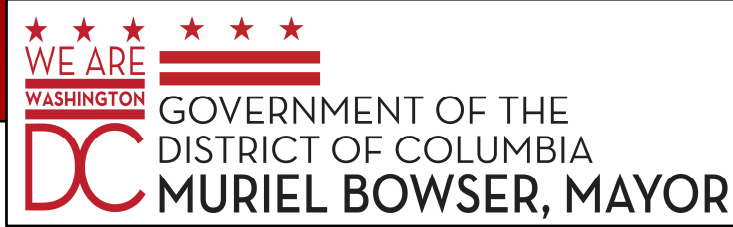


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DRAFT REQUEST FOR PROPOSALS

Delivery of Smart Street Lighting Project

Instructions to Proposers

District of Columbia Office of Public-Private Partnerships (OP3)

District of Columbia Department of Transportation (DDOT)

District of Columbia Office of the Chief Technology Officer (OCTO)

[●] [●], 2021



Request for Proposals No.: [●]

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Pursuant to 27 DCMR 4803.1, this Request for Proposals is a draft subject to approval by the Council of the District of Columbia.

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Introduction and General Provisions

1.1 Introduction

1.1.1 Introduction

The District of Columbia Office of Public-Private Partnerships (“**OP3**”), in conjunction with the District of Columbia Department of Transportation (“**DDOT**”) and the Office of the Chief Technology Officer (“**OCTO**”), is issuing this Request for Proposals (the “**RFP**”) in accordance with the District of Columbia Public-Private Partnership Act of 2014 (“**P3 Act**”), and Title 27, Chapter 48, of the District of Columbia Municipal Regulations, to seek competitive proposals for a public-private partnership (“**P3**”) for performance of the scope of work described in Section 1.1.2 (Scope of Work) (the “**Project**”).

1.1.2 Overview of Scope of Work

The Project will include the design, construction, installation, financing, and asset management of upgrades to the existing street light network in the District. The Project will include upgrades of the entire street light network within the District that currently consists of approximately 75,000 primarily street and alley lights, as well as (i) select overhead guide signs, (ii) internal and external lighting for approximately 30 “Welcome to Washington, D.C.” signs located throughout the District, and (iii) navigation, underpass, bike trail, and tunnel lights (for a limited number of tunnels). The Project will require lights of different color temperatures appropriate to their setting, as further detailed in the Technical Provisions.

The District seeks a private partner to:

- (a) convert existing non-LED and LED District-owned lights to LED technology;
- (b) design and install systems providing for the remote monitoring and control of the street light network that: (i) are fully scalable, reliable, and fast; (ii) use open standards; (iii) and feature dynamic or environmentally responsive dimming capability;
- (c) upgrade poles and associated infrastructure (including underground infrastructure), where appropriate or required based on DDOT’s condition assessment and a pre-determined process and criteria for establishing when such infrastructure must be replaced;
- (d) deliver long-term asset management of the street light system pursuant to the terms, conditions, and requirements of the Project Agreement;
- (e) install smart city technology (“**SCT**”), including wireless access points, to leverage the street light system and the District’s significant fiber optic network (known as

“DC-Net”) for ancillary uses and to deliver broadband Wi-Fi coverage that advances the District’s goal of city-wide broadband access; and

- (f) finance the improvements to the District’s existing street light network and installation of the SCT.

1.1.3 Project Goals

The District has identified seven key goals for the Project. These goals have been developed jointly by DDOT, OP3, and OCTO.

- (a) *Public and Traffic Safety*: Reduce traffic-related accidents and injuries in keeping with the District’s Vision Zero goals and enhance crime prevention and detection by providing more uniform and reliable lighting throughout all of the District’s Wards through the use of LED street lights.
- (b) *Design and Historic Preservation*: Design and implement a modernized street light system, including dimming, shielding and other adjustments to minimize impacts on wildlife and eliminate light pollution. Having given due consideration to the nature of historic districts, protected landmarks, and the District’s status as the nation’s capital, there should be no change to the structure of the street light system or style following the conversion to LED fixtures.
- (c) *Smart City Technology*: Introduce functionality for the street light system to serve as a platform for ancillary uses, including Wi-Fi technology, that will help close the digital divide, increase effectiveness and efficiency of government services, and promote economic development.
- (d) *Energy Efficiency and Performance-Based Delivery*: Reduce energy consumption by as much as 50% to 60% per year (an annual savings of approximately \$3 million), resulting in a reduction of approximately 38,000 tons of greenhouse gases annually throughout the District, by installing energy efficient LED luminaires that have a useful life that is three to four times longer than the technology currently in use, and implement an improved pay-for-performance mechanism that maintains the street lighting system at a higher state of repair.
- (e) *Risk Transfer*: Transfer project integration and other commercial risks to a private entity across the appropriate aspects of the Project beyond those currently transferred through traditional performance-based contracting mechanisms.
- (f) *Stakeholder Engagement*: Foster stakeholder understanding and support throughout Project development and implementation.

1.2 Procuring Office; Certain Background Information

OP3 will be the procuring office for the Project, working closely with DDOT and OCTO.

DC-Net provides managed voice, data, and video wire-based and wireless services to all government constituents city-wide over a secure, highly redundant, and high capacity fiber optic telecommunications platform. This standards-based platform lays the foundation for all next-generation government and public safety communications throughout the District. DC-Net is a program managed by OCTO. OCTO owns and manages an extensive subterranean fiber optic network that will serve as the backbone for the SCT solutions desired by the District as a part of the Project.

The street lights are powered by electricity supplied via a contract currently with Washington Gas and Electric (“**WGES**”) and distributed via Pepco’s network through a mix of overhead (50%) and underground (50%) power lines.

Pepco and Verizon both own a portion of the street light poles in the District (37% and 9%, respectively), while the District owns the remainder. DDOT owns the arms and fixtures on all of the poles contemplated as part of the Project.

1.3 Request for Proposals

1.3.1 Introduction

By the RFP, the District is seeking from all teams of firms who were shortlisted (“**Proposers**”) in accordance with the Request for Qualifications for the Project issued on June 21, 2017, as revised on July 21, 2017 (the “**RFQ**”), Proposals to undertake the design, construction, financing, and asset management of the Project. Only those Respondents who submitted a statement of qualifications (“**SOQ**”) in response to the RFQ and were shortlisted under the RFQ are eligible to submit Proposals in response to the RFP.

1.3.2 Responsibility and Liability

Each Proposer is solely responsible and liable for:

- (a) all investigations and analyses related to the Project, as more fully described in Section 1.8 (*Disclosed Information and Proposers’ Diligence*);
- (b) preparation of its Proposal; and
- (c) any design, construction, and asset management solutions, and means and methods, that it selects.

1.3.3 Preferred Proposer

The District will select (in accordance with these Instructions to Proposers (this “**ITP**”)) a Proposer to enter into the Project Agreement with the District (the “**Preferred Proposer**”). The Preferred Proposer, or an entity created by the Preferred Proposer, will become the developer (the “**Developer**”) for the Project upon execution of the Project Agreement.

1.3.4 RFP Documents

- (a) The RFP consists of the documents described below and any other documents that may be issued by Addenda (in each case, as such documents may be revised, amended, supplemented or otherwise modified):
 - (i) this ITP (including all Appendices and Forms attached to this ITP);
 - (ii) the draft Project Agreement (including all exhibits attached to the draft Project Agreement); and
 - (iii) the Technical Provisions (which will also be an exhibit to the Project Agreement).
- (b) For the purposes of the RFP, if there are any conflicts or inconsistencies among the terms and conditions of any of the documents comprising the RFP, the following shall apply:
 - (i) with respect to matters of interpretation related to the Procurement Process, this ITP shall prevail over the documents in any other part of the RFP; and
 - (ii) with respect to matters of interpretation related to the Project or the Project Agreement, the Project Agreement shall prevail over the documents in any other part of the RFP.

1.3.5 Procurement Process

The procurement process to select a Preferred Proposer to deliver the Project shall commence with the issuance of the Draft RFP and terminate upon Commercial Close or the date that the District notifies the Proposers that the procurement for the Project has been terminated, whichever occurs first, and shall include the steps described in this ITP, including the steps described in Section 2 (Procurement Process) of this ITP (collectively, the “**Procurement Process**”).

1.3.6 Definitions

Definitions of capitalized terms used and not otherwise defined in Appendix A (Definitions) of this ITP are set forth in Exhibit 1 (*Definitions*) to the Project Agreement. In the event of a conflict between the definitions set forth in this ITP and the definitions set forth in the Project Agreement, the Project Agreement definitions shall control.

1.3.7 Procurement Schedule

A detailed schedule of the Procurement Process (the “**Procurement Schedule**”) is set forth in Appendix B (Procurement Schedule) of this ITP. All dates set forth in the

Procurement Schedule and elsewhere in the ITP are subject to change, in the District's sole discretion, by notice to the Proposers.

1.4 Compliance with this ITP

Proposers must comply with this ITP throughout the Procurement Process. Failure by a Proposer to comply with any of the terms of this ITP may result in:

- (a) disqualification of such Proposer from the Procurement Process;
- (b) a draw by the District on such Proposer's Proposal Security (as defined below), but only under the circumstances described in Section 4.6.3 (*Forfeiture of Proposal Security*); and
- (c) loss of such Proposer's eligibility to receive the Stipend, as described in Section 7.4 (*Stipend*).

1.5 Communications Protocols

1.5.1 District's Point of Contact

The Contracting Officer for this procurement is:

Todd Allen, Esq.
Office of Contracting and Procurement
441 4th Street, NW, Suite 330 South
Washington, DC 20001
todd.allen@dc.gov

Unless expressly provided otherwise by this ITP, the Contracting Officer shall be the District's sole point of contact and source of information for Proposers during the Procurement Process.

If the District replaces the Contracting Officer at any time during the Procurement Process, the District shall notify the Proposers of the name, address and other contact information of the new Contracting Officer.

1.5.2 Proposer Representative

- (a) Each Proposer shall designate one individual to be its authorized representative for the Procurement Process (the "**Proposer Representative**").
- (b) If a Proposer wishes to replace its Proposer Representative at any time during the Procurement Process, the Proposer shall notify the Contracting Officer (in writing) of the name, address, telephone number and email address of the new Proposer Representative.

- (c) Each Proposer is responsible for ensuring that the name and contact information for its Proposer Representative is accurate and updated at all times during the Procurement Process. Failure to do so may result in such Proposer failing to receive important communications from the District. The District is not responsible for any such failure.

1.5.3 Rules of Contact

(a) No Improper Influence

Proposers are expected to conduct themselves with professional integrity and to refrain from all lobbying activities related to the Project, the RFP or the Procurement Process. Any substantiated allegation that a Proposer or any employee, member, agent, consultant, advisor, representative, promoter or advocate of the Proposer has engaged in prohibited communications or attempted to unduly influence the selection process may be cause for the District to disqualify the Proposer, or to disqualify the Proposer employee, member, agent, consultant, advisor, representative, promoter or advocate, from participating with the Proposer, in each case, in the sole discretion of the District.

(b) Communications with District

All notices, submissions, approvals, and other communications described in this ITP from a Proposer to the District, or from the District to a Proposer, shall be in writing and delivered through the Contracting Officer, except as otherwise expressly permitted or required to be given orally (in person or by telephone), in hard copy or otherwise, in each case, as designated by the District (in the RFP or through a subsequent communication).

(c) Improper Communications and Contacts

From the date of issuance of the RFQ until the date of issuance of the first draft of the RFP, the rules of contact set forth in the RFQ shall apply.

From and after the date of issuance of the first Draft RFP and ending on the earliest of (x) the Commercial Closing Date, (y) rejection of all Proposals by the District or (z) cancellation of the RFP:

- (i) Communication with other Proposers. 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 any team's Proposal; *provided* that (A) subcontractors (excluding Major Non-Equity Members and Major Participants), financiers or underwriters 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 such subcontractors, financiers and underwriters (as applicable) 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 District-sponsored informational meetings (if any) that are attended by more than one Proposer.

- (ii) Proposer Representatives. Each Proposer Representative shall be responsible for contacts with the District on behalf of such Proposer and, except at One-on-One Meetings (as defined below) and other group discussions with the District, each Proposer may only communicate with the District regarding the RFP or the Project through its Proposer Representative.
- (iii) Ex Parte Communications. No Proposer or representative of a Proposer through their employees, agents, consultants, advisors or other representatives shall have any *ex parte* communications regarding the RFP or the Project with the District or any District staff, advisors, contractors or consultants involved with the RFP or the Project, except for communications expressly permitted by the RFP or approved in advance by the Contracting Officer, in such person's sole discretion. The foregoing restriction does not prohibit or restrict communications with regard to matters unrelated to the RFP or the Project or participation in public meetings of the District.
- (iv) Stakeholders. Communication by or on behalf of any Proposer with any entity listed below (each, a "**Stakeholder**"), including any of the Stakeholder's members, staff-persons, employees, agents, consultants, advisors or other representatives, regarding the Procurement Process or the Project is prohibited, except for communication expressly permitted by the RFP or approved in advance by the Contracting Officer, in such person's sole discretion:
 - (1) the Council of the District of Columbia;
 - (2) the Office of the Mayor of the District of Columbia;
 - (3) the Mayor of the District of Columbia;
 - (4) the Office of the Deputy Mayor for Planning and Economic Development;
 - (5) DDOT;
 - (6) OCTO;
 - (7) OP3;

- (8) the District of Columbia Office of Planning (“**DCOP**”);
- (9) the District of Columbia State Historic Preservation Office (“**SHPO**”);
- (10) any other District agencies;
- (11) the Public Service Commission of the District of Columbia;
- (12) any office or agency of the U.S. Department of Transportation;
- (13) U.S. Commission on Fine Arts (“**CFA**”);
- (14) National Capital Planning Commission (“**NCPC**”);
- (15) any utility owners whose facilities are likely to be impacted by the Project (including Pepco and Verizon);
- (16) any District Advisory Neighborhood Commission (“**ANC**”);
- (17) the Streetlight Advisory Panel;
- (18) National Park Service;
- (19) CSX Corporation;
- (20) Amtrak;
- (21) Washington Metropolitan Area Transit Authority;
- (22) other entities designated as “Consulting Parties” for the purposes of historic preservation review under NEPA and Section 106 of the National Historic Preservation Act; and
- (23) telecommunications providers that may seek to attach small cell antennas and related equipment to utility poles (whether owned by the District or a third-party) to which District-owned street lights are attached.

It is the intent of the District that the District will provide any necessary coordination during the Procurement Process with Stakeholders so that, among other things, the Procurement Process may be implemented in a fair, competitive and transparent manner and with uniform information. Information requests concerning Stakeholders should be sent to the Contracting Officer, who, in the District’s 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. Such meetings will be open to all Proposers and will not include any confidential matters.

- (v) Any communications in breach of the foregoing clauses (i) - (iv) (inclusive) of this Section 1.5.3(c) may result in disqualification from the Procurement Process, in the absolute discretion of the District.
- (vi) The District will not be responsible for any oral exchange or any other information or exchange that occurs outside of the official process specified in this Section 1.5 (Communications Protocols).
- (vii) For the purposes of this Section 1.5.3 (Rules of Contact), “contact” and “communication” includes face-to-face, telephone, email, text messaging, social media, other electronic means or formal written communication, either directly by a Proposer or indirectly by an employee, member, agent, consultant, advisor, representative, promoter or advocate of a Proposer.

1.5.4 USDOT and FHWA

Without limiting the foregoing, Proposers shall not contact any USDOT or FHWA office, or any representative or consultant of USDOT or FHWA regarding (i) any requests for a Private Activity Bonds (“**PABs**”) allocation for the Project or (ii) any other application that may be submitted with respect to the Project.

1.5.5 Conduit Issuers

If any Proposer wishes to propose a Financial Plan that incorporates PABs (as further discussed in Section 1.13 (Private Activity Bonds)) and to communicate with the Conduit Issuer regarding its participation in such Financial Plan, then such Proposer may communicate regarding such matters with the Conduit Issuer; *provided* that (i) the Proposer shall give written notice to the District prior to each such communication and (ii) from Preferred Proposer Selection, no Proposer other than the Preferred Proposer shall engage in such communication.

1.6 Improper Conduct

1.6.1 Non-Collusion

Each Proposer shall submit, together with its Technical Proposal, a Non-Collusion Affidavit in the form attached as Form 1 (Non-Collusion Affidavit). Neither the Proposer, nor any of its team members, may undertake any of the prohibited activities identified in the Non-Collusion Affidavit.

1.6.2 Definition of Conflicts of Interest

For purposes of this ITP, “**Conflict of Interest**” means:

- (a) any situation or circumstance where a Proposer or any of its Major Non-Equity Members or Major Participants:
 - (i) has other commitments, relationships, financial interests or involvement in ongoing litigation that:
 - (1) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the District’s independent judgment; or
 - (2) could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Project Agreement;
 - (ii) is under contract with the District to prepare, or advise on the preparation of, procurement documents for the Project; or
 - (iii) has knowledge of, or access to, confidential information (other than confidential information disclosed by the District in the normal course of the Procurement Process) of strategic or material relevance to the RFP or to the Project that is not available to other Proposers and that could or could be seen to give the Proposer an unfair competitive advantage; and
- (b) an “organizational conflict of interest” under 23 CFR § 636.103, which is defined as follows:

“Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”

1.6.3 Prohibition on Conflicts of Interest

Each Proposer is prohibited from:

- (a) directly or indirectly receiving any advice relating to the Project or the Procurement Process from; or

- (b) including as a Major Non-Equity Member, Major Participant, or contractor, subcontractor, or consultant to the Proposer or any Major Non-Equity Member or Major Participant,

any Person with a Conflict of Interest, including any member, staff person, employee, agent, advisor, consultant, or other representative of:

- (i) the Council of the District of Columbia;
- (ii) the Office of the Mayor of the District of Columbia;
- (iii) the Mayor of the District of Columbia;
- (iv) the Office of the Deputy Mayor for Planning and Economic Development;
- (v) DDOT;
- (vi) OCTO;
- (vii) OP3;
- (viii) DCOP;
- (ix) SHPO;
- (x) any other District agencies;
- (xi) the Public Service Commission of the District of Columbia;
- (xii) any office or agency of the U.S. Department of Transportation;
- (xiii) Hunton Andrews Kurth LLP;
- (xiv) Ames & Gough, Inc.;
- (xv) Baller Stokes & Lide PC;
- (xvi) KPMG LLP;
- (xvii) NV5 – Energy Efficiency Services Group (f/ k/a Celtic Energy, Inc.);
- (xviii) RK&K;
- (xix) Leidos;
- (xx) SWP Group Holdings, LLC (d/b/a SmartWorks Partners);
- (xxi) any utility owner whose facilities are likely to be impacted by the Project;

- (xxii) CFA;
- (xxiii) NCPC;
- (xxiv) any ANC;
- (xxv) the Street Light Advisory Panel; and
- (xxvi) any other Person that, to the best of Proposer's knowledge and belief, is engaged by the District or any of the above listed entities in connection with the Project or the RFP.

1.6.4 Existence of Conflicts of Interest

- (a) If a Proposer discovers any perceived, potential or actual Conflict of Interest, the Proposer must promptly disclose the same to the District in a written statement, consistent with the requirements of 27 DCMR §§ 2220-2222 and 27 DCMR § 4812, delivered by the Proposer Representative to the Contracting Officer, including:
 - (i) the names and contact information of the Persons to which the perceived, potential or actual Conflict of Interest relates;
 - (ii) a description of the perceived, potential or actual Conflict of Interest; and
 - (iii) a description of the steps taken or proposed to be taken to mitigate the perceived, potential or actual Conflict of Interest.
- (b) If a Conflict of Interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the Procurement Process, the District may, in its discretion, disqualify such Proposer.
- (c) The District may grant exceptions to the policy set forth in Section 1.6.3 (*Prohibition on Conflicts of Interest*), upon written request from a Proposer, if it is determined that the relevant party's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposers seeking such exception are advised to submit a written request as soon as possible because the District will not be responsible for any failure to respond to any such request prior to the Technical Proposal Due Date as set forth in Appendix B (*Procurement Schedule*).
- (d) The provisions of this Section 1.6 (*Improper Conduct*) are intended to augment applicable federal and District law. Such Applicable Law will also apply to Proposers and may preclude certain firms and their entities from participating on a Proposer team. Proposers should note that the conflict of interest rules set out in 23 C.F.R. Part 636, Subpart A, including 23 C.F.R. § 636.116, are expected to

apply to this procurement (see also Section 1.6.2 (Definition of Conflicts of Interest)).

1.6.5 Participation on More Than One Proposer Team

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

1.7 Changes in Proposer's Organization and Key Personnel

1.7.1 Changes in Proposer's Organization

- (a) Following Council approval of the Final RFP and subject to clause (b) below, Proposers may add, remove or substitute team members and reorganize their teams during the Procurement Process, unless the change would result in a Conflict of Interest.
- (b) Notwithstanding the foregoing, Proposers must not do any of the following without the District's prior written consent:
 - (i) delete, substitute or change the identity of any Major Non-Equity Member, any Major Participant, or any other team member identified in its SOQ, or change the role or scope of work of such Major Non-Equity Member, Major Participant, or team member; or
 - (ii) otherwise reorganize its team to the extent that such reorganization would render the organizational charts and descriptions provided in their SOQ inaccurate or incomplete,(each an "**Organizational Change**").
- (c) If a Proposer wishes to make any Organizational Change, a Proposer must submit to the District a written request for the change as soon as possible but in no event later than the date and time specified in the Procurement Schedule as the deadline for submission of such a request. Such request must include a description of the proposed change and any relevant documentation related to the change, including updated versions of information submitted in the Proposer's SOQ.
- (d) While the District reserves the right to withhold its consent to any Organizational Change under clause (b) in its sole discretion, the District intends to base its

decision as to whether to accept a proposed Organizational Change on whether the proposed Organizational Change would:

- (i) result in a Proposer team with equal or better levels of experience, financial strength, and quality compared to those demonstrated in the Proposer's SOQ;
- (ii) result in any Conflict of Interest; or
- (iii) cause the Proposer to be in violation of another provision of the RFP.

1.7.2 Changes in Key Personnel Identified in an SOQ

Following Council approval of the Final RFP, if a Proposer wishes to change any of the Key Personnel identified in Part B, Volume 3, Section 3.2 of its SOQ during the Procurement Process, the Proposer must submit to the District a written notice of the change as soon as possible but in no event later than the date and time specified in the Procurement Schedule as the deadline for submission of such a request. Such notice must include the reason for the proposed change, a resume for the new Key Personnel (to the same level of detail as the resume submitted with the SOQ for the relevant position), and such other information about the change and the new Key Personnel as the District may reasonably require.

1.7.3 Key Personnel Nominated in a Proposal

- (a) As part of its Proposal, each Proposer is required to nominate individuals as Key Personnel in accordance with Appendix C (Technical Proposal Instructions).
- (b) Prior to the Commercial Closing Date, a Proposer must not change any of the Key Personnel nominated in its Proposal, except in accordance with this Section 1.7.3.
- (c) If the Proposer wishes to change any of the Key Personnel identified in its Proposal prior to the Commercial Closing Date, the Proposer must submit to the District a written request for the District to approve such change as soon as possible. The Proposer shall provide the District with such information as the District may require with respect to any proposed change, including the reasons for the change, the identity and qualifications (including a resume) of any new individual that is proposed to be a Key Personnel and evidence demonstrating that the proposed change in Key Personnel results in Key Personnel that are of a quality equal to or better than the Key Personnel prior to such change. The District is under no obligation to approve such requests and may approve or disapprove such a request in its sole discretion. The District will only consider such requests based on circumstances beyond the Proposer's control.
- (d) Following the Commercial Closing Date, any proposed changes to Key Personnel will be governed by the Project Agreement.

1.8 Disclosed Information and Proposers' Diligence

1.8.1 Disclosed Information

- (a) Studies and investigations undertaken by the District in connection with the Project are contained in the Disclosed Information. Disclosed Information will be provided to Proposers via the Data Room per the instructions communicated to Proposers in conjunction with the release of the Draft RFP. Additional Disclosed Information may be added to the Data Room throughout the Procurement Process. Although the District will endeavor to notify Proposers via the Data Room when documents are added to the Data Room, each Proposer will be solely responsible for monitoring the Data Room for new Disclosed Information.
- (b) Disclosed Information is provided to Proposers for the sole purpose of providing the Proposers with background information relating to the Project; neither the Proposer nor any of its members may disseminate the Disclosed Information except as expressly provided in their respective non-disclosure and non-use agreements entered into with the District.
- (c) Except as expressly stated in the Project Agreement:
 - (i) the Disclosed Information will not form a part of the Project Agreement or any other agreement between the District and the Developer;
 - (ii) the Disclosed Information is not mandatory or binding;
 - (iii) Proposers are not entitled to rely on the Disclosed Information or any opinions, suggestions, directions or recommendations within the Disclosed Information as presenting financing, design, engineering, construction, or asset management solutions or other direction, means or methods for complying with the requirements of this procurement, the Project Agreement, Governmental Approvals or Applicable Law;
 - (iv) the District will 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:
 - (1) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Disclosed Information; or
 - (2) any action or forbearance in reliance on the Disclosed Information.
- (d) 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:

- (i) preliminary in nature and may be obsolete;
 - (ii) not intended to express the views or preferences of the District or any other Governmental Entity or represent any statement of approval or acceptance thereof by the District or any other Governmental Entity; and
 - (iii) not intended to form the basis of a Proposer's design solutions, technical solutions or construction means and methods.
- (e) Proposers shall use or not use the Disclosed Information at their sole risk and remain solely responsible and liable for:
 - (i) all investigations and analyses relating to the Project, including those relating to any subsurface conditions or Utilities;
 - (ii) the preparation of their Proposals; and
 - (iii) any design and construction solutions, means and methods that they select, in each case, without regard to anything contained in the Disclosed Information.
- (f) The District 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, District-Provided Approvals or Applicable Law. No Proposer shall have the 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, except as otherwise expressly provided in the Project Agreement that such Proposer enters into with the District.

1.8.2 Examination of Disclosed Information

(a) Due Diligence

Each Proposer shall be solely responsible for:

- (i) examining, with appropriate care and diligence, the Disclosed Information and any other documents or information provided by the District prior to the Setting Date; and

- (ii) informing itself with respect to any and all circumstances that may in any way affect the nature of its Proposal or the performance of its obligations if such Proposer enters into the Project Agreement with the District.

(b) Public Space

Proposers may not perform surveys or otherwise gather data from locations within the Public Space to the extent that doing so would disrupt vehicular, pedestrian, or bicycle traffic in the District or require coordination with, or permission from, a Governmental Entity or other third party.

(c) Condition of Existing Assets

The District has made available to Proposers certain data relating to the condition of existing assets as Disclosed Information in the Data Room. The provisions of Section 1.8.1 (*Disclosed Information*) apply with respect to any such data provided as Disclosed Information.

(d) Utilities

As provided in the Project Agreement and the Technical Provisions, the Developer shall be responsible for coordinating all utility adjustments necessary to comply with obligations under the Project Agreement in accordance with Applicable Law and the relevant terms of the License Agreements.

(e) Permitting

- (i) Certain Environmental Permits

The District has received clearance for the Project pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*) (“**NEPA**”) and Section 106 of the National Historic Preservation Act (54 U.S.C. §§ 300101 *et seq.*). Copies of the relevant documentation will be made available to Proposers via the Data Room.

- (ii) Other Governmental Approvals

The Developer will be responsible for obtaining all other Governmental Approvals required to deliver the Project and to comply with its obligations under the Project Agreement.

1.9 Federal Contracting Requirements

In order to preserve the ability of the District and the Preferred Proposer to use federal funds and federal credit assistance for the Project, the procurement process and the Project Agreement must comply with applicable federal laws and regulations. The District

reserves the right to modify the Procurement Process to address any concerns, conditions or requirements of relevant federal agencies. Proposers will be notified of any such modifications.

1.9.1 Disadvantaged Business Enterprises

- (a) DDOT has established a Disadvantaged Business Enterprise (“**DBE**”) program in accordance with regulations of the USDOT, 49 C.F.R. Part 26. DDOT anticipates receiving federal grant assistance from the USDOT, and as a condition of receiving this assistance, the DDOT has signed an assurance that it will comply with 49 C.F.R. Part 26. It is the policy of DDOT to ensure that DBEs have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also DDOT’s policy:
 - (i) to ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
 - (ii) to create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
 - (iii) to ensure that the DBE program is narrowly tailored in accordance with Applicable Law;
 - (iv) to ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
 - (v) to help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
 - (vi) to assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- (b) The District’s DBE requirements applicable to the Project, including the participation goals with respect to the D&C Work and the Asset Management Services, are set forth in Article 11 (*Federal Requirements*) of the Project Agreement.

1.9.2 Other Federal Contracting Requirements

The following federal requirements are applicable to the Project:

- (a) Title VI of the Civil Rights Act of 1964;
- (b) the Buy American Act (41 U.S.C. §§ 8301—8305) (which supersedes Section 103.01, Article 24 (*Buy American*) of the Gold Book);
- (c) FHWA Buy America requirements (23 C.F.R. § 635.410);

- (d) the Davis-Bacon Act (40 U.S.C. §§ 3141—3148); and
- (e) the Service Contract Act (41 U.S.C. §§ 6701—6707).

1.10 Certifications

The Proposer and each Major Non-Equity Member and Major Participant must sign and submit the certifications attached in the forms of Form 1 (Non-Collusion Affidavit), Form 2 (Equal Employment Opportunity Certification), Form 3 (Certification for Use of Contractor Funds for Lobbying) and Form 4 (Debarment and Suspension Certification) to this ITP, as part of the Proposer’s Technical Proposal.

1.11 Insurance

The Project Agreement contains certain minimum insurance requirements that must be reflected in Proposals. Refer to Article 35 (*Insurance*) and Exhibit 9 (*Required Insurance*) of the Project Agreement for further details.

1.12 Other Federal Financing

The District does not anticipate pursuing Transportation Infrastructure Finance and Innovation Act (“**TIFIA**”) credit assistance for the Project. The District continues to monitor TIFIA and other potential federal credit assistance programs and reserves the right to pursue any such programs in its absolute discretion.

1.13 Private Activity Bonds

1.13.1 PABs Allocation

The District intends to request a provisional allocation for PABs for the eligible aspects of the Project from USDOT. The District anticipates that confirmation of any provisional allocation of PABs will be received prior to issuance of the Final RFP.

1.13.2 Use of PABs in the Financial Proposal

In the event that the District receives a provisional PABs allocation, each Proposer may, but will not be obligated to, use the PABs allocation in its Financial Proposal.

1.13.3 Proposer Responsibilities to Conduit Issuer

The Proposer shall be responsible for all of the Conduit Issuer’s costs associated with issuing the PABs, including attorney’s fees associated with obtaining bond counsel opinions. The District will not provide an estimate of these costs or fees, and it is the responsibility of the Proposer to correspond with the Conduit Issuer to determine this amount.

1.13.4 Conduit Issuer Requirements

The Proposer should be familiar with the Conduit Issuer's requirements and guidelines for issuance of PABs that the Proposer must satisfy.

1.13.5 Proposer Responsibilities for PABs

The District will make the PABs allocation available to provide for a portion of the financing for the Project as set forth in the Preferred Proposer's Financial Proposal. A Proposer wishing to use PABs shall be solely responsible for obtaining ratings, bond counsel opinions and credit enhancement and for satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of state and federal tax and securities laws.

1.13.6 District Assistance for Governmental Approvals

The District's approach to the possible use of PABs has been developed as an accommodation to the Proposers in an attempt to facilitate the use of PABs by Proposers. The District will reasonably assist the Proposer in seeking approvals from any relevant Government Entities necessary for issuing PABs. The District makes no representation about, and no guarantee of, the amount, if any, of PABs that can be issued for the Project or the use of proceeds of PABs to finance the Project as a matter of federal tax law. Proposers should seek advice from their own tax consultants. If a Proposer elects to include PABs in its Financial Proposal, it does so at its own risk and cost, and the District shall have no liability with respect to such inclusion.

1.13.7 District Assistance for Obtaining Documents

The District will assist the Developer in obtaining documents required to comply with any disclosure requirements under Applicable Law in connection with the issuance of PABs or any other capital markets issuance, including legal opinions, delivery of information, and continuing disclosure undertakings, as are reasonably necessary to comply with Applicable Law and the applicable requirements of underwriters.

Procurement Process

2.1 Summary of the Procurement Process

2.1.1 The following is a general summary of the key steps involved in the Procurement Process, which are described in greater detail in the subsequent Sections of this ITP, and for which a detailed schedule is provided in Appendix B (Procurement Schedule):

(a) Issuance of the Draft RFP, Final RFP and Addenda

The Draft RFP, Final RFP and Addenda will be issued in accordance with Section 2.2 (Issuance of the RFP and Addenda).

(b) Communications with Proposers and One-on-One Meetings

- (i)** Proposers' Submittal of Questions and Comments Regarding the Draft RFP and Final RFP: Prior to the District's submission of the proposed Final RFP to Council for approval, Proposers may submit questions and requests for clarification or interpretation of, and comments on, any provision in the RFP, in writing, and the District may respond to such questions, requests and comments in each One-on-One Meeting and through updated drafts of the Draft RFP and through Addenda (following Council approval of the Final RFP). The District may, but is not obligated to, disclose non-confidential questions from any Proposer and provide all Proposers with the District's responses to such questions.
- (ii)** One-on-One Meetings. The District contemplates conducting bilateral meetings between the District and each Proposer as described in Section 2.4 (One-on-One Meetings) prior to the District's submission of the proposed Final RFP to Council for approval. The District may conduct meetings with Proposers and third-parties at its discretion.
- (iii)** Proposers' Submittal of Alternative Technical Concepts and the District's Responses. Prior to the District's submission of the proposed Final RFP to Council for approval, Proposers may submit ATCs, and the District shall respond to such submissions, as described in Section 3 (Alternative Technical Concepts).

(c) Submission of Technical and Financial Proposals

Each Proposer shall submit its Technical Proposal and Financial Proposal not later than the due dates for submittal of Technical Proposals and Financial Proposals set forth in Appendix B (Procurement Schedule) (respectively, the "**Technical Proposal Due Date**" and the "**Financial Proposal Due Date**") in accordance with Section 4 (General Requirements for Technical and Financial Proposals).

(d) **Preferred Proposer Selection**

The District will select the Preferred Proposer in accordance with the evaluation process set forth in Section 5 (*Proposal Evaluation Process*).

(e) **Finalization of the Project Agreement, Commercial Close and Financial Close**

The Preferred Proposer and the District will finalize, execute and deliver the Project Agreement in accordance with Section 7.1 (*Executing the Project Agreement*). The Preferred Proposer will achieve Commercial Close and Financial Close in accordance with Article 2 (*Terms and Conditions Precedent to Commercial Close and Financial Close*) of the Project Agreement.

(f) **Community Consultation**

- (i) Proposers are referred to Section 110 of the P3 Act and 27 DCMR § 4803 for a description of the process for community consultation required with respect to the Draft RFP, and approvals by the District of Columbia Council required with respect to the Final RFP.
- (ii) The District has established an advisory panel (the “**Street Light Advisory Panel**”) comprised of District of Columbia residents. The Street Light Advisory Panel will meet regularly for briefings on the status of the Project and to offer feedback on the design, construction and startup of asset management work.

2.2 Issuance of the RFP and Addenda to the Final RFP

2.2.1 RFP Issuance

- (a) The District will issue to Proposers the Draft RFP and the Final RFP (including all Addenda to the Final RFP, if any) and all notices and other documents related to such documents and the Project solely in electronic format by the Contracting Officer. To the extent any Proposer wishes to comment on the Draft RFP, such Proposer shall only comment on the Draft RFP provided by the Contracting Officer, and for the avoidance of doubt, such Proposer shall not comment on any other version of the RFP (including versions posted on the OP3 website).
- (b) Proposers are solely responsible for monitoring the Data Room and for receiving and reviewing all documents provided through the Data Room.

2.2.2 Issuance of Addenda to the Final RFP

- (a) The District reserves the right, in its sole discretion, to revise, modify, supplement or otherwise amend the Draft RFP, the Final RFP, or the Procurement Process. Any such revisions, modifications, supplements, or amendments to the Final RFP will be implemented through the issuance of Addenda.
- (b) Proposers will be notified of the issuance of Addenda, if any, by the Contracting Officer.
- (c) Each Proposer shall acknowledge in both its Technical Proposal Letter and Financial Proposal Letter receipt of all Addenda and all written responses to Proposers' questions issued by the District. Failure to acknowledge receipt of all Addenda may cause the related Proposal to be deemed non-responsive and be rejected.

2.3 Questions and Responses Regarding the RFP

2.3.1 Examination and Clarification of the Final RFP

Each Proposer shall be solely responsible for:

- (a) examining, with appropriate care and diligence, the Final RFP (including all Addenda); and
- (b) requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained in the Final RFP, or of any provision thereof that the Proposer does not understand.

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

2.3.2 Question Submission

- (a) The District will only consider comments and questions regarding the Draft RFP and the Final RFP, including requests for clarification and requests to correct errors, if transmitted via e-mail by a Proposer to the Contracting Officer in the prescribed format. No telephone or oral requests will be considered.
- (b) Such comments/questions may only be submitted at any time prior to the applicable time and date specified in Appendix B (Procurement Schedule) or such later date as may be specified in any Addendum, and shall:
 - (i) be submitted:
 - (1) in writing in Microsoft Word format using Form 5 (Clarification Request Form);

- (2) with each question/comment being identified by the Proposer as primarily “technical”, “legal/commercial” or “financial”; and
 - (3) with a separate document in Word format being submitted for each such category of question/comment (i.e., three documents shall be submitted by a Proposer if it has questions/comments that fall in each of the “technical”, “legal/commercial” and “financial” categories);
 - (ii) be sequentially numbered, as set forth in Form 5 (Clarification Request Form);
 - (iii) identify the relevant document (e.g., the ITP, Project Agreement, Technical Provisions);
 - (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 or contain proprietary or confidential information; and
 - (vi) indicate whether the question is a Category 1, 2, or 3 question (as described below).
- (c) “Category 1” means a potential “go/no-go” issue that, if not resolved in an acceptable manner, may preclude the Proposer from submitting a Proposal. “Category 2” means an issue that, if not resolved in an acceptable manner, will significantly affect value for money. “Category 3” means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.
- (d) Proposers may include a blackline mark-up of the relevant part or parts of the RFP with Form 5 (Clarification Request Form).

2.3.3 District Responses

- (a) Proposers shall submit questions and requests for clarification in accordance with the requirements set forth in Section 2.3.2 (Question Submission). Subject to clause (b) below, the District may share non-binding written responses to selected questions, requests for clarification and comments regarding the Draft RFP and the Final RFP with all Proposers. The District may also discuss issues of common concern in each One-on-One Meeting. The District will not disclose which Proposer team submitted the questions/requests for clarification when sharing responses or discussing issues of common concern. For the avoidance of doubt, any such responses are provided for informational purposes only and will not

amend or be considered part of the Final RFP, except to the extent they are specifically incorporated in any Addenda.

- (b) The District shall not share and may provide non-binding written responses individually to those written questions identified by a Proposer or deemed by the District 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 District reserves the right to disagree with the confidentiality of information in the interest of maintaining a fair process or complying with Applicable Law. Under such circumstances, the District will inform the Proposer and may allow the Proposer, within a time period set by the District, to withdraw the question, rephrase the question or have the question answered non-confidentially. If a Proposer fails to respond to the District within the time frame identified by the District, such failure shall be deemed to allow the District to answer the question on a non-confidential basis.
- (c) The District may rephrase questions as it deems appropriate and may consolidate similar questions. The District may also create and answer questions independent of the Proposers.

2.4 One-on-One Meetings

- (a) The District intends to conduct bilateral meetings with each Proposer and its advisors during the Procurement Process (each, a **“One-on-One Meeting”**) and prior to the District’s submission of the proposed Final RFP to Council for approval. The schedule for anticipated One-on-One Meetings is set forth in Appendix B (Procurement Schedule). The District may conduct additional One-on-One Meetings with each Proposer, its advisors and relevant third-parties at its discretion.
- (b) One-on-One Meetings will be conducted to discuss issues and clarifications regarding the Project and Project-related documents including Proposer’s questions, requests for clarification and comments on the Draft RFP submitted in accordance with Section 2.3 (Questions and Responses Regarding the RFP). The District intends the One-on-One Meetings to be interactive, and accordingly, the District may raise its own questions and issues for discussion at any One-on-One Meeting. The Proposer shall submit (at least three (3) Business Days prior to the scheduled date of the One-on-One Meeting) a proposed agenda to the Contracting Officer with a short description of the items the Proposer wishes to discuss. The District may require that any questions or requests for clarification to be discussed at a One-on-One Meeting be submitted by the Proposer to the District in writing.

- (c) The District may request additional One-on-One Meetings to those included in the Procurement Schedule. In these instances, the District will give notice of scheduling to all Proposer Representatives via the Data Room.

2.4.1 General Rules

All One-on-One Meetings are subject to the following rules:

- (a) the District, except as provided in this ITP, will not discuss with any Proposer any information submitted as part of this procurement (including other Proposals or other Proposers' ATCs) other than its own;
- (b) no Proposer shall seek to obtain commitments from the District in One-on-One Meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer;
- (c) no aspect of any One-on-One Meeting is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and any material information about the Project or procurement that the District 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;
- (d) although discussions or statements made during a One-on-One Meeting are intended to be confidential, nothing shall preclude the District from exercising any rights that it may have under the RFP, including the right to issue clarifications to the Draft RFP or Addenda to the Final RFP as a result of the discussions during a One-on-One Meeting;
- (e) the discussions or any statements made by either party in a One-on-One Meeting shall not be binding on such entity; and
- (f) no part of the evaluation of Proposals will be based on the conduct or discussions that occur during the One-on-One Meetings.

2.5 Public Disclosure

2.5.1 Requirement for an Electronic Copy of the Proposals to be made Public

In addition to the RFP submission requirements in Section 4.4 (Proposal Delivery – Due Dates and Location), the Proposer must submit, not later than ten (10) Business Days following the Financial Proposal Due Date, an electronic copy of its Proposal, redacted in accordance with any applicable exemptions from disclosure under D.C. Official Code § 2-534, including a statement of the grounds for the claimed exemption. The redacted version of the Proposer's Proposal must be submitted to the Contracting Officer. D.C. Official Code § 2-536(b) requires the District to make available electronic copies of records that must be made public. The District's policy is to release proposals relating to District

projects following award of the contract, and the conclusion of any protest, appeal, or other challenge to the award, subject to applicable exemptions under the District of Columbia Freedom of Information Act (“**FOIA**”) (D.C. Official Code §§ 2-531-539) and the P3 Act. The Preferred Proposer’s redacted Proposal will be published on the District of Columbia Office of Contracting and Procurement’s website in accordance with D.C. Official Code § 2-361.04, subject to applicable FOIA exemptions, if any. A determination of whether the Proposer is entitled to an exemption will be made by the Contracting Officer.

2.5.2 Restriction on Disclosure and Use of Data

A Proposer shall identify those portions of its Proposal or other submitted materials that the Proposer considers to be confidential or proprietary.

For the confidential or proprietary information of a Proposer to be eligible for exemption from public disclosure, the Proposer must do all of the following:

- (a) invoke the exemption on submission of the information or other materials for which protection is sought as part of the cover letter or executive summary of the Proposal;
- (b) identify with conspicuous labeling the data or other materials for which protection is sought;
- (c) state the reasons why protection is necessary; and
- (d) fully comply with any applicable District law with respect to information that the Proposer contends should be exempt from disclosure.

The Contracting Officer will review information that a Proposer designates as confidential or proprietary to determine if that designation is proper under Applicable Law. Where the Proposer cannot justify the protection of information, the Contracting Officer may ask the Proposer to revise its Proposal accordingly. If an agreement cannot be reached between the Proposer and the Contracting Officer regarding the designation of information as confidential or proprietary, the Proposer may withdraw its Proposal from the procurement.

Notwithstanding the foregoing, OP3 will release or disclose the executive summary of each Proposal and any other information required to be disclosed under Sections 108(f) and 114(a) of the P3 Act (D.C. Official Code §§ 2-273.03(f) and 2-273.09(a)) before the award of the Project Agreement. OP3 will not release or disclose any other part of a Proposal except in accordance with Applicable Law or pursuant to the terms of the Final RFP, including, without limitation, Section 3 (*Alternative Technical Concepts*) of this ITP.

If, however, a contract is awarded to the Proposer as a result of, or in connection with, the submission of data included in a Proposal, the District will have the right to duplicate,

use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in the Proposals if such information is obtained from another source. The data subject to any such restriction must be contained in sheets marked with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this Proposal."

2.5.3 Freedom of Information Act

FOIA provides that any person has the right to request access to records. All public bodies of the District government are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions set forth in D.C. Official Code § 2-534.

Subject to the exceptions specified in this Section 2.5.3 (Freedom of Information Act) and in FOIA, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to the District during the procurement process, regardless of whether included in the Proposals or otherwise submitted, will not be returned to the submitting Proposer. Proposers should familiarize themselves with the provisions of FOIA requiring disclosure of public information and exceptions thereto. In no event shall the District, OP3, DDOT, OCTO, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a Proposer, a Major Non-Equity Member, Major Participant or any other member of a Proposer's team for the disclosure of such Proposer's Proposal or any other materials or information submitted to the District in connection with the RFP.

(a) Disclosure Waiver

Each Proposer, by submitting a Proposal, consents to the disclosures described in the Final RFP, including the disclosures in this Section 2.5.3 (Freedom of Information Act), and all other disclosures required by law, and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under FOIA or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the District be responsible for or liable to a Proposer, a Major Non-Equity Member, Major Participant, or any other member of a Proposer's team or other party as a result of the disclosure of any such materials. The Proposer further agrees to assist the District in complying with the disclosure requirements if the Proposer is selected as the Preferred Proposer.

(b) Disclosure Process for Requests under FOIA

All requests under FOIA for disclosure of the RFP or information contained therein shall be processed in accordance with FOIA.

Alternative Technical Concepts

3.1 Overview of ATCs

- 3.1.1** An Alternative Technical Concept (“**ATC**”) is a proposed technical, financial or other change or variance from a requirement contained in the Draft RFP. This Section 3 (Alternative Technical Concepts) sets forth the process for submission and review of any proposed ATC.
- 3.1.2** ATCs eligible for submission to the District pursuant to this Section 3 (Alternative Technical Concepts) shall be limited to concepts that result in performance, safety, durability, quality, and utility of the end product that is equal to or better than the performance, safety, durability, quality, and utility of the end product that would result from full compliance with the Technical Provisions and the Project Agreement, as determined by the District in its sole discretion, without causing any substantial delay to the schedule of, substantial additional cost to, or substantial reduction to the scope of the Project or the addition of separate projects.
- 3.1.3** Without limiting the forgoing, an ATC is not eligible for consideration and, as such, shall not be approved by the District if the District finds, in its sole discretion, that the proposed ATC:
- (a) does not enable innovation in design, construction, performance, or financing;
 - (b) could result in a reduction in performance, safety, durability, quality, or utility;
 - (c) results in a reduction in the scope of the Project or the addition of a separate project;
 - (d) results in a substantial increase in the cost of the Project to the District;
 - (e) results in a substantial delay of the Project; or
 - (f) does not comply with any Applicable Law.
- 3.1.4** A Proposer may include an ATC in its Technical Proposal only if the ATC has been received and approved by the District in accordance with this Section 3 (Alternative Technical Concepts).
- 3.1.5** If the District revises the RFP after an ATC has been approved, the Proposer shall be solely responsible for reviewing the RFP and determining if the ATC deviates from the revised requirements of the RFP. If necessary, the Proposer must submit a request for approval of all additional required amendments to

the RFP within fourteen (14) days after the revised RFP is issued via the Data Room.

- 3.1.6** An ATC shall in no way take advantage of an error or omission in the Technical Provisions or other documents incorporated into the Technical Provisions by reference. If, at the sole discretion of the District, an ATC is deemed to take an advantage of an error or omission in the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, the Draft RFP will be revised without regard to confidentiality of such ATC. If, at any time, the District receives a question on the Project from another Proposer similar to a concept submitted in the form of an ATC, the District reserves the right to revise the Draft RFP without regard to the confidentiality of such question.
- 3.1.7** Approval of any ATC in no way relieves a Proposer of its obligation to satisfy (i) other requirements of the RFP (including the Technical Provisions) not specifically identified in the ATC submission, (ii) any obligation that may arise under Applicable Law or that is a condition of a District-Provided Approval, and (iii) all other conditions imposed in connection with the approved ATC.
- 3.1.8** Except as otherwise provided herein, the District will treat all ATCs as confidential in accordance with Section 3.4.8 (Confidentiality of ATCs).

3.2 Procedure, Format and Required Information

3.2.1 Procedure and Format

- (a) Proposers shall submit ATCs for consideration by the District, in accordance with the process set forth in Sections 3.2.2 (Stage 1: Summary ATCs) and 3.2.3 (Stage 2: Detailed ATCs), at any time after issuance of the Draft RFP and prior to the applicable Deadlines for submission of ATCs set forth in Appendix B (Procurement Schedule). For clarity, all ATCs must be submitted by Proposers and considered by the District prior to the District's submission of the proposed Final RFP to Council for approval.
- (b) The submission of Summary ATCs is optional. Only approved Detailed ATCs are eligible to be included in the relevant Proposer's Proposal.
- (c) Each ATC submission may include more than one suggested revision to the Technical Provisions relating to the same ATC.
- (d) All ATC submissions (including Summary ATCs and Detailed ATCs) shall contain:
 - (i) a cover sheet identifying the Proposer and stating "[Proposer Name]—Confidential ATCs"; *provided* that if a Proposer does not clearly designate

its submission as an ATC, the submission will not be eligible for consideration as an ATC by the District; and

- (ii) an electronic copy (in searchable PDF format).
- (e) All ATC submissions must be delivered to the Contracting Officer by uploading the electronic copy to the Proposer's file-sharing page on the District's Box site.

3.2.2 Stage 1: Summary ATCs

- (a) If a Proposer wishes to propose an ATC, it may first submit an abbreviated version of its ATC proposal (a **"Summary ATC"**) for consideration by the District. A Summary ATC must contain the following information:
 - (i) Description: A brief description of the ATC, including specifications and conceptual drawings, if applicable.
 - (ii) Usage: A brief description of where and how the ATC would be used on the Project.
 - (iii) Amendments: A summary of the amendments to the Project Agreement and/or Technical Provisions, as applicable, that would be required to accommodate the ATC (detailed drafting is not required for a Summary ATC).
 - (iv) Public Record: A specific notation designating (if applicable and at the discretion of the Proposer) that some or all of the ATC is a trade secret or otherwise not subject to disclosure as a public record.
 - (v) Cost: An order-of-magnitude estimate of the proposed cost impact of the proposed ATC.
- (b) The District may request additional information regarding proposed Summary ATCs at any time.
- (c) Provided that a Proposer has submitted all of the information required under Sections 3.2.2(a) and 3.2.2(b) (Stage 1: Summary ATCs) with respect to a Summary ATC, the District will respond in writing via the Contracting Officer with one of the following determinations:
 - (i) the District is willing to consider the proposed ATC in greater detail, and the Proposer may submit a Detailed ATC in accordance with Section 3.2.3 (Stage 2: Detailed ATCs) below to permit full analysis of the proposed ATC;
 - (ii) the proposed ATC, though eligible for consideration as an ATC, is not acceptable for inclusion in the Proposal;

- (iii) the proposed ATC is not eligible for consideration as an ATC;
 - (iv) the proposed ATC does not qualify as an ATC but may be included in Proposer's Proposal because it does not require amendment to the Project Agreement and/or Technical Provisions; or
 - (v) the District intends to revise the Draft RFP.
- (d) The District in no way warrants that a positive response to a Summary ATC will translate into a positive response to a Detailed ATC. In addition, a positive response to a Summary ATC is not sufficient to include the ATC in a Technical Proposal.

3.2.3 Stage 2: Detailed ATCs

A Detailed ATC must contain the following information:

- (a) Description: A detailed description of the ATC, including specifications and conceptual drawings, if applicable.
- (b) Usage: A detailed description of where and how the ATC would be used on the Project.
- (c) Revisions: A mark-up of those sections of the Project Agreement and/or Technical Provisions that need to be revised in order to accommodate the relevant ATC.
- (d) Analysis: A detailed analysis justifying the ATC and demonstrating why modifications or revisions to requirements of the Draft RFP should be allowed, including information on how the ATC meets the Project goals.
- (e) Public record: A specific notation designating (if applicable and at the discretion of the Proposer) that some or all of the ATC is a trade secret or otherwise not subject to disclosure as a public record.
- (f) Cost: A detailed estimate complete with supporting information of the proposed cost impact of the proposed ATC.
- (g) Risk allocation: A discussion of any impacts on the District's obligations or risk allocation from the proposed ATC, including land acquisition and permits.
- (h) Schedule: A detailed description of how the ATC affects the work schedule.

3.3 District's Review of and Response to Detailed ATCs

3.3.1 General

- (a) Prior to the District's submission of the proposed Final RFP to Council for approval, the District will determine whether or not to allow inclusion of a proposed ATC (that has been included in a Detailed ATC) for submission with the Proposal. Each Proposer, however, is responsible for ensuring that its Proposal complies with the requirements of the RFP, as modified by the District's written determination of ATCs (including any conditions, modifications or other requirements identified by the District).
- (b) The District will return responses to each Proposer regarding its Detailed ATCs in accordance with Section 3.3 (District's Review of and Response to Detailed ATCs), provided that the District has received all information required or requested under Section 3.2.3 (Stage 2: Detailed ATCs) and any additional information requested under this Section 3.3.1(c) (General) regarding such ATC.
- (c) The District may request additional information regarding proposed ATCs at any time.

3.3.2 District Responses to Detailed ATCs

Provided that a Proposer has submitted all of the information required under Sections 3.2.3(a) through 3.2.3(h) (Stage 2: Detailed ATCs) in respect of a Detailed ATC, the District will respond in writing via the Contracting Officer with one of the following determinations:

- (a) the proposed ATC is acceptable and approved (with any such conditions, modifications or requirements as are identified by the District);
- (b) the proposed ATC, though eligible for consideration as an ATC, is not acceptable for inclusion in the Proposal;
- (c) the proposed ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in the District's discretion, of certain identified conditions that must be met, including the incorporation of any required clarifications or modifications;
- (d) the proposed ATC is not eligible for consideration as an ATC;
- (e) the proposed ATC does not qualify as an ATC, but may be included in Proposer's Proposal because it does not require revisions to the Technical Provisions; or
- (f) the District intends to revise the Draft RFP.

3.4 General

3.4.1 One-on-One Meetings

In addition to conducting scheduled One-on-One Meetings with Proposers (and having discussions with such Proposers concerning their respective ATCs), the District may conduct separate confidential One-on-One Meeting(s) with any Proposer to discuss any proposed ATCs it submits. Such separate One-on-One Meetings, if any, will be conducted prior to the District's submission of the proposed Final RFP to Council for approval.

3.4.2 No Objection to ATC Process

Each Proposer, by submitting its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the ATC process, as well as to the District's determinations regarding acceptability of ATCs.

3.4.3 No Liability for Disclosure

Under no circumstances will the District be responsible or liable to a Proposer or any other party as a result of disclosing any of such Proposer's ATC materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of the District or its respective officers, employees, contractors or consultants.

3.4.4 No Extension

The District's rejection of an ATC will not entitle the Proposer to an extension of the Technical Proposal Due Date, or of the deadlines to submit Summary ATCs or Detailed ATCs, set forth in Appendix B (Procurement Schedule).

3.4.5 Modification of the Draft RFP

- (a) If the District determines, in connection with its review of a proposed ATC or otherwise, that the Draft RFP contains an error, ambiguity or mistake, the District reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC (including that such ATC no longer qualifies or is eligible for consideration as an ATC).
- (b) If the District does not, in its sole judgment, approve a proposed ATC because it does not enable innovation in design, construction or performance, but the District, nevertheless, sees the benefit of making the relevant amendments to the Technical Provisions associated with the relevant ATC, the District may, for the benefit of all Proposers, include any or all of such amendments in any subsequent draft of the RFP.
- (c) If, in respect of any proposed ATC the District finds acceptable, the District shall either:
 - (i) approve such ATC and the Proposer may incorporate the ATC into its Proposal; or

- (ii) make such revisions in any subsequent draft of the RFP that, in the District's sole judgment, it deems necessary to allow the concept in the proposed ATC to be incorporated into a Proposal without the need for an ATC. When preparing any such revisions to the RFP, the District shall use reasonable efforts to avoid disclosing the concept in the proposed ATC.
- (d) Modifying the Draft RFP in accordance with this Section 3.4.5 (*Modifications of the Draft RFP*) shall not be considered a breach by the District of its obligation to maintain confidentiality of ATCs.

3.4.6 Incorporation of Approved ATCs in the Proposal

- (a) A Proposer may incorporate one or more approved ATCs as part of its Proposal. If the District responded to a Detailed ATC by stating that it would be approved if certain conditions were met, the Proposer shall demonstrate in the Technical Proposal or Financial Proposal, as applicable, that these conditions have been met, or make a commitment in the Technical Proposal or Financial Proposal, as applicable, to meet those conditions, and such conditions shall be incorporated into the Project Agreement pursuant to Section 3.4.7 (*Incorporation of ATCs into the Project Agreement*).
- (b) In its Proposal, the Proposer must specifically state whether any approved ATCs are included, reference the ATC identification number, describe how the ATC is used, and provide cross-references to other elements of the Proposal that are affected by the ATC.
- (c) Technical Proposals and Financial Proposals will be evaluated using the evaluation criteria found in this ITP. Approved ATCs included in a Proposal will be evaluated as part of such Proposal.
- (d) Except for incorporating approved ATCs, neither the Technical Proposal nor the Financial Proposal may otherwise contain exceptions to, or deviations from, the requirements of the Final RFP (including the Technical Provisions and the Project Agreement), or other documents incorporated into the Final RFP by reference.

3.4.7 Incorporation of ATCs into the Project Agreement

- (a) Following the Preferred Proposer Selection, the ATCs that were approved by the District and incorporated in the Proposal by the Preferred Proposer shall be incorporated into the Project Agreement unless the District and the Preferred Proposer agree otherwise. If the District responded to any ATC by stating that it would be acceptable if certain conditions were met (including any required third party approval), those conditions will become part of the Project Agreement. After the Preferred Proposer Selection but prior to the Commercial Closing Date,

the Project Agreement will be conformed to reflect the ATCs, including any District conditions to such ATC.

- (b) Notwithstanding anything to the contrary in this ITP or in the Project Agreement, if the Developer does not comply with one or more District or third party conditions of preapproval for an ATC, or if the Developer fails to obtain a required third-party approval for an ATC, the Developer will be required to comply with the original requirements of the Project Agreement without regard to the ATC and without being entitled to a change order, or other compensation or relief (whether pursuant to a Compensation Event, Relief Event or otherwise) as set forth in Article 6 (*Alternative Technical Concepts*) of the Project Agreement.
- (c) In accordance with Section 3.4.8 (Confidentiality of ATCs), ATCs from unsuccessful Proposers may, in the District's sole discretion, be presented to the Preferred Proposer during post-selection negotiations for possible incorporation. In addition, following the Commercial Closing Date and payment of the Stipends to unsuccessful Proposers in accordance with Section 7.4 (Stipend), ATCs from unsuccessful Proposers may, in the District's sole discretion, be presented to the Developer as a District Change.

3.4.8 Confidentiality of ATCs

- (a) Subject to the terms of the RFP, the District will treat all ATCs as Confidential Information in accordance with Section 2.5.2 (Restriction on Disclosure and Use of Data).
- (b) Subject to the terms of the RFP and Applicable Law, the District will not disclose a Proposer's ATCs or any communications regarding a Proposer's ATCs until the earlier of the following:
 - (i) the election by the District to negotiate the incorporation of such Proposer's ATC into the Project Agreement with a Preferred Proposer that is another Proposer, *provided* that such other Proposer has executed a Stipend Agreement;
 - (ii) the Commercial Closing Date; and
 - (iii) payment for Proposal Work Product has been made to the relevant Proposer.
- (c) As described in Section 7.4 (Stipend), by executing a Stipend Agreement, the Proposer agrees, if it is not selected as the Preferred Proposer, to disclosure of its Proposal Work Product (including its ATCs) to the Preferred Proposer.

General Requirements for Technical and Financial Proposals

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal and a Financial Proposal that meet the requirements set forth in Appendix C (*Technical Proposal Instructions*) and Appendix D (*Financial Proposal Instructions*), respectively. Certain additional requirements for Proposal submissions are provided below.

4.1.1 Signatures Required

Each of the Technical Proposal Letter and Financial Proposal Letter shall be signed by all ITP Equity Members and shall be accompanied by evidence of signatory authorization as specified in Form 6 (*Technical Proposal Letter*) and Form 7 (*Financial Proposal Letter*), respectively. Electronic signatures will be permitted.

4.1.2 Language and Currency

- (a) Proposals shall be written in the English language.
- (b) Any information quantified in currency shall be provided in U.S. dollars. If financial statements are converted from a foreign currency into U.S. dollars, the conversion method(s) must be explained.

4.1.3 Inclusion of Proposal in Project Agreement

- (a) Proposers should note that portions of the Preferred Proposer's Proposal will become the "Developer's Proposal Commitments" and will be attached as Exhibit 6 (*Developer's Proposal Commitments*) to the Project Agreement (or otherwise made a part of the Project Agreement as provided therein or herein), and shall be binding obligations of the Developer thereunder, including portions of the Proposer's:
 - (i) Technical Proposal;
 - (ii) Preliminary Project Baseline Schedule;
 - (iii) Financial Plan;
 - (iv) Preliminary Financial Model; and
 - (v) such other portions of the Preferred Proposer's Proposal deemed by the District to be relevant to the obligations of the Developer with respect to the Project.

- (b) Unless incorporated into the Project Agreement, no information included in a Proposal shall be binding on the District.

4.2 Requirements to Submit a Responsive Proposal

- (a) Tentative or contingent commitments will not be considered in the evaluation of a Proposal (unless such commitments are clarified to the satisfaction of the District at its request or the District waives any related requirement pursuant to Section 9 (Reserved Rights)). For example, items modified by phrases such as “we may” or “we are considering” will not be considered in the evaluation process since they do not indicate a firm commitment, unless clarified or waived. The Proposal may not include any reservations, qualifications, conditions, assumptions or exceptions to or deviations from the requirements of the RFP, unless approved by the District in writing. If the Proposal does not fully comply with the instructions and requirements contained in this ITP, including the Appendices and Forms, or if a Proposal contains a substantive change to any portion of this ITP, including the Appendices and Forms, it may be deemed non-responsive in the District’s sole discretion.
- (b) If a Proposal is deemed non-responsive, the District may disqualify the Proposal from further consideration, in the District’s sole discretion. Such disqualification, alone, will not result in the forfeiture of a Proposer’s Proposal Security but, may, in the District’s sole discretion, preclude a Proposer from being entitled to a Stipend. Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing and to all other requirements of the Procurement Process.
- (c) Each Proposal must be submitted in the format specified by the District in this ITP.
- (d) Each Proposer may only submit one Proposal. Multiple or alternate Proposals may not be submitted.
- (e) In the District’s sole discretion, a Proposal may be considered non-responsive and may be disqualified from the Procurement Process for any of the following reasons:
 - (i) the Proposal is submitted in a format other than as specified in this ITP;
 - (ii) any part of the Proposal is missing from the Proposal package or otherwise does not meet the requirements of this Section 4.2 (Requirements to Submit a Responsive Proposal);
 - (iii) the District determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations or items not required by the RFP or unauthorized additions;

- (iv) a Proposal includes (x) any conditions or provisions reserving a Proposer's right to accept or reject an award if it is selected as Preferred Proposer or (y) any conditions to entering into the Project Agreement;
- (v) the Proposal Security is not provided in substantially the form attached as Form 8 (Proposal Security) in accordance with Section 4.6 (Proposal Security and Closing Security);
- (vi) any required information is not included in the Proposal; or
- (vii) any other reason that the Proposal is non-responsive to any other instructions, requirements, terms or conditions of the Final RFP, as determined by the District.

4.3 Content, Format and Organization

4.3.1 Proposal Contents and Format

- (a) In the RFP, the term “**Proposal**” means a Proposer's response, in its entirety, to the RFP, including:
 - (i) such Proposer's response to the requirements set forth in Appendix C (Technical Proposal Instructions), including all reports, drawings, plans and other documents as described in that Appendix (collectively, the “**Technical Proposal**”); and
 - (ii) such Proposer's response to the requirements set forth in Appendix D (Financial Proposal Instructions), including all other financial information as described in that Appendix (collectively, the “**Financial Proposal**”).
- (b) Each Proposal shall include each of the applicable items listed and a copy of the checklists provided in Appendix F (Summary and Checklist of Proposal Contents). Each Proposal component shall be clearly titled and identified. All blank spaces in the Forms attached to this ITP must be filled in as appropriate. No substantive change shall be made to any Form attached to this ITP. Each of the Technical Proposal and the Financial Proposal must have all pages sequentially numbered.
- (c) Confidential information shall be submitted with the Proposal and may be submitted in a separate PDF file for each member of the Proposer. Whenever a Proposal contains confidential information, a sheet should be inserted in the appropriate section with a statement directing the District to the appropriate PDF file to locate the information.

More detailed submittal requirements, regarding the format and organization for each of the Technical Proposal and Financial Proposal, are set forth in Appendix C

(Technical Proposal Instructions) and Appendix D (Financial Proposal Instructions), respectively.

- (d) The Proposal shall be in searchable PDF format (including bookmarks to facilitate moving between the various parts of the Proposal); *provided* that completed Forms in a Proposal may be submitted in either searchable PDF or Word format; and *provided further*, that scanned signed letters and forms may be submitted in non-searchable PDF format. The Preliminary Project Baseline Schedule should be provided in the format described in Section 2.4.2 (*Part 4: Preliminary Project Baseline Schedule*) of Appendix C (Technical Proposal Instructions).
- (e) Each Proposal shall contain concise written material and drawings, enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity and completeness of each portion of a Proposal are essential.

4.4 Proposal Delivery – Due Dates and Uploading and Delivery Instructions

- (a) The completed Technical Proposals shall be uploaded to the Proposer’s file-sharing page on the District’s Box site on or before the Technical Proposal Due Date. Each part of the Technical Proposal (as described in Section 1.3 (*Organization*) of Appendix C (Technical Proposal Instructions)) must be uploaded as a separate file. All files must be named and organized with a clear structure that follows the same outline and content of the Technical Proposal when printed.
- (b) The completed Financial Proposals shall be uploaded to the Proposer’s file-sharing page on the District’s Box site on or before the Financial Proposal Due Date. Each part of the Financial Proposal (as described in Section 2.1.2 (*Content, Format, and Organization of the Financial Proposal*) of Appendix D (Financial Proposal Instructions)) and the Preliminary Financial Model must be uploaded as separate files. All files must be named and organized with a clear structure that follows the same outline and content of the Financial Proposal when printed. All files must be password-protected such that the files cannot be opened or the contents of such files read without use of the password(s). Proposers must not provide the password(s) at the time the files are uploaded in accordance with this Section 4.4(b). Rather, Proposers must provide the password(s) to the Contracting Officer upon the Contracting Officer’s request. In order to protect the integrity of the evaluation process, the Contracting Officer will not request the password(s) until the Contracting Officer completes the evaluation of Technical Proposals.
- (c) The original Proposal Security and certified copies thereof must be delivered to the Contracting Officer on or before the Financial Proposal Due Date.

4.5 Modifications and Withdrawals

4.5.1 Modifications to a Proposal

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

4.5.2 Withdrawal of Proposals

- (a) A Proposer may withdraw its Technical Proposal or Financial Proposal at any time prior to the time due on the relevant due date by means of a written request signed by its Proposer Representative. Such written request shall be delivered to the Contracting Officer.
- (b) A withdrawal of a Technical Proposal or Financial Proposal will not prejudice the right of a Proposer to file a new Technical Proposal or Financial Proposal, as applicable; *provided* that the new Technical Proposal or Financial Proposal is received before the time due on the relevant due date.
- (c) No Technical Proposal or Financial Proposal may be withdrawn on or after the time due on the relevant due date, and any attempt by a Proposer to do so will entitle the District to draw on the Proposer's Proposal Security, as set forth in Section 4.6.3 (Forfeiture of Proposal Security).

4.6 Proposal Security and Closing Security

4.6.1 Proposal Security

- (a) As security for its commitment to enter into the Project Agreement in accordance with its Proposal commitments, each Proposer shall submit to the District security in the form of Form 8 (Proposal Security) (the "**Proposal Security**").

- (b) The Proposer shall provide as part of its Financial Proposal one (1) original of the Proposal Security and three (3) certified copies of the Proposal Security enclosed in a single envelope labeled “[Proposer Name]: Proposal Security for Smart Street Lighting Project”. The original of the Proposal Security shall be marked “original”. The Proposer shall deliver the original of the Proposal Security and the certified copies thereof to the Contracting Officer at the address shown in Section 1.5.1 (District’s Point of Contact) by 2:00 PM (prevailing local time in the District of Columbia) on the Financial Proposal Due Date.
- (c) The Proposer shall provide Proposal Security in an aggregate amount equal to ten million dollars (\$10,000,000). The Proposer may submit more than one letter of credit in the form of Form 8 (Proposal Security) as its Proposal Security; *provided* that the amount of all such Proposal Security will equal ten million dollars (\$10,000,000).
- (d) The Proposal Security must be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. If, at any time following the Proposer’s submission of its Proposal Security to the District, any issuer ceases to be an Eligible Security Issuer, the Proposer shall promptly notify the District in writing of such change, and within thirty (30) days of such notice, the Proposer shall deliver to the District new Proposal Security from a replacement Eligible Security Issuer. Upon the District’s receipt of such replacement Proposal Security, the District shall promptly return the replaced Proposal Security to the Proposer.

4.6.2 Closing Security

- (a) As a condition precedent to the Commercial Closing Date, the Preferred Proposer will be required to renew or replace the Proposal Security with one or more standby letter(s) of credit substantially in the form of Exhibit 4 (*Form of Closing Security*) to the Project Agreement (or otherwise in form and substance acceptable to the District, in its absolute discretion), as applicable (the “**Closing Security**”).
- (b) The Closing Security must:
 - (i) be issued by an Eligible Security Issuer;
 - (ii) designate the District as the beneficiary; and
 - (iii) be in an aggregate amount equal to ten million dollars (\$10,000,000).
- (c) The rights and obligations of the District to draw upon or return the Closing Security are set out in the Project Agreement.

4.6.3 Forfeiture of Proposal Security

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

- (a) the Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal (except as otherwise permitted by Section 4.5.2(a) (*Withdrawal of Proposals*));
- (b) following notification by the District to the Proposer that such Proposer is the Preferred Proposer:
 - (i) the Preferred Proposer fails to negotiate in good faith as expressly described in Section 7 (*Finalization of Project Agreement and Closing*);
 - (ii) the Commercial Closing Date does not occur by the Commercial Closing Deadline specified in Appendix B (*Procurement Schedule*), unless:
 - (1) the Proposer has satisfied (or caused to be satisfied) each of the Conditions Precedent to the Commercial Closing Date in accordance with Article 2 (*Terms and Conditions Precedent to Commercial Close and Financial Close*) of the Project Agreement on or before the Commercial Closing Deadline, other than those conditions set out in the following sections of the Project Agreement: (A) Section 2.2(g) (*Representations and Warranties of the District*); (B) Section 2.2(i) (*District Opinion*); (C) Section 2.2(k) (*Comprehensive Demonstration*) (provided such failure is not attributable to any action or omission of the Proposer); or (D) Section 2.2(l) (*Council Approval of Project Agreement*); and
 - (2) the failure to achieve the Commercial Closing Date by the Commercial Closing Deadline is not attributable to either (x) any action or omission of the Proposer or (y) the Proposer failing to honor any commitment made in its Proposal; or
- (c) any of the following occurs:
 - (i) the Proposer fails to (x) notify the District that the issuer of the Proposal Security is not an Eligible Security Issuer or (y) deliver replacement Proposal Security, if applicable, in each case, in accordance with Section 4.6.1(d) (*Proposal Security*); or
 - (ii) the District determines that the Proposal Security submitted by such Proposer contains a material alteration from the form of Proposal Security set forth in Form 8 (*Proposal Security*) that has not been previously approved by the District, as applicable;

provided that to the extent the District draws on the Proposer's Proposal Security pursuant to this Section 4.6.3(c) (Forfeiture of Proposal Security) and the Proposer replaces such drawn cash with replacement Proposal Security from an Eligible Security Issuer in compliance with this ITP, the District will return such drawn cash to the Proposer.

4.6.4 Return of Proposal Security

- (a) The District will retain the Proposal Security of each unsuccessful Proposer until the earliest to occur of the following:
 - (i) the Preferred Proposer has satisfied (or caused to be satisfied) each of the Conditions Precedent to the Commercial Closing Date in accordance with Article 2 (*Terms and Conditions Precedent to Commercial Close and Financial Close*) of the Project Agreement, other than those conditions set out in the following sections of the Project Agreement: (A) Section 2.2(g) (*Representations and Warranties of the District*); (B) Section 2.2(i) (*District Opinion*) and (C) Section 2.2(l) (*Council Approval of Project Agreement*);
 - (ii) the District has terminated the Procurement Process and cancelled the RFP; and
 - (iii) the expiration of such Proposer's Proposal Validity Period (as it may have been extended in accordance with the RFP);

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

- (b) Following the occurrence of any of the foregoing events, the District will return the Proposal Security of each unsuccessful Proposer within five (5) Business Days, except for any Proposal Security drawn by the District in accordance with the terms of the Final RFP.
- (c) Subject to Section 4.6.3 (Forfeiture of Proposal Security), the Proposal Security of the Preferred Proposer shall either be:
 - (i) returned upon the delivery of the Closing Security by the Developer at the Commercial Closing Date; or
 - (ii) at the Preferred Proposer's request, retained as part of the Developer's Closing Security in accordance with the terms of the Project Agreement;

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

4.6.5 Proposal Validity Period

- (a) Each Proposal shall be valid for a period of two hundred seventy (270) days after the Financial Proposal Due Date (the “**Proposal Validity Period**”).
- (b) Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the initial Proposal Validity Period.
- (c) Any Proposer that agrees to extend the validity of its Proposal beyond the initial Proposal Validity Period will, as a condition to the District’s acceptance of such extension, provide amended or replacement Proposal Security covering the extended Proposal Validity Period.

4.7 Proposers’ Costs Not Reimbursable

The cost of preparing a Proposal, and any and all other costs incurred by a Proposer at any time during the Procurement Process, shall be borne solely by such Proposer. The District does, however, intend to pay a Stipend in the circumstances contemplated by Section 7.4 (Stipend), as applicable.

Proposal Evaluation Process

5.1 Overview

- 5.1.1 The District's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing the Procurement Process.
- 5.1.2 The evaluation of the Proposals will include an initial review of each Technical Proposal and Financial Proposal for responsiveness (as further described in Section 1 (*Responsiveness*) of Appendix E (*Proposal Evaluation Criteria and Scoring*)), followed by quantitative evaluation of each responsive Technical Proposal and Financial Proposal. Following this evaluation, the District will determine which Proposal provides the best overall value to the District, based on the scoring formula described in Section 5.4 (*Preferred Proposer Selection*) below.
- 5.1.3 The District will not award the Project Agreement unless there has been (i) successful negotiation and finalization of the Project Agreement in accordance with Section 7.1 (*Executing the Project Agreement*), (ii) receipt by the District of all of the documents required to be provided in connection with the Commercial Closing Date pursuant to Section 2.2 (*Conditions Precedent to the Commercial Closing Date*) of the Project Agreement, (iii) approval of the Project Agreement by the Council pursuant to 27 DCMR § 4809, and (iv) satisfaction of any other conditions to award set forth in this ITP or required by Applicable Law.

5.2 Review Committees

- 5.2.1 Evaluation of the Technical Proposals will be conducted by a committee (the "**Technical Review Committee**"), the members of which will be determined by the District in its sole discretion.
- 5.2.2 Evaluation of the Financial Proposals will be conducted by a committee other than the Technical Review Committee (the "**Financial Review Committee**"), the members of which will be determined by the District in its sole discretion.
- 5.2.3 Each of the Technical Review Committee and the Financial Review Committee may receive assistance from District personnel, advisors, and other representatives as determined by the Contracting Officer.

5.3 Contracting Officer Review

- 5.3.1 The Contracting Officer will complete an independent evaluation of the Technical Proposals and consider the recommendations and supporting information provided by the Technical Review Committee. The

recommendations of the Technical Review Committee are advisory and are not binding upon the Contracting Officer.

- 5.3.2** Following the Contracting Officer’s evaluation of the Technical Proposals, the Financial Proposals will be evaluated by the Contracting Officer based on the Financial Proposal evaluation criteria described in Section 5.6 (Financial Proposal Evaluation) and for price reasonableness, but the Contracting Officer is not required to evaluate the Financial Proposal for price realism (i.e., whether the Proposer’s price is overly optimistic and/or impractically low). The Financial Proposals will initially be reviewed to ensure the minimum requirements as described in Section 5.6.1 (Financial Proposal Initial Review), have been met. Financial Proposals meeting the minimum requirements will be assigned a score, as outlined in Section 5.6.2 (Financial Proposal Evaluation Process).

5.4 Preferred Proposer Selection

The total score for each Proposal (the “**Total Proposal Score**”) will be computed using the following formula:

$$\begin{array}{r} \text{Financial Proposal Score (max. 700 points)} \\ + \text{Technical Proposal Score (max. 300 points)} \\ \hline = \text{Total Proposal Score (max. 1,000 points)} \end{array}$$

Once the District has evaluated and scored each responsive Technical Proposal and Financial Proposal and determined each Proposer’s Total Proposal Score, it shall rank the Total Proposal Scores from highest to lowest. Further details regarding the computation of the Total Proposal Score are set forth in Section 3.1 (*Total Proposal Score*) of Appendix E (Proposal Evaluation Criteria and Scoring).

The Project Agreement will be awarded to the Proposer whose Proposal is the most advantageous to the District, based upon the evaluation criteria set forth below. Thus, while the points in the evaluation criteria indicate their relative importance, the Total Proposal Score will not necessarily be determinative of the award. Rather, the Total Proposal Score will guide the District in making an intelligent award decision based upon the evaluation criteria. Following the evaluation of Proposals, the Contracting Officer will make the award to the Proposer whose Proposal offers the best value to the District considering both technical and price factors.

5.5 Technical Proposal Evaluation

5.5.1 Technical Proposal Initial Review

- (a) The Contracting Officer will evaluate each Technical Proposal for responsiveness to the applicable Final RFP requirements upon receipt thereof. For a Technical Proposal to be deemed responsive, it must:
 - (i) be complete and include all documents and information required by Appendix C (Technical Proposal Instructions) in the format and organizational structure specified therein and in Section 4.3 (Content, Format and Organization);
 - (ii) include responses that comply with the evaluation criteria set forth in Appendix E (Proposal Evaluation Criteria and Scoring); and
 - (iii) not contain any material misrepresentation.
- (b) If a Technical Proposal (i) is incomplete or (ii) contains a material misrepresentation, then, subject to Section 5.7 (Other Evaluation Considerations), the Technical Proposal and the related Financial Proposal, as a whole, may be considered non-responsive and “fail” this step of the evaluation process, and the Contracting Officer may disqualify the Proposer from the Procurement Process.
- (c) If a Technical Proposal is deemed non-responsive, the Proposer will be so advised in writing by the District.

5.5.2 Technical Proposal Evaluation Process

Technical Proposals deemed responsive per Section 5.5.1 (Technical Proposal Initial Review) will be evaluated and assigned a Technical Proposal Score by the Technical Review Committee in accordance with Appendix E (Proposal Evaluation Criteria and Scoring).

5.6 Financial Proposal Evaluation

5.6.1 Financial Proposal Initial Review

- (a) The Contracting Officer will first evaluate each Financial Proposal for responsiveness to the applicable Final RFP requirements upon receipt thereof. For a Financial Proposal to be deemed responsive, it must:
 - (i) be complete and include all documents and information required by Appendix D (Financial Proposal Instructions), in the format and organizational structure specified therein and in Section 4.3 (Content, Format and Organization);
 - (ii) include responses that comply with the evaluation criteria set forth in Appendix E (Proposal Evaluation Criteria and Scoring); and

- (iii) not contain any material misrepresentation.
- (b) If a Financial Proposal is incomplete, fails to comply with any of the evaluation criteria in Appendix E (Proposal Evaluation Criteria and Scoring) or contains a material misrepresentation, then, subject to Section 5.7 (Other Evaluation Considerations), the Financial Proposal and the related Technical Proposal, as a whole, may be considered non-responsive and “fail” this step of the evaluation process and the Contracting Officer may disqualify the Proposer from the Procurement Process.
- (c) If a Financial Proposal is deemed non-responsive, the Proposer will be so advised in writing by the District.

5.6.2 Financial Proposal Evaluation Process

Financial Proposals deemed responsive per Section 5.6.1 (Financial Proposal Initial Review) will be evaluated and assigned a Financial Proposal Score by the Financial Review Committee in accordance with Appendix E (Proposal Evaluation Criteria and Scoring).

5.7 Other Evaluation Considerations

The District, in its sole discretion, may waive mistakes, clerical errors and minor irregularities, omissions, nonconformities or discrepancies unrelated to the material content of a Proposal and may offer a Proposer the opportunity to clarify its Proposal or request revisions to any Proposal, in each case, in accordance with this Section 5.7 (Other Evaluation Considerations). The provisions of this Section 5.7 (Other Evaluation Considerations) are not intended to, and shall not, limit in any manner any of the rights reserved by the District under Section 9 (Reserved Rights).

5.8 Requests for Clarification

- (a) The District may, at any time during the Proposal evaluation, issue one or more requests for clarification to one or more Proposers, seeking additional information or clarification from a Proposer, and may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such request by such time as is specified by the District in such request. The scope, length and topics to be addressed in requests for clarification shall be prescribed by, and subject to the absolute discretion of, the District. Upon receipt of any requested additional information or clarification, the applicable Proposal or Proposals may be re-evaluated by the District to consider such additional information or clarification.
- (b) Any additional information or clarification submitted by a Proposer pursuant to this Section 5.8 (Requests for Clarification) shall become a part of the Proposer’s Technical Proposal or Financial Proposal, as applicable.

Interest Rate Protection

6.1 Selection of Base Interest Rates

- 6.1.1** Each Proposer shall submit its selected indices and the base interest rates underlying the debt financing proposed in its Financial Proposal and Preliminary Financial Model (the “**Base Interest Rate(s)**”) on Table 1 of Form 9 (Interest Rate and Credit Spread Submittal) (the “**Interest Rate Submittal**”) to the District for approval by the date set forth in Appendix B (Procurement Schedule) (the “**Interest Rate Submission Date**”) supported by a screenshot or other independently verifiable source.
- 6.1.2** On the date three (3) Business Days after the Interest Rate Submission Date and in accordance with Appendix B (Procurement Schedule), the District will approve the Base Interest Rate(s) to be used in Proposer’s Financial Proposal (upon approval, the Interest Rate Submission Date becoming the “**Interest Rate Protection Start Date**”).
- 6.1.3** The District may request clarification regarding any information in an Interest Rate Submittal. In any such event, the District may extend the date by which it must approve the Interest Rate Submittal or revised Interest Rate Submittal, as applicable, while it addresses the clarification or issue with the Proposer and, assuming and following the resolution thereof, the approved Base Interest Rate(s) and indices may be included in the Financial Proposal; provided that, the delay in approval shall not affect the Interest Rate Protection Start Date.

6.2 Base Interest Rate Fluctuation

- 6.2.1** To the extent provided in the Project Agreement, the District will bear the risk of increases and the benefit of decreases in Base Interest Rates that occur during the period beginning on the Interest Rate Submission Date and ending on:
- (a) with respect to any Bank Debt Financing, the Bank Debt Pricing Date (such period, the “**Bank Debt Rate Protection Period**”); and
 - (b) with respect to any Bond Financing, the Bond Pricing Date (such period, the “**Bond Rate Protection Period**”).
- 6.2.2** On the Bank Debt Pricing Date or the Bond Pricing Date, as applicable, the Developer will record the fluctuations in the Base Interest Rates.
- 6.2.3** The recording (supported by a screenshot or other evidence of closing interest rates as may be agreed between the District and Proposers) will be

taken from the Bloomberg U.S. based screen or another independently verifiable source acceptable to the District, as appropriate.

- 6.2.4** Subject to the terms of the Project Agreement, upon Financial Close, the Developer's quarterly Maximum Availability Payment ("**MAP_Q**") will be increased or decreased, as applicable, in accordance with Exhibit 13 (*Update to Base MAP*) to the Project Agreement to reflect the financial impact of any change in Base Interest Rates on any Bank Debt Financing and/or Bond Financing proposed in the Proposer's Financial Proposal, in each case, over the duration of the Bank Debt Rate Protection Period and/or the Bond Rate Protection Period, as applicable.

6.3 Credit Spread Risk Sharing

- 6.3.1** Subject to the terms of the Project Agreement, the District will bear eighty-five percent (85%) of the risk and benefit of fluctuations in Base Credit Spreads (positive or negative), with the Developer bearing fifteen percent (15%) of the risk and benefit of fluctuations in Base Credit Spreads (either positive or negative). Exhibit 13 (*Update to Base MAP*) to the Project Agreement sets forth the process, mechanics, and terms and conditions of any applicable Base Credit Spread fluctuation adjustments.
- 6.3.2** No later than the Interest Rate Submission Date, each Proposer must submit to the District for approval the Base Credit Spreads that the Proposer intends to use in its Preliminary Financial Model (the "**Credit Spread Submittal**"). Proposer may also provide Base Credit Spreads for alternate forms of financing by the date in the Procurement Schedule and must do so in order to be entitled to a Base Credit Spread adjustment under the Project Agreement. As part of the Credit Spread Submittal, the Proposer shall provide the indicative credit rating(s), approximate average life of the financing instruments, market comparables, anticipated call options, and/or other supporting data such as serial or term maturities, the use of sinking funds and anticipated par calls. Proposers shall use Table 2 and/or Table 3 of Form 9 (*Interest Rate and Credit Spread Submittal*) for purposes of the Credit Spread Submittal and shall list the credit spread. For each indicative rating, the Proposer may not submit more than one credit spread for a specified maturity. Proposers may only submit one amortization profile for each indicative rating and maturity. A Proposer may submit different credit spread submittals for each respective indicative credit rating if the Proposer has not yet finalized its indicative credit rating; however, the Proposer may only submit one Credit Spread Submittal for each credit rating.
- 6.3.3** No later than the date and time specified in the Procurement Schedule, the District will provide written approval to each Proposer of the Base Credit Spreads to be assumed in Proposer's Preliminary Financial Model; *provided*,

however, that if the District has a clarification or issue regarding a Proposer's Submittal, the District may extend the date by which it must approve the Base Credit Spreads while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the Base Credit Spreads shall be included in the Proposal (and the delay in approval shall not affect the Bond Rate Protection Period).

6.3.4 Upon Financial Close, the District will work with the Developer to implement the Credit Spread Risk Sharing in accordance with the principles outlined in Exhibit 13 (*Update to Base MAP*) to the Project Agreement.

6.3.5 It is anticipated that, at Financial Close, there will be a single Financial Model Update in accordance to reflect the Base Interest Rates fluctuation adjustments and the Credit Spread Risk Sharing.

6.4 Dry Run of Interest Rate Submittal and Credit Spread Submittal

The District intends to conduct one or more dry runs of the Interest Rate Submittal and Credit Spread Submittal processes outlined Sections 6.2 (*Base Interest Rate Fluctuation*) and 6.3 (*Credit Spread Risk Sharing*) solely to confirm a mutual understanding with Proposers of these processes. The dry run processes will take place as follows: on the date(s) notified to Proposers by the District, Proposers shall submit the appropriate Tables in Form 9 (*Interest Rate and Credit Spread Submittal*) to the District, including all information required in Sections 6.2 (*Base Interest Rate Fluctuation*) and 6.3 (*Credit Spread Risk Sharing*).

The District does not intend to approve Proposer's dry run submittal; however, it may provide feedback or seek clarification.

Finalization of the Project Agreement and Closing

7.1 Executing the Project Agreement

- (a) The District intends to resolve any issues relating to the Project Agreement (through the Proposers' submittal of questions and comments and through One-on-One Meetings) prior to the District's submission of the proposed Final RFP to Council for approval and the submission of Proposals so that, upon the Preferred Proposer Selection, the District and the Preferred Proposer can quickly finalize the Project Agreement without further negotiation or amendment, except as necessary in accordance with Section 7.1(b) (Executing the Project Agreement).
- (b) By submitting its Proposal, each Proposer commits to enter into good faith negotiations with the District to finalize the Project Agreement included as part of the Final RFP, without any revisions except with respect to the following:
 - (i) minor changes, additions and modifications necessary to create a complete and legally binding contract;
 - (ii) additions or modifications to those provisions that require information regarding the Preferred Proposer's corporate and financing structure, provided that such additions or modifications are consistent with the terms of the form of Project Agreement and the RFP in the District's sole discretion;
 - (iii) additions or modifications required in order to incorporate terms or concepts, including ATCs, provided in the Proposal that have been approved or required by the District for inclusion in the Project Agreement;
 - (iv) additions or modifications required to complete the schedules, exhibits, appendices or forms, as applicable, in the Project Agreement; and
 - (v) incorporation of ATCs or other work product from unsuccessful Proposers into the Project Agreement.
- (c) The Preferred Proposer will be deemed to have failed to engage in good faith negotiations with the District and shall forfeit its Proposal Security if the Preferred Proposer (i) fails to attend and actively participate in reasonably scheduled negotiation meetings with the District or (ii) insists upon terms or conditions for any documents to be negotiated or provided by the Preferred Proposer under this ITP (including the Project Agreement) that are inconsistent with the Final RFP.
- (d) Failure by a Preferred Proposer to agree to inclusion of ATCs or other work product from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle the District to draw upon the Proposal Security.

- (e) Upon Preferred Proposer Selection, the Preferred Proposer shall be responsible for achieving Commercial Close not later than the date set forth as the Commercial Closing Deadline on Appendix B (*Procurement Schedule*) (the “**Commercial Closing Deadline**”). If the Preferred Proposer fails to achieve Commercial Close prior to the Commercial Closing Deadline (unless as a direct result of the District’s failure to satisfy any of the conditions set forth in Article 2 (*Terms and Conditions Precedent to Commercial Close and Financial Close*) of the Project Agreement for which the District is responsible), the District may revoke its selection of the Preferred Proposer, draw on the Preferred Proposer’s Proposal Security to the extent set forth in Section 4.6.4 (*Return of Proposal Security*), and may take any other action described in Section 9.1 (*The District’s Rights*). Notwithstanding the foregoing, the District may agree to negotiate certain terms of the Project Agreement with the Preferred Proposer, including incorporation of an unsuccessful Proposers’ Proposal Work Product. Any decision as to whether and/or when to commence such negotiations is at the District’s sole discretion.
- (f) The Preferred Proposer shall be responsible for achieving Financial Close by the date set forth as the “Financial Closing Deadline” set forth in the Project Agreement (the “**Financial Closing Deadline**”).
- (g) The Developer must deliver to the District draft copies of all documents reflecting resolution of all material terms and other deliverables required as Developer Conditions Precedent pursuant to Article 2 (*Terms and Conditions Precedent to Commercial Close and Financial Close*) of the Project Agreement no later than fifteen (15) days prior to the Financial Closing Date.

7.2 Reserved

7.3 Withdrawal of Preferred Proposer Status

Pursuant to Section 9.1 (*The District’s Rights*), the District may formally end negotiations with the Proposer selected as the Preferred Proposer and revoke its status as Preferred Proposer. In such case, the District reserves the right, and shall be entitled, to:

- (a) reject all Proposals;
- (b) issue a request for Proposal revisions to all Proposers; or
- (c) proceed with the Proposal that had passed all steps of the evaluation process described in Section 5 (*Proposal Evaluation Process*) and achieved the next highest Proposal Score to negotiate and finalize (or attempt to negotiate and finalize) a Project Agreement with that Proposer in accordance with Section 7.1 (*Executing the Project Agreement*).

7.4 Stipend

7.4.1 Stipend on or before Technical Proposal Due Date

Subject to the conditions listed in Section 7.4.3 (*Stipend General Conditions*) and in the Stipend Agreement, if the District cancels the procurement fewer than thirty (30) days before the Technical Proposal Due Date, the District will pay each Proposer that has executed a Stipend Agreement a cancellation stipend of up to two hundred fifty thousand dollars (\$250,000) (the “**Maximum Cancellation Stipend Amount**”).

7.4.2 Stipend after Technical Proposal Due Date

- (a) Subject to the conditions listed in Section 7.4.3 (*Stipend General Conditions*) and in the Stipend Agreement, after the Technical Proposal Due Date, if the District cancels the procurement or if a Proposer is notified that it is not the Preferred Proposer, the District will pay each unsuccessful Proposer that has executed a Stipend Agreement a Stipend of up to five hundred thousand dollars (\$500,000) (the “**Maximum Stipend Amount**”).
- (b) If a Preferred Proposer is selected, and the District later cancels the procurement or terminates negotiation with the Preferred Proposer for the convenience of the District and through no fault of the Preferred Proposer, prior in each such case to the occurrence of the Commercial Closing Date, the District will pay the Preferred Proposer (following the Preferred Proposer’s execution of a Stipend Agreement) a Stipend up to the Maximum Stipend Amount. Notwithstanding the foregoing, the Preferred Proposer shall not be entitled to a Stipend under this Section 7.4.2(b) if:
 - (i) the Commercial Closing Date occurs;
 - (ii) the Preferred Proposer fails to proceed with the Commercial Closing Date for any reason other than (x) the Preferred Proposer’s failure to satisfy one or more conditions precedent to the occurrence of the Commercial Closing Date set forth in the Project Agreement, the failure of which does not arise or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law, or willful misconduct of the Preferred Proposer or (y) the District’s election to cancel the procurement after the selection of a Preferred Proposer, which election does not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law, or willful misconduct of the Preferred Proposer; or
 - (iii) there exist any of the conditions for forfeiture of the Preferred Proposer’s Proposal Security.

7.4.3 Stipend General Conditions

- (a) Payment of any Stipend is expressly conditioned upon such Proposer (i) providing an executed Waiver of Protest and Proposal Preparation Stipend Agreement in the form attached as Form 12 (Form of Waiver of Protest and Proposal Preparation Stipend Agreement) (the “**Stipend Agreement**”), which may be provided at any time prior to or concurrently with such Proposer’s submission of its Technical Proposal and Financial Proposal, and (ii) being fully compliant with the conditions established in such Stipend Agreement for payment of the Stipend.
- (b) Under the Stipend Agreement, the District will pay a Stipend as full and final consideration for:
 - (i) the irrevocable licensing to the District of a Proposer’s intellectual property and Work Product (including ATCs, designs, drawings, plans, etc.) related to its Technical Proposal, as further described in the Stipend Agreement;
 - (ii) the waiver of all rights to protest the award of the contract for the Project; and
 - (iii) the delivery of a full and final release of all claims related to the RFP, the Proposal and the Project in favor of the District.
- (c) The Proposer further agrees that a payment of a Stipend is in consideration for the District’s right to use all Proposal Work Product submitted by the Proposer without any further compensation or consideration to the Proposer.
- (d) A Proposer is not eligible for a Stipend if:
 - (i) unless the District has cancelled the procurement within thirty (30) days prior to the Technical Proposal Due Date (and the Proposer otherwise qualifies for a Stipend under the Stipend Agreement):
 - (1) the Proposer fails to submit its Technical Proposal and Financial Proposal by the time due on the relevant due date; or
 - (2) the Proposer fails to submit a Proposal that is responsive to the Final RFP as defined in Section 4.2 (Requirements to Submit a Responsive Proposal);
 - (ii) the Proposer withdraws its Proposal;
 - (iii) the Proposer files a protest challenging the award of the contract for the Project;

- (iv) the Proposer fails to satisfy any of the other conditions set forth in the Stipend Agreement; or
- (v) the Proposer becomes the Preferred Proposer.

Debriefs; Protest Procedures

8.1 Debriefs

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debrief. Debriefs shall be provided at the earliest reasonable time after Financial Close. The debrief shall be conducted by the Contracting Officer.

Debriefs 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.

Debriefs may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the Technical Review Committee and Financial Review Committee, but may include a summary of the rationale for the selection decision and award of the Project Agreement.

8.2 Protest

Any actual or prospective Proposer or contractor who is aggrieved in connection with the procurement must file with the D.C. Contract Appeals Board ("**Board**") a protest no later than ten (10) Business Days after the basis of protest is known or should have been known, whichever is earlier. Notwithstanding the foregoing, a protest based on alleged improprieties in the Procurement Process that are apparent at the time set for receipt of the Proposal must be filed with the Board prior to the time set for receipt of the Proposal. Alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of Proposer's requests for clarification in accordance with Section 2.3 (Questions and Responses Regarding the RFP) following the incorporation.

The protest shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved Proposer shall also mail a copy of the protest to the Contracting Officer for the procurement.

Reserved Rights

9.1 The District's Rights

- (a) The District may (i) investigate the qualifications and Proposal of any Proposer under consideration, (ii) require confirmation of information furnished by a Proposer, and (iii) require additional evidence of the Developer's qualifications to perform its obligations under the Project Agreement.
- (b) The District reserves to itself, and on behalf of OP3, DDOT, and OCTO, any and all of the rights available to it under Applicable Law (which rights shall be exercisable by the District in the District's sole discretion). Such rights include the right to:
 - (i) modify the Procurement Process or solicitation documents;
 - (ii) modify the scope of the Project during the Procurement Process or the responsibilities of the parties under the Project Agreement;
 - (iii) develop the Project in any manner that in its absolute discretion it deems necessary, including developing some or all of the Project itself or through another entity;
 - (iv) reject or terminate the evaluation of ATCs, submittals, responses or Proposals received at any time;
 - (v) modify any dates the Final RFP sets or projects, including the Procurement Schedule and any deadlines;
 - (vi) cancel, modify or withdraw the RFP, in whole or in part, at any time prior to the execution by the District of a Project Agreement, without incurring any cost obligations or liabilities, except as otherwise specifically provided in the RFP;
 - (vii) negotiate with a Proposer at any time during the procurement process, without being bound to any provision in the Proposal;
 - (viii) issue a new request for qualifications after withdrawal of the Final RFP;
 - (ix) issue Addenda, supplements and modifications to the Final RFP;
 - (x) terminate the Procurement Process and issue a new RFP or commence a new Procurement Process for part or all of the Project;
 - (xi) suspend or terminate negotiations of the Project Agreement at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence Project Agreement

negotiations with any responding Proposer or engage in negotiations with Proposers other than the highest ranked Proposer;

- (xii) disqualify any Proposer where a Conflict of Interest arises that cannot be resolved to the satisfaction of the District;
- (xiii) require additional information or clarification from a Proposer concerning its Proposal;
- (xiv) waive minor errors, omissions, or irregularities in a response to any requests and determine if such occurrence is minor in nature;
- (xv) waive deficiencies, informalities or other irregularities in Proposals and accept and review a nonconforming Proposal or seek clarifications or modifications to a Proposal;
- (xvi) permit clarifications or corrections to data submitted with any response to the Final RFP;
- (xvii) permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by the District until such time as the District declares that a particular stage or phase of its review of the responses to the Final RFP has been completed and closed;
- (xviii) seek or obtain data from any source that could improve the understanding and evaluation of the Proposals;
- (xix) revise the evaluation factors or methodology prior to the Technical Proposal Due Date;
- (xx) approve or disapprove changes in a Proposer's organization;
- (xxi) appoint or reform evaluation committees to review Proposals and make recommendations;
- (xxii) exclude from further consideration any Proposal that is not responsive to the requirements of the Final RFP or that does not satisfy any evaluation criteria of any phase of the evaluation process;
- (xxiii) exclude from consideration any Proposer whose Proposal contains a material misrepresentation;
- (xxiv) disclose to the public any information contained in a Proposal (or otherwise submitted to the District) as permitted by law and the RFP;

- (xxv) disqualify any Proposer that violates the terms of the Final RFP;
- (xxvi) exercise any other right reserved or afforded to the District under the RFP or Applicable Law; and
- (xxvii) exercise its discretion in relation to the matters that are the subject of the RFP as it considers necessary or expedient in light of all circumstances prevailing at the time which the District considers to be relevant.

9.2 District Disclaimers

- 9.2.1** The RFP does not commit the District or OP3 to enter into a Project Agreement or to proceed with Project procurement.
- 9.2.2** Except as expressly set forth in Section 7.4 (*Stipend*), neither the District nor OP3 assumes any obligation, responsibility or liability, fiscal or otherwise, to (i) reimburse all or any part of the costs incurred or alleged to have been incurred by parties in considering a response to or in responding to the Final RFP or (ii) make any payments with respect to such costs.
- 9.2.3** Except as set forth in Section 7.4 (*Stipend*), all of such costs shall be borne solely by each Proposer.
- 9.2.4** In no event shall the District be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Project Agreement has been authorized and executed by the District and, then, only to the extent set forth in the Project Agreement, *provided* that the disclaimer in this Section 9.2.4 (*District Disclaimers*) shall not apply to the obligations of the District to the Proposers during the Procurement Process, which are expressly set forth in the RFP.
- 9.2.5** Neither the District, OP3, DDOT, nor OCTO, nor any of their respective agents, representatives, consultants, directors, officers or employees, shall be charged personally with any liability by a Proposer or another Person or held liable to a Proposer or another Person under any provision of the RFP or any statement made in the RFP, or because of the submission or attempted submission of a Proposal or other response, or otherwise. Each Proposer by submitting a Proposal in response to the RFP expressly waives any right it may have to bring a claim for any such liability.
- 9.2.6** Except as otherwise set forth in this ITP or the Project Agreement, any and all information made available to the Proposers is provided for convenience purposes only and is without representation or warranty of any kind.

- 9.2.7** In submitting a Proposal in response to the Final RFP, each Proposer is specifically acknowledging and agreeing to the disclaimers set forth in this Section 9.2 (District Disclaimers).

Pursuant to 27 DCMR 4803.1, this Request for Proposals is a draft subject to public review and comment and eventual approval by the Council of the District of Columbia. The terms of this Request for Proposals may change prior to submission to Council.

The RFP does not commit the District to enter into any contract. Except as expressly set forth in the ITP, the District of Columbia 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 the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall the District be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract Documents, in form and substance satisfactory to the District, have been authorized and signed by the District and, then, only to the extent set forth therein. By its involvement in the solicitation process, including all discussions and one-on-one meetings and in submitting a Proposal in response to the final approved RFP, the Proposer is specifically acknowledging these disclaimers.

APPENDIX A

DEFINITIONS

Definitions of capitalized terms used and not otherwise defined in this ITP are set forth in Exhibit 1 (*Definitions*) to the Project Agreement.

“Addenda” or “Addendum” means supplemental additions, deletions and modifications to the provisions of the RFP.

“Administrative Submittal” means the portion of the Technical Proposal described in Section 2.1.2 (*Proposer’s Technical Proposal*) of Appendix C (*Technical Proposal Instructions*).

“ANCs” means the District Advisory Neighborhood Commissions.

“Assumed Financial Closing Date” means [●] [●], 20[●].

“Assumptions and Instructions Book” means the book of instructions described in Section 5.3 (*Assumptions and Instructions Book*) of Appendix D (*Financial Proposal Instructions*).

“ATCs” is defined in Section 3.1.1 (*Overview of ATCs*).

“Bank Debt Financing” means any debt financing, other than Bond Financing, provided by a bank or similar financial institution.

“Bank Debt Pricing Date” means with respect to any Bank Debt Financing proposed in the Preliminary Financial Model, the earlier of (i) the date of Financial Close, (ii) the date at which the Bank Debt Financing is fixed or hedged by the Developer or (iii) such other date as may be mutually agreed to by the Developer and the District.

“Bank Debt Rate Protection Period” is defined in Section 6.2.1 (*Base Interest Rate Fluctuation*).

“Base Interest Rates” is defined in Section 6.1.1 (*Selection of Base Interest Rates*).

“Base Credit Spread” means the credit spread(s) shown in Tables 2 and 3 of Form 9 (*Interest Rate and Credit Spread Submittal*).

“Board” is defined in Section 8.2 (*Protest*).

“Bond Financing” means any financing comprising bonds, which may include tax-exempt and/or taxable bonds.

“Bond Pricing Date” means (i) the earlier of (a) Financial Close and (b) the date of execution of a bond purchase agreement related to a Bond Financing or (ii) such other date as may be mutually agreed by the District and the Developer.

“Bond Rate Protection Period” is defined in Section 6.2.1 (*Base Interest Rate Fluctuation*).

“CFA” is defined in Section 1.5.3(c) (*Improper Communications and Contacts*).

“Conduit Issuer” means the District of Columbia.

“Commercial Close” means the execution of the Project Agreement by the District and the Developer.

“Commercial Closing Deadline” is defined in Section 7.1(e) (*Executing the Project Agreement*).

“Conceptual Design Narrative” the portion of the Proposer’s Technical Proposal that is described in Section 2.3.1 (*Part 3: Conceptual Design Narrative and Visualizations*) of Appendix C (*Technical Proposal Instructions*).

“Conflict of Interest” is defined in Section 1.6.2 (*Definition of Conflicts of Interest*).

“Contracting Officer” means the District representative identified in Section 1.5.1 (*District’s Point of Contact*).

“Credit Spread Risk Sharing” means the process for a Proposer and the District to share risk, as described in Section 6.3 (*Credit Spread Risk*).

“Credit Spread Submittal” is defined in Section 6.3.2 (*Credit Spread Risk Sharing*).

“Data Room” means the electronic data room managed by the District to give Proposers access to information related to the Project.

“DBE” is defined in Section 1.9.1 (*Disadvantaged Business Enterprises*).

“Debt Commitment Letter” is defined in Section 4.3.1 (*Debt Commitment Letters*) of Appendix D (*Financial Proposal Instructions*).

“Debt Term Sheet” is defined in Section 4.4 (*Debt Term Sheets*) of Appendix D (*Financial Proposal Instructions*).

“Detailed ATC” means the ATC submittal described in Section 3.2.3 (*Stage 2: Detailed ATCs*).

“Developer” means the entity identified, or otherwise established, by the Preferred Proposer to enter into the Project Agreement. The Developer shall develop, design, finance, construct, and manage the Project for the term of the Project Agreement.

“DC-Net” is defined in Section 1.1.2 (Scope of Work).

“DCOP” is defined in Section 1.5.3(c) (Improper Communications and Contacts).

“DDOT” is defined in Section 1.1.1 (Introduction).

“Deadline” means any applicable deadline set forth in Appendix B (Procurement Schedule).

“District” means the District of Columbia Office of Contracting and Procurement acting by and through the District of Columbia Office of Public-Private Partnerships.

“Draft RFP” means the draft Request for Proposals to Design, Build, Finance, and Manage the Project issued by the District.

“Expiration Date” is defined in Form 8 (Proposal Security) of this ITP.

“FHWA” means the Federal Highway Administration.

“Final RFP” means the last version of the Request for Proposals for the Project issued by the District in accordance with the Procurement Schedule, as the same may be amended by Addendum following the issuance thereof pursuant to Section 2.2.2 (Issuance of Addenda to the RFP).

“Financial Capacity Information” means the information to be provided in accordance with Section 3 (Financial Capacity Information) of Appendix D (Financial Proposal Instructions).

“Financial Close” means the Developer’s satisfaction of all conditions necessary to achieve financial close specified in the Project Agreement.

“Financial Closing Deadline” is defined in Section 7.1(f) (Executing the Project Agreement).

“Financial Plan” is defined in Section 4 (Financial Plan) of Appendix D (Financial Proposal Instructions).

“Financial Plan Memorandum” is defined in Section 4.1 (Financial Plan Memorandum) of Appendix D (Financial Proposal Instructions).

“Financial Price” is defined in Section 4.3 (Financial Proposal Score) of Appendix E (Proposal Evaluation Criteria and Scoring).

“Financial Proposal” is defined in Section 4.3.1 (Proposal Contents and Format).

“Financial Proposal Checklist” means the checklist of Financial Proposal requirements, as described in Appendix F (Summary and Checklist of Proposal Contents).

“Financial Proposal Due Date” is defined in Section 2.1.1(c) (Submission of Technical and Financial Proposals).

“Financial Proposal Letter” means a letter submitted by the Proposer with its Financial Proposal in the form of Form 7 (Financial Proposal Letter).

“Financial Proposal Score” is defined in Section 4.3 (Financial Proposal Score) of Appendix E (Proposal Evaluation Criteria and Scoring).

“Financial Review Committee” is defined in Section 5.2.2 (Review Committees).

“FOIA” is defined in Section 2.5.1 (Requirements for an Electronic Copy of the Proposals to be Made Public).

“GAAP” is defined in Section 3.1.1(a)(iv)(1) (Financial Capacity Information) of Appendix D (Financial Proposal Instructions).

“Gold Book” means DDOT’s *Standard Specifications for Highways and Structures (2013)*.

“Guarantor” means a parent company or affiliate company of a Proposer, Lead Contractor or ITP Equity Member whose financial statements were or are used to demonstrate financial capability of the Proposer, Lead Contractor or ITP Equity Member.

“IFRS” is defined in Section 3.1.1(a)(iv)(1) (Financial Capacity Information) of Appendix D (Financial Proposal Instructions).

“Interest Rate Protection Start Date” is defined in Section 6.1.2 (Selection of Base Interest Rates).

“Interest Rate Submission Date” is defined in Section 6.1.1 (Selection of Base Interest Rates).

“Interest Rate Submittal” is defined in Section 6.1.1 (Selection of Base Interest Rates).

“ISP98” is defined in Form 8 (Proposal Security).

“ITP” is defined in Section 1.3.3 (Preferred Proposer).

“ITP Equity Members” means the members of a Proposer that will contribute equity to the Developer as part of the financing plan for the Project.

“Key Personnel” means those individuals that will serve in each of the positions listed as “Key Personnel” in Section 2.1 (*Developer Personnel and Organization*) of the Technical Provisions.

“Lead Asset Management Contractor” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the performance of the Asset Management Work.

“Lead Asset Management Member” means, where the Lead Asset Management Contractor is an incorporated or unincorporated joint venture, each member or joint venturer in the Lead Asset Management Contractor.

“Lead Contractor” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for the performance of construction work for the Project.

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

“Lead Engineer” means the entity (whether a single incorporated entity or an incorporated or unincorporated joint venture) with primary responsibility for preparation of the detailed plans and specifications for construction of the Project.

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

“Letter of Credit” or “LC” is defined in Form 8 (*Proposal Security*).

“Lumen Chart” is defined in Section 13.8 (*Definitions*) of the Technical Provisions.

“Major Non-Equity Member” means, with respect to a Proposer, each of the following team members but only if such team member is not also an ITP Equity Member or Guarantor in respect of an ITP Equity Member:

- (a) the Lead Contractor;
- (b) each Lead Contractor Member (if any);
- (c) each Subcontractor (if any);
- (d) the Lead Engineer;

- (e) each Lead Engineer Member (if any);
- (f) the Lead Asset Management Contractor; and
- (g) each Lead Asset Management Member (if any).

“Major Participant” means each of the following:

- (a) each ITP Equity Member;
- (b) if an ITP Equity Member is an investment fund, the fund’s general partner(s); and
- (c) each Guarantor (if any).

“Maximum Availability Payment” or **“MAP_Q”** means the quarterly value which includes costs necessary to design, construct, finance, operate, and provide asset management services with respect to the Improved Street Light Network in accordance with the Agreement. The MAP_Q is further described in Section 3(b) of Exhibit 14 (*Payment Mechanism*) to the Project Agreement.

“Maximum Cancellation Stipend Amount” is defined in Section 7.4.1 (*Stipend on or before Technical Proposal Due Date*).

“Maximum Stipend Amount” is defined in Section 7.4.2 (*Stipend after Technical Proposal Due Date*).

“Model Audit Opinion” is defined in Section 5.5.2(a) (*Model Audit Opinion*) of Appendix D (*Financial Proposal Instructions*).

“Model Audit Report” is defined in Section 5.5.1(a) (*Model Audit Report*) of Appendix D (*Financial Proposal Instructions*).

“Model Auditor” is defined in Section 5.5.1(a) (*Model Audit Report*) of Appendix D (*Financial Proposal Instructions*).

“NEPA” is defined in Section 1.8.2(e)(i) (*NEPA*).

“NCPC” means the National Capital Planning Commission.

“Non-Collusion Affidavit” means the statement by the Proposer contained in Form 1 (*Non-Collusion Affidavit*).

“OCTO” is defined in Section 1.1.1 (*Introduction*).

“One-on-One Meetings” is defined in Section 2.4(a) (*One-on-One Meetings*).

“OP3” is defined in Section 1.1.1 (*Introduction*).

“Organizational Change” is defined in Section 1.7.1(b) (*Changes in Proposer’s Organization*).

“P3 Act” means the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228, D.C. Official Code §§ 2-271.01 *et seq.*).

“Pepco” means the Potomac Electric Power Company.

“Preferred Proposer” means the Proposer selected by the District to enter into the Project Agreement with the District, in accordance with this ITP.

“Preferred Proposer Selection” means determination by the District of the Preferred Proposer in accordance with the RFP.

“Preliminary Asset Management Plan” is defined in Section 2.2.7 (*Preliminary Asset Management Plan*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary Bundling and Phasing Plan” is defined in Section 2.2.3 (*Preliminary Bundling and Phasing Plan*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary Conversion Work Plan” is defined in Section 2.2.2 (*Preliminary Conversion Work Plan*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary DBE Participation Plan” is defined in Section 2.2.9 (*Preliminary DBE Participation Plan*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary Financial Model” is defined in Section 5 (*Preliminary Financial Model*) of Appendix D (*Financial Proposal Instructions*).

“Preliminary Management and Staffing Plan” is defined in Section 2.2.1 (*Preliminary Management and Staffing Plan*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary Performance Plans” means the portion of the Technical Proposal described in Section 2.2 (*Part 2: Preliminary Performance Plans*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary Project Baseline Schedule” is defined in Section 2.4.2 (*Part 4: Preliminary Project Baseline Schedule*) of Appendix C (*Technical Proposal Instructions*).

“Preliminary Public Information and Communications Plan” is defined in Section 2.2.8 (Preliminary Public Information and Communications Plan) of Appendix C (Technical Proposal Instructions).

“Preliminary Quality Management Plan” is defined in Section 2.2.5 (Preliminary Quality Management Plan) of Appendix C (Technical Proposal Instructions).

“Preliminary Systems Development Plan” is defined in Section 2.2.4 (Preliminary Systems Development Plan) of Appendix C (Technical Proposal Instructions).

“Preliminary Technical Proposal Score” is defined in Section 4.2 (Technical Proposal Score) of Appendix E (Proposal Evaluation Criteria and Scoring).

“Preliminary Traffic Management Plan” is defined in Section 2.2.6 (Preliminary Traffic Management Plan) of Appendix C (Technical Proposal Instructions).

“Proceedings” is defined in Form 8 (Proposal Security).

“Procurement Process” means the procurement process to select a Preferred Proposer to deliver the Project, as outlined in Section 1.3.5 (Procurement Process).

“Procurement Schedule” means the schedule for the Procurement Process set forth in Appendix B (Procurement Schedule).

“Project” is defined in Section 1.1.1 (Introduction).

“Project Agreement” means the Project Agreement to be entered into between the District and the Developer for design, construction, financing, and asset management of the Project, including the Technical Provisions and all other exhibits to the Project Agreement.

“Proposal” is defined in Section 4.3.1 (Proposal Contents and Format).

“Proposal Security” is defined in Section 4.6.1(a) (Proposal Security).

“Proposal Validity Period” is defined in Section 4.6.5(a) (Proposal Validity Period).

“Proposer” means a respondent selected by the District pursuant to the RFQ to submit a Proposal in response to the RFP.

“Proposer Representative” is defined in Section 1.5.2 (Proposer Representative).

“Public Space” means all the publicly-owned property between the property lines on a street, as further defined by 24 DCMR 399.

“Rating Agency” means (i) Standard & Poor’s Ratings Services, (ii) Moody’s Investor Services, (iii) Fitch Ratings, (iv) DBRS, Inc., and (v) Kroll Bond Rating Agency, Inc.

“Rating Agency Letters” means the letters issued by the relevant Rating Agencies evidencing the indicative credit rating issued by such Rating Agency for the Proposer’s debt.

“RFP” means the Request for Proposals for the Project issued by the District.

“RFQ” is defined in Section 1.3.1 (Introduction).

“Street Light Advisory Panel” is defined in Section 2.1.1(f)(ii) (Community Consultation).

“SCT” is defined in Section 1.1.2(e) (Scope of Work).

“Setting Date” means the date that is thirty (30) days before the Technical Proposal Due Date.

“SHPO” means the District of Columbia State Historic Preservation Office.

“SOQ” is defined in Section 1.3.1 (Introduction).

“Stakeholders” is defined in Section 1.5.3 (Rules of Contact).

“Stipend” means a payment by the District to a Proposer in accordance with Section 7.4 (Stipend).

“Stipend Agreement” is defined in Section 7.4.3(a) (Stipend General Conditions).

“Stated Amount” is defined in Form 8 (Proposal Security).

“Subcontractor” means any subcontractor identified in and evaluated as a part of the Proposer’s SOQ (and which is not otherwise captured by the definition of Major Non-Equity Member).

“Summary ATC” is defined in Section 3.2.2 (Stage 1: Summary ATCs).

“Technical Proposal” is defined in Section 4.3.1(a) (Proposal Contents and Format) and described in Appendix C (Technical Proposal Instructions).

“Technical Proposal Checklist” means the checklist of Technical Proposal requirements, as described in Appendix F (Summary and Checklist of Proposal Contents).

“Technical Proposal Due Date” is defined in Section 2.1.1(c) (Submission of Technical and Financial Proposals).

“Technical Proposal Letter” means a letter submitted by the Proposer with its Technical Proposal in the form of Form 6 (Technical Proposal Letter).

“Technical Proposal Score” is defined in Section 4.2 (Technical Proposal Score) of Appendix E (Proposal Evaluation Criteria and Scoring).

“Technical Provisions” means the Technical Provisions set out in Exhibit 5 (*Technical Provisions*) to the Project Agreement.

“Technical Review Committee” is defined in Section 5.2.1 (Review Committees).

“TIFIA” means Transportation Infrastructure Finance and Innovation Act of 1998 (23 U.S.C. §§ 601 *et seq.*), as amended.

“Total Proposal Score” is defined in Section 5.4 (Preferred Proposer Selection).

“USDOT” means the United States Department of Transportation.

“Verizon” means Verizon Communications, Inc.

“Vision Zero” means the District’s transportation safety plan described at: www.dcvisionzero.com.

“WGES” means Washington Gas and Electric.

“Work Product” is defined in Section 1.2 (*Defined Terms*) of the Stipend Agreement.

APPENDIX B

PROCUREMENT SCHEDULE

The following represents the current anticipated schedule for the Procurement Process:

Event	Date
Issuance of First Draft RFP	August 5, 2019
Deadline for Proposer Comments/Questions on First Draft RFP	August 29, 2019 at 5:00 PM
First One-on-One Meeting	September 17-19, 2019
Issuance of Second Draft RFP	October 28, 2019
Deadline for Proposer Comments/Questions on Second Draft RFP	November 12, 2019 at 9:00 AM
Second One-on-One Meeting	November 19-21, 2019
Issuance of Third Draft RFP	March 31, 2020
Deadline for Proposer Comments/Questions on Third Draft RFP	April 30, 2020 at 5:00 PM
Issuance of Fourth Draft RFP	June 29, 2020
Deadline for Submitting ATCs	July 10, 2020 at 5:00 PM
Deadline for Proposer Comments/Questions on Fourth Draft RFP	July 31, 2020 at 5:00 PM
Issuance of Responses to Proposer Comments/Questions on Fourth Draft RFP and Fifth Draft RFP	October 5, 2020
Deadline for Proposers to Identify Remaining Bid/No-Bid Issues, If Any	October 13, 2020 at 12:00 PM
Deadline for District to Respond to Outstanding ATCs	October 26, 2020

Event	Date
Submit Proposed Final RFP to FHWA	October 2020
Publish Proposed Final RFP for Public Hearing	November 2020
Public Hearing	December 2020
Submit Proposed Final RFP to Council	January 2021
Issue Final RFP	February 19, 2021
Deadline for Submitting Any Organizational Changes or Changes to Key Personnel	February 26, 2021 at 5:00 PM
Deadline for Proposer Comments/Questions on Final RFP	February 26, 2021 at 5:00 PM
Deadline to Submit Model Auditor Information	March 19, 2021 at 5:00 PM
Technical Proposal Due Date	March 22, 2021 at 5:00 PM
Interest Rate Submission Date*	April 5, 2021 at 5:00 PM
Interest Rate Protection Start Date	April 8, 2021
Financial Proposal Due Date	April 19, 2021 at 5:00 PM (Proposal Security to be delivered to Contracting Officer by 2:00 PM , as described in Section 4.6.1 (<i>Proposal Security</i>) of the ITP))
Selection of Preferred Proposer	July 2021
Present Project Agreement to Council	September 2021
Commercial Close Deadline	Thirty (30) days following Council approval of Project Agreement
Financial Close Deadline (as may be extended pursuant to the Project Agreement)	Sixty (60) days following the Commercial Closing Date

**The District will provide Proposers with the date(s) on which the District intends to conduct dry run(s) of the Interest Rate Submittal and Credit Spread Submittal processes in due course during the Procurement Process.*

All dates and times set forth above reflect the District's anticipated timing of the occurrence of the events listed above and are subject to change, in the District's absolute discretion, by notice to the Proposers, and are otherwise subject to adjustment in accordance with the terms of the ITP. All times set forth above and elsewhere in the ITP are the prevailing local times in the District of Columbia.

APPENDIX C

TECHNICAL PROPOSAL INSTRUCTIONS

1. General Instructions

1.1 Overview

The required contents and organization of the Technical Proposal are presented in this Appendix C (Technical Proposal Instructions) and summarized in the Technical Proposal Checklist provided in Appendix F (Summary and Checklist of Proposal Contents). Each Proposer is required to submit all the information set out in this Appendix C (Technical Proposal Instructions) in the organization and format specified herein and in the order set forth in Appendix F (Summary and Checklist of Proposal Contents). A copy of the Technical Proposal Checklist shall be included in the front of each Technical Proposal. The Proposer shall not amend the order or change the contents of the Technical Proposal Checklist except to provide the required cross-references to its Proposal.

1.2 Format

- 1.2.1 Text shall be in English in a standard, minimum of 12-point font, single-spaced. Page size shall be 8.5" x 11", with dividers for each section/subsection. Text used on graphics and figures and in tables may be a minimum of 8-point font. Graphics shall not consist of text only. Each printed side of a sheet counts as one page.
- 1.2.2 Drawings, organizational charts, and schedules may be shown on 11" x 17" sized pages. The visualizations that accompany the Proposer's Conceptual Design Narrative shall be presented in imperial units and shall be at a scale to clearly identify the work to be completed for the Project.
- 1.2.3 The Proposer shall number each page in each Part consecutively (e.g., 1-1, 1-2; 2-1, 2-2).
- 1.2.4 Part 1 of the Technical Proposal shall be limited to ten (10) pages; *provided* the Administrative Submittal shall be unlimited in regard to page length. Parts 2 through 4 of the Technical Proposal shall be limited to a combined total of one hundred (100) pages, excluding tabs and divider pages. Part 5 of the Technical Proposal shall be unlimited in regard to page length.

1.3 Organization

The Technical Proposal shall set out the Proposer's technical approach to the Project in accordance with the Technical Provisions and the Final RFP and shall be submitted in separate parts, separated by tabs. Elements of the Technical Proposal that exceed the minimum requirements of the Project Agreement shall be clearly and separately identified in each part of the Technical Proposal to facilitate evaluation. The Technical Proposal shall consist of the following elements:

Part 1: Executive Summary and Administrative Submittal

Part 2: Preliminary Performance Plans

Part 3: Conceptual Design and Visualizations

Part 4: Preliminary Project Baseline Schedule

Part 5: Attachments

Attachment A: Key Personnel Resumes

Attachment B: Conceptual Design and Visualizations

Attachment C: Preliminary Project Baseline Schedule

2. PROPOSER'S TECHNICAL PROPOSAL

The required contents of each element of the Proposer's Technical Proposal is described in detail below.

2.1 Part 1: Executive Summary and Administrative Submittal

The Proposer shall submit an executive summary that shall summarize significant aspects of the Technical Proposal and the benefits to the Project and the District, as further provided in Section 2.1.1 (Part 1: Executive Summary and Administrative Submittal) of this Appendix C (Technical Proposal Instructions). The executive summary shall contain sufficient information to familiarize the District with the Proposer's approach to satisfy the requirements of the Project Agreement. The Proposer also shall submit an Administrative Submittal, as further provided in Section 2.1.2 (Part 1: Executive Summary and Administrative Submittal) of this Appendix C (Technical Proposal Instructions).

2.1.1 The executive summary shall include the following:

- (a) For disclosure to the public at any time pursuant to D.C. Official Code §§ 2-273.03(f) and 2-273.09(a), a description of the major elements of the Proposer's proposal, **excluding**:
 - (i) price;
 - (ii) financial plan; and
 - (iii) other confidential or proprietary information or trade secrets that the Proposer intends to be exempt from disclosure.
- (b) Organization and Project Management:
 - (i) Identify changes since submitting the SOQ, including but not limited to changes in the Proposer's organization, ITP Equity Members, Major Non-Equity Members, Major Participants and Key Personnel, in each case as approved by the District in accordance with Section 1.7.1 (Changes in Proposer's Organization) and Section 1.7.2 (Changes in Key Personnel Identified in an SOQ) of the ITP;
 - (ii) An overview of the Proposer's approach to project management;
 - (iii) Proposer's approach to providing a safe environment for workers and the public; and
 - (iv) Proposer's approach to addressing stakeholder engagement, information sharing and communications for the Project.
- (c) Project Schedule:

Identify the Proposer's key milestones, including the achievement of NTP1, the achievement of the first NTP3, and the Project Final Completion Date.
- (d) DBE Participation:

Provide a written statement that the Proposer is committed to achieving the goals for DBE participation for the Project set forth in the Project Agreement and describe the Proposer's approach to achieving the DBE participation goal for the Project.

(e) Project Delivery Approach:

- (i) Describe the Proposer's approach to delivering the D&C Work and the Asset Management Services based on the Technical Provisions, including:
 - (1) a description of innovative design concepts and how they benefit the District;
 - (2) a summary of the approach to the work, including the resources and equipment required to complete the work as proposed; and
 - (3) a summary of the Proposer's approach to asset management and handback of the Project.

2.1.2 The Administrative Submittal shall include the following:

- (a) Technical Proposal Letter: The Administrative Submittal shall include a signed Technical Proposal Letter, in the form of Form 6 (Technical Proposal Letter), which shall be executed by each Major Participant, the Lead Contractor, and the Lead Asset Management Contractor. If any of the foregoing is a joint venture or partnership, the Technical Proposal Letter must be executed by all joint venture members or all general partners, as applicable.
- (b) Professional Licensing: Certification that the designs will be performed under the supervision of a professional engineer licensed in the District of Columbia and proof of such license(s).
- (c) Contractor Licensing: Certification that construction will be performed under the supervision of a contractor licensed in the District of Columbia and proof of such license(s).
- (d) Qualification Confirmation: Each Proposer shall confirm in writing that if it is designated the Preferred Proposer, the Developer

organized by the Preferred Proposer and each of the Developer's subcontractors will be lawfully qualified to do business in the District at the time that the Developer enters into the Project Agreement with the District.

- (e) Non-Collusion: Each Proposer shall attach a Form 1 (Non-Collusion Affidavit) completed by the Proposer, each Major Non-Equity Member and each Major Participant.
- (f) Equal Employment Opportunity: Each Proposer shall attach a Form 2 (Equal Employment Opportunity Certification) completed by the Proposer, each Major Non-Equity Member, and each Major Participant.
- (g) No Use of Contract Funds for Lobbying: Each Proposer shall attach a Form 3 (Certification for Use of Contract Funds for Lobbying) completed by the Proposer, each Major Non-Equity Member, and each Major Participant.
- (h) Debarment and Suspension: Each Proposer shall attach a Form 4 (Debarment and Suspension Certification) completed by the Proposer, each Major Non-Equity Member and each Major Participant.
- (i) Buy America: Each Proposer shall attach a Form 13 (Buy America Certification) completed by the Proposer and the Lead Contractor.
- (j) Conflicts of Interest: Each Proposer shall either (i) confirm that it has no Conflicts of Interest or (ii) disclose any such Conflicts of Interest by attaching a completed Form 14 (Conflict of Interest Disclosure Statement).
- (k) Confidential and Proprietary Information: Each Proposer shall identify those portions of its Proposal that are confidential and proprietary in accordance with 27 DCMR § 4804.13.
- (l) Supplier Information: Each Proposer shall attach a Form 15 (Master Supplier Form) completed by the Proposer and the Lead Contractor.

- (m) Tax Certification: Each Proposer shall attach a Form 16 (Tax Certification Affidavit) completed by the Proposer, each Major Non-Equity Member and each Major Participant.
- (n) Updates to Relevant Experience Provided in SOQ: Each Proposer shall provide an update to its relevant experience described in its SOQ as follows. For each of the projects identified on Form E (*Project Information*) to its SOQ, the Proposer will provide a narrative setting forth the following:
 - (i) identify and describe the role of each Major Participant or Major Non-Equity Member, as applicable, involved with the project;
 - (ii) the name and location of the project;
 - (iii) a description of the project, including contract price;
 - (iv) contact information of the owner or developer, including the project manager's name, telephone number, and e-mail address;
 - (v) the construction start date;
 - (vi) the originally scheduled date for completion;
 - (vii) the actual date of completion (or, if completion has not yet been achieved, the anticipated date of completion); and
 - (viii) as applicable, an explanation of the cause of delay in completion and steps taken to mitigate such delay.
- (o) Proposer Certification Form: Each Proposer shall attach a Form 17 (Proposer Certification Form) completed by the Proposer, each Major Non-Equity Member and each Major Participant.

2.2 Part 2: Preliminary Performance Plans

As further described in the Technical Provisions, the Developer will carry out the D&C Work and the Asset Management Services in accordance with the Developer Management Plan. The Technical Proposal will contain the following documents (the “**Preliminary Performance Plans**”) that will be used by the Proposer to

develop its Developer Management Plan and manage the Project. Each Preliminary Performance Plan will demonstrate, at a minimum, compliance with the requirements of the Technical Provisions. The Preliminary Performance Plans include:

- (i) Preliminary Management and Staffing Plan;
- (ii) Preliminary Conversion Work Plan;
- (iii) Preliminary Bundling and Phasing Plan;
- (iv) Preliminary Systems Development Plan;
- (v) Preliminary Quality Management Plan;
- (vi) Preliminary Traffic Management Plan;
- (vii) Preliminary Asset Management Plan;
- (viii) Preliminary Public Information and Communications Plan; and
- (ix) Preliminary DBE Participation Plan.

2.2.1 Preliminary Management and Staffing Plan

The Preliminary Management and Staffing Plan shall provide a description of the proposed approach to managing all project activities during the design, conversion, and asset management of the Project. The Preliminary Management and Staffing Plan shall include:

- (a) an organizational chart outlining the structure of the Proposer's project management organization for design, conversion, and asset management (including for quality assurance and quality control) and a description of the roles allocated, responsibilities, interrelation 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);
- (b) information describing how each of the Key Personnel involved with design, conversion, and asset management 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 or she will devote to the Project;

- (c) a description of the qualifications and experience (in the form of a resume, no longer than two (2) pages) for the individuals that will serve in each of the Key Personnel positions;
- (d) a description of how the Proposer will integrate its Project delivery team, contractors, and suppliers to achieve the scope, quality, and schedule objectives set forth in the Project Agreement; and
- (e) information regarding the current and projected workload and backlog of the Proposer team (including all Major Non-Equity Members) and a description of the 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.

2.2.2 Preliminary Conversion Work Plan

The Preliminary Conversion Work Plan shall provide a description of how the Proposer will plan and implement the Conversion Work, including:

- (a) a description of how the Proposer intends to deliver the Improved Street Light Network and Smart City Improvements given the geographic distribution and multi-asset nature of the Project;
- (b) a description of the testing, commissioning, and acceptance protocols the Proposer will use to confirm that the Improved Street Light Network and Smart City Improvements comply with the design and performance requirements of the Technical Provisions;
- (c) a description of the Proposer's approach to sourcing key materials and supplies, including Luminaires; and
- (d) a description of the Proposer's approach to coordinating the D&C Period Asset Management Services with the Conversion Work.

2.2.3 Preliminary Bundling and Phasing Plan

The Preliminary Bundling and Phase Plan shall describe how the Proposer will sequence the Conversion Work and Smart City Work, including:

- (a) a description of the Proposer's method and criteria for identifying Street Light Bundles and Smart City Bundles; and
- (b) an overview of the Street Light Bundles and Smart City Bundles the Proposer has identified; and
- (c) a description of how the Street Light Bundles and Smart City Bundles the Proposer has identified will promote the equitable progress in the delivery of the Conversion Work and the Smart City Work across each of the District's Wards.

2.2.4 Preliminary Systems Development Plan

The Preliminary Systems Development Plan shall describe the Proposer's approach to the design, installation, testing, and commissioning of the Remote Monitoring Control System ("**RMCS**") and the Asset Management Information System ("**AMIS**"), with a particular emphasis on how the Proposer's approach will ensure the Remote Monitoring Control System and the Asset Management Information System will satisfy the relevant performance and availability requirements described in the Technical Provisions given the scope and scale of the Project. The Preliminary Systems Development Plan shall:

- (a) comply with the ISO/IEC/IEEE 12207:2017 Systems and Software Engineering software lifecycle process standard;
- (b) describe the following technical processes consistent with the ISO/IEC/IEEE 12207:2017 Systems and Software Engineering software lifecycle process standard:
 - (i) business or mission analysis;
 - (ii) stakeholder needs and requirements definition;
 - (iii) system/software requirements definition;
 - (iv) architecture definition;
 - (v) design definition

- (vi) system analysis;
 - (vii) implementation;
 - (viii) integration;
 - (ix) verification;
 - (x) transition;
 - (xi) validation;
 - (xii) operation;
 - (xiii) maintenance; and
 - (xiv) disposal; and
- (c) include the following for the AMIS and RMCS:
- (i) software architecture description;
 - (ii) software architecture diagrams;
 - (iii) software architecture documentation;
 - (iv) system/software test plan(s);
 - (v) system/software integration test case(s);
 - (vi) system/software integration test plan(s); and
 - (vii) system/software integration test case(s).

2.2.5 Preliminary Quality Management Plan

The Preliminary Quality Management Plan shall describe the Proposer's approach that will be used to meet the quality objectives described in the Technical Provisions with respect to the design, conversion, and asset management of the Project, with a particular emphasis on the multi-asset, multi-location nature of the Project. The Preliminary Quality Management Plan shall include:

- (a) for the design phase of the Project:

- (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 all final design documents to be independently reviewed and verified for completeness and accuracy;
 - (iii) a description of the design deliverables and a description of the internal process for design reviews;
 - (iv) a description of quality assurance and quality control functions;
 - (v) the approach to reporting, including relationships;
 - (vi) a description of how the District's comments will be integrated into the design;
 - (vii) a description of how the program will integrate with the District's oversight and how the Proposer will conform with federal oversight requirements;
 - (viii) a description of how changes will be made to correct design deficiencies; and
 - (ix) a description of how design quality management will be documented;
- (b) for the conversion phase of the Project:
- (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 inspections to effect changes, as necessary;
 - (ii) a description of the approach for integrating with design, the control of materials, acceptance testing, inspection and monitoring of the Conversion Work, including reporting organization and procedures;

- (iii) a description of the internal processes for preparing and reviewing incident reports, nonconformance reports, noncompliance reports, and how noncompliance issues will be documented and corrected;
 - (iv) a description of how the program will integrate with the design activities, the District's oversight, and all quality-related activities;
 - (v) a description of how the program will integrate with the District's oversight and how the Proposer will conform with federal oversight requirements; and
 - (vi) a description of how quality management with respect to the Conversion Work will be documented; and
- (c) for the Asset Management phase of the Project:
 - (i) the quality control, quality assurance, and quality acceptance activities and procedures for the Asset Management Services and how the quality process will be integrated into the self-monitoring and self-reporting program to effect changes, as necessary;
 - (ii) a description of how the quality process will be integrated into remedial and preventative asset management inspections and action plans to effect changes, as necessary, in asset management procedures and performance; and
 - (iii) a description of how the District will be involved and how the Proposer will conform with federal oversight requirements.

2.2.6 Preliminary Traffic Management Plan

The Technical Proposal shall include a narrative describing the Proposer's approach to traffic management, including detours and Closures required for the D&C Work and the Asset Management Services. The Proposer's approach to traffic management shall include an overview of the most common traffic management situations the Proposer expects to encounter

in executing the Work and describe general traffic control measures the Proposer may employ to address those situations.

2.2.7 Preliminary Asset Management Plan:

The Preliminary Asset Management Plan shall provide a description of how the Proposer will plan and implement the Asset Management Services, including:

- (a) a description of the Proposer's approach to transitioning asset management responsibility for the Existing Street Light Network from the District to the Developer;
- (b) a description of the Proposer's approach to carrying out the D&C Period Asset Management Services and coordinating such work with the Conversion Work;
- (c) with respect to the Improved Street Light Network, a description of the Proposer's approach to meet or exceed the performance requirements set forth in the Technical Provisions;
- (d) a description of the Proposer's approach to energy efficiency improvement and management, including (i) a detailed schedule for the hours of operation, rated wattage of Luminaires at operational levels, and a description of the methods, scheduling, or power management tools the Proposer will employ to achieve the reported power usage and (ii) monthly power usage tables (reported in KW-hours) for the full Asset Management Period showing the calculated power usage and the products, equipment, and system assumptions used in such calculations;
- (e) a description of the anticipated schedules for routine asset management and Renewal Work;
- (f) a description of the Proposer's approach to transitioning responsibility for asset management services to the District or its contractor(s) at the end of the Term; and
- (g) a description of the Proposer's approach to data collection, reporting and management during the Asset Management Period to ensure ongoing communication with DDOT and OCTO.

2.2.8 Preliminary Public Information and Communications Plan

The Preliminary Public Information and Communications Plan shall include a narrative describing the Proposer's approach to addressing stakeholder engagement, information sharing and communications management, which will serve as the basis for the Public Information and Communications Plan, as described in the Technical Provisions. The narrative shall include a description of the Proposer's plan to establish and maintain positive relationships with residents, businesses, institutions, organizations, the general public, and others interested in or affected by each phase of the Project.

2.2.9 Preliminary DBE Participation Plan

The Preliminary DBE Participation Plan shall include (i) a written statement that the Proposer is committed to achieving the goals for DBE participation with respect to the D&C Work and the Asset Management Services set forth in the Project Agreement and (ii) a narrative describing the Proposer's approach to achieving such goals, such narrative to include (x) a description of the types of activities the Proposer intends to subcontract to DBEs, (y) a description of the Proposer's approach to managing and monitoring its DBE subcontracting efforts and (z) a description of DBE industry outreach the Proposer intends to conduct in order to make DBE firms aware of subcontracting opportunities.

2.3 Part 3: Conceptual Design Narrative and Visualizations

2.3.1 The Conceptual Design Narrative will serve as the basis for the Street Light Improvements Design Manual, which will be prepared by the Developer and submitted to the District for review and approval in accordance with Section 7.2.1 (*Street Light Improvements Design Manual*) of the Technical Provisions. The Conceptual Design Narrative shall clearly address the following:

- (a) a general description of the conceptual design of the Project;
- (b) a design statement setting out the Proposer's approach to the design of the Project, including descriptions of the standard engineering specifications that the Proposer will use to ensure the

performance of the Improved Street Light Network meets the relevant performance criteria set forth in the Technical Provisions;

- (c) a description of the Proposer's prototypical, standard designs for each Lighting Unit type;
- (d) a description of the specific products, including Luminaires and off-the-shelf components to be incorporated into the Improved Street Light Network; and
- (e) a description of any products and innovative features, or other value-added components, the Proposers will incorporate into the Project that have not been specifically requested in the Technical Provisions but that will benefit the District.

As part of its Conceptual Design Narrative, the Proposer will include, as an option for potential incorporation into the Improved Street Light Network, the installation of pole tilt sensors for Upright Pedestal and Twin 20 Lighting Units. Such sensors should be capable of being programmed to monitor a maximum-allowable tilt angle. If this angle is exceeded, the sensor should be capable of providing an alarm via the RMCS. As detailed in Form 11 (Financial Pricing Form), the Proposer must include separate pricing for the pole tilt sensors so the District can evaluate whether such sensors should be included in the scope of the D&C Work.

2.3.2 The visualizations provided as part of the Conceptual Design Narrative shall accurately reflect and otherwise be consistent with the conceptual design described in the Conceptual Design Narrative. The visualizations shall include:

- (a) color graphics depicting the shielding for each Lighting Unit type, and other major design features of fixtures to be used throughout the Improved Street Light Network; and
- (b) cut sheets for each Lighting Unit type that show how the components and equipment for the Smart City Improvements will be integrated into each such Lighting Unit Type (including, in particular, how such integration will be accomplished with the shielding for each Lighting Unit Type).

2.4 Part 4: Preliminary Project Baseline Schedule

2.4.1 The Proposer shall provide a description of its proposed schedule methodology, which demonstrates how the D&C Work will be accomplished to Project Final Completion on or before the date that is twenty-four (24) months following the Assumed Financial Closing Date. The description also shall clearly address:

- (a) the schedule logic and approach to the progress of the D&C Work and the D&C Period Asset Management Services;
- (b) the Proposer's approach to, and description of, the schedule management system(s) the Proposers will use to control, review and manage the schedule for the D&C Work and the D&C Period Asset Management Services;
- (c) the Proposer's approach to effectively manage the interface between the Developer, subcontractors, and suppliers and the interfaces among design, quality management, construction and asset management teams;
- (d) the permits and other approvals needed from the District and Governmental Authorities in order to carry out the D&C Work; and
- (e) the Proposer's approach to managing transitions in the phases of the Project to ensure consistency of approach between the Proposer's team members.

2.4.2 The Proposer also shall provide a preliminary Project Baseline Schedule (the **"Preliminary Project Baseline Schedule"**) that complies with the requirements relating to content and format set out in Section 2.3.1(r) (*Preliminary Project Baseline Schedule*) of the Technical Provisions.

2.5 Part 5: Attachments

2.5.1 The following Appendices shall each be included with the Proposer's Technical Proposal:

- (a) Attachment A: Key Personnel Resumes;
- (b) Attachment B: Conceptual Design Visualizations; and

(c) Attachment C: Preliminary Project Baseline Schedule.

APPENDIX D

FINANCIAL PROPOSAL INSTRUCTIONS

1. General Instructions

- 1.1 The required contents and organization of the Financial Proposal are presented in this Appendix D (Financial Proposal Instructions) and summarized in the Financial Proposal Checklist provided in Appendix F (Summary and Checklist of Proposal Contents). Each Proposer is required to submit all the information specified in this Appendix D (Financial Proposal Instructions) and in the order set forth in Appendix F (Summary and Checklist of Proposal Contents).
- 1.2 All of the parts of the Proposal that indicate price and financial terms are to be included in the Financial Proposal.

2. Content, Format, and Organization of the Financial Proposal

- 2.1 Financial Proposal – Submitted on the Financial Proposal Due Date
 - 2.1.1 The documents and information listed in Section 2.1.2(a) (Divider Tab A – Organizational Information) through (f) (Divider Tab F – Other Financial Proposal Information) below and described in further detail in this Appendix D (Financial Proposal Instructions), shall collectively comprise the Financial Proposal. A Financial Proposal must contain all the documents and information required by this Section 2 (Content, Format, and Organization of the Financial Proposal), in accordance with the relevant sections of this Appendix D (Financial Proposal Instructions), to be considered responsive.
 - 2.1.2 Proposers shall organize their Financial Proposals in the following sequence, with a copy of the Financial Proposal Checklist at the front of the Financial Proposal. The Proposer shall not amend the order or change the contents of the Financial Proposal Checklist except to provide the required cross-references to its Financial Proposal.
 - (a) *Divider Tab A – Organizational Information:* Each Proposer shall also attach the following documentation:

- (i) a summary of the Proposer’s organization and financial plan, in the form set forth in Form 10 (Financial Plan Summary); and
 - (ii) a copy of the correspondence (if any) issued by the District approving any Organizational Change, as required by Section 1.7 (Changes in Proposer’s Organization and Key Personnel) of the ITP. If the Proposer includes any such correspondence, the Proposer shall also include a brief description (2-page maximum) of these changes.
- (b) *Divider Tab B – Financial Capacity Information:* The information regarding financial capacity described in Section 3 (Financial Capacity Information) of this Appendix D (Financial Proposal Instructions).
- (c) *Divider Tab C – Financial Plan:* Financial Plan information complying with Section 4 (Financial Plan) of this Appendix D (Financial Proposal Instructions).
- (d) *Divider Tab D – Preliminary Financial Model:* Financial Plan complying with Section 5 (Preliminary Financial Model and Related Materials) of this Appendix D (Financial Proposal Instructions), including an (i) electronic copy of the Preliminary Financial Model in accordance with Section 5.1 (General and Structural Requirements) of this Appendix D (Financial Proposal Instructions) (the electronic copy of the Preliminary Financial Model shall be uploaded along with the Financial Proposal (with the phrase “Preliminary Financial Model ORIGINAL” used in the file name) and (ii) copies of the Model Audit Report and Model Audit Opinion, each of which shall comply with the requirements of Section 5.5 (Preliminary Financial Model Audit) of this Appendix D (Financial Proposal Instructions).
- (e) *Divider Tab E – Proposal Security:* A completed and executed original of the Proposal Security (Form 8).
- (f) *Divider Tab F – Other Financial Proposal Information:* Each Proposer shall provide, as applicable, forms not covered under previous sections and a signed Financial Proposal Letter, in the

form of Form 7 (Financial Proposal Letter) (including all attachments), which shall be executed by each Major Participant, the Lead Contractor, and the Lead Asset Management Contractor. If any of the foregoing is a joint venture or a partnership, the Financial Proposal Letter must be executed by all joint venture members or all general partners, as applicable.

3. Financial Capacity Information

3.1.1 The Financial Proposal shall provide each of the following items:

- (a) Audited Financial Statements and Interim Audited Financial Statements
 - (i) The Proposer shall provide audited financial statements (in PDF file format) for the Proposer, all ITP Equity Members, the Lead Contractor (if the Lead Contractor is a consortium, partnership or any other form of a joint venture, all such entities comprising the Lead Contractor), and any Guarantor, in each case for the most recently ended fiscal year for which such audited financial statements are available. These statements shall cover all periods subsequent to those included in the SOQ.
 - (ii) In addition to the financial statements provided under (i) above, interim unaudited statements (in Microsoft Excel file format) for the above entities are to be provided for the period since the most recent completed fiscal year.
 - (iii) Except as otherwise noted, the financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must include:
 - (1) opinion Letter (Auditor's Report) (audited financial statements only);
 - (2) balance sheet;
 - (3) income statement;

- (4) statement of cash flow; and
 - (5) footnotes.
- (iv) Financial statements must meet the following requirements:
- (1) GAAP/IFRS. Financial statements must be prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) or International Financial Reporting Standards (“IFRS”). If any entity provides financial statements that are prepared in accordance with principles other than GAAP or IFRS, a letter must be provided from a certified public accountant, or equivalent, discussing the areas of the financial statements that would be affected by a conversion to GAAP or IFRS.
 - (2) Audited (Audited Financial Statements Only). Financial statements must be audited by a certified public accountant or equivalent for foreign entities. If audited financial statements are not available for any entity, the Proposer must provide unaudited financial statements for such entity, certified as true, correct and complete by its chief financial officer or equivalent for that entity.
 - (3) English Language and U.S. Dollars. Information in the financial statements must be provided in English and specify all amounts in U.S. dollars. If financial statements are prepared in a language other than English, an English translation must be provided. If financial statements are converted from a foreign currency into U.S. dollars, the conversion method(s) must be explained in an attachment and must be reasonable. Translation at the average period rate for income statements and cash flow statements and period end rate for balance sheet statements shall be appropriate.

(4) New Entities. If any entity required to submit financial statements is a newly formed entity or has not yet been formed and does not have independent financial statements, such entity shall expressly state that it is a newly formed entity or has not yet been formed and does not have independent financial statements meeting the requirements above.

(5) SEC Filings. If any entity for whom financial statements are submitted files reports with the United States Securities and Exchange Commission, then such entity must provide electronic links to the most recently filed Forms 10-K, 10-Q and 8-K for all such reporting entities in lieu of hard copies.

(b) Credit Ratings

Entities must provide the most recent credit rating(s) (if any) for the debt of the Proposer and/or, as applicable, that of each ITP Equity Member, Lead Contractor and any Guarantor that provides a letter of support, to the extent such entities have credit ratings. If no credit ratings exist, entities must include a statement specifying that no credit ratings exist for that entity.

(c) Material Changes in Financial Condition

(i) Each of the Proposer, ITP Equity Members, Lead Contractor and any Guarantor must provide a letter from its chief financial officer either:

(1) providing information on any material changes in financial condition since submission of the SOQ (including any pending material changes); or

(2) certifying that no such material changes have occurred.

(ii) Additionally, the Proposers shall provide updated information following the Financial Proposal Due Date

about such entities as such information becomes public until the Preferred Proposer achieves Financial Close.

- (iii) The following list identifies certain items that the District would consider to constitute a material change in financial condition. This list is intended to be indicative only. At the discretion of the District, any failure to disclose a prior or pending material change may disqualify a Proposer from further participation in the selection process. In instances where a material change has occurred or is anticipated, the affected entity shall provide a statement describing each material 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 material change as certified by the chief financial officer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material 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 material 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.
- (1) An event of bankruptcy involving the affected entity, or the parent corporation or Guarantor of the affected entity or any Affiliate;
 - (2) A change in tangible net worth of 10% of shareholder equity;

- (3) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition that in any way involves the affected entity or parent corporation or Guarantor of the affected entity;
- (4) A change in credit rating for the affected entity or parent corporation or Guarantor of the affected entity;
- (5) Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation or Guarantor of the affected entity that has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties; and
- (6) Other events known to the affected entity that represent a material adverse change in financial condition over the past three years or may be pending for the next reporting period (e.g., pending litigation).

(d) Off-Balance Sheet Liabilities

The Proposer shall supply a letter from the certified public accountant or chief financial officer, treasurer, principal accounting officer controller or other similar financial officer for each entity for which financial information is submitted, identifying all off-balance sheet liabilities in excess of \$25 million in the aggregate.

- 3.1.2 The information required for Divider Tab B shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer's organization (ITP Equity Member, Lead Contractor, etc.). Financial statements shall be provided in electronic, searchable PDF and/or Microsoft Word format. Proposers must also submit standard unlocked and unprotected Microsoft Excel workbooks containing the balance sheet, income statement and statement of cash flows as disclosed in each set of the audited financial

statements. For each entity providing financial statements, one worksheet should be used for each of the balance sheet, income statement and statement of cash flows, with figures for each of the three most recent years in separate columns, in chronological order, from left to right. If Proposers wish any of this information to be considered confidential information, it must be marked in accordance with Section 2.5 (Public Disclosure) of the ITP.

4. Financial Plan

Collectively, each of the documents and information required by this Section 4 (Financial Plan) regarding a Proposer's approach to financing the Project shall be referred to as the "**Financial Plan.**"

4.1 Financial Plan Memorandum

The Financial Plan must include a detailed memorandum (the "**Financial Plan Memorandum**") that includes the following information:

4.1.1 Overview

A two-page (maximum) narrative overview of the Proposer's approach to financing the Project, including:

- (a) a table illustrating the Developer's projected total sources and uses of funds during the D&C Period and Asset Management Period for the Project;
- (b) the total amount of debt to be obtained by the Proposer and the identity of the initial debt providers or underwriters;
- (c) if more than one debt facility, the amount to be obtained from each facility, the identity of the forms of debt (i.e., senior debt, mezzanine debt, etc.) provider and the purpose of each debt facility;
- (d) the total amount, if any, and sources of other capital to be provided by or on behalf of the Developer for the Project (e.g., equity, shareholder loans, etc.) and the identity of the initial debt providers or underwriters; and

- (e) a succinct description of drawdown priority and considerations for the cash-flow waterfall.

4.1.2 Project Structuring Information (in each case, to the extent applicable with respect to the Proposer's Financial Proposal)

In addition to the amounts (for each time period) provided in the Preliminary Financial Model and the Assumptions and Instructions Book, the Proposer will provide the following:

- (a) Details of up-front development and pursuit costs:
 - (i) Identified source(s) of financing from which such up-front development and pursuit costs are eligible to be paid (given the restrictions, if any, on the use of proceeds from such source(s) of financing);
 - (ii) Up-front fees to be payable in connection with any Project debt and deferred equity letters of credit, including fees for loan arranging, bond underwriting, letter(s) of credit, guarantee(s), or other financing fees; and
 - (iii) Non-financing expenses, such as Proposal development costs, including design and engineering work and legal, accounting, tax, financing, and other advisory fees (including lender due diligence expenses); and
- (b) Rationale for the funding or drawdown of reserve accounts (if any), including funding, release timing, and sources.

4.1.3 Developer's Revenues and Cash-flow Waterfall

A detailed description of all sources of the Developer's revenues for the Project, namely the Availability Payments. Proposers must also provide a description of any funds that may be needed to supplement such revenues during the Term, as well as how, and in which order, such revenues and funds will be applied to Project expenses.

4.1.4 Monthly Drawdown and Repayment Schedule

A detailed schedule of the Developer's monthly debt drawdowns and debt service payments (separating principal and interest) over the course of the Term in accordance with the District's fiscal year (October 1 to September 30), together with a schedule for fees and any other up-front and ongoing costs incurred with respect to the Project debt.

4.1.5 Project Financing Information (in each case, to the extent applicable with respect to the Proposer's Financial Proposal)

- (a) Description of each source of Project debt intended for use (e.g., bank loans, capital market securities (including PABs), other government-sponsored or subsidized loans, credit enhancements, any swaps or synthetic structures, letters of credit, and subordinated facilities);
- (b) The maximum leverage ratio allowed by lenders and how the maximum leverage ratio is being calculated, as well as the maximum leverage achieved in the D&C Period and the Asset Management Period and all applicable ratio requirements (including debt service, project life, and loan life coverage ratios) with respect to average and minimum levels;
- (c) The maximum and average maturity of each Project debt facility, any principal or interest deferral periods, and drawdown/availability periods for each facility;
- (d) The cost of each Project debt facility (including details of base interest rates, credit spread assumptions, and all other related fees) and, if used, credit enhancements, hedging instruments, and interest rate swaps (for each period, if applicable); and
- (e) A description of the reserve accounts that the Developer will establish pursuant to requirements under its funding agreement(s), including ensuring compliance with financial covenants in the funding agreement(s).

4.1.6 Financial Close Work Plan

A narrative description and schedule, with references as appropriate, demonstrating the Proposer's ability to satisfy the requirements relating

to finalization of the Project Agreement and achievement of Financial Close, within the time frames set forth in Section 7 (Finalization of the Project Agreement and Closing) of the ITP; and

4.1.7 Other Information

Any other information relating to the Financial Plan that the Proposer considers to be material or valuable for offering the District a better understanding of its Financial Proposal.

4.2 Details of Equity Commitment

4.2.1 For each ITP Equity Member, Proposers shall provide the following information.

- (a) Proposers shall provide the identity of the ITP Equity Members and, in cases where the equity is contributed by a fund, describe:
 - (i) the date the fund was established;
 - (ii) the total amount raised in the investment fund;
 - (iii) the total amounts of undrawn and uncommitted funds available to be invested in the Project;
 - (iv) fund managers and general characteristics of the fund investors;
 - (v) confirmation that the Project is an eligible investment of the fund; and
 - (vi) confirmation that the amount to be contributed does not exceed the maximum investment permitted by the fund's organizational documents, based on the amount raised in the investment fund as of the bid date.

In cases where the ITP Equity Member intends to fund its equity commitment through use of internal resources (e.g., a corporate entity supplying its own capital), please identify where and how the equity commitment will be sourced and total amounts of funds available to be invested in the Project.

- (b) Proposers shall provide written documentation of each ITP Equity Member's level of equity support. If the investment requires board approval, then such documentation must include action(s) taken by the ITP Equity Member's board (or any other relevant corporate or governance body from which authorization is required), authorizing such ITP Equity Member to submit the Proposal as a member of the relevant Proposer and acknowledging the equity investment that such ITP Equity Member will be required to provide if its Proposer becomes the Developer. Documentation of each ITP Equity Member's level of equity support may include board resolutions (or relevant extracts therefrom), investment committee resolutions, execution copies of or detailed term sheets for any contribution agreements or shareholder/member agreements that includes the detailed terms and conditions describing how and when the Equity Investment will be provided by the ITP Equity Members. Such actions or agreements, as applicable, should acknowledge the equity transfer restriction provisions of the Project Agreement.
- (c) Proposers shall provide a description of the percentage, form, and timing of the total equity investment to be made by each ITP Equity Member and each ITP Equity Member's investment horizon. Proposers also shall describe any future equity transfers anticipated by any ITP Equity Member(s), including those occurring at the close-off of investment funds should they mature before the end of the Term. To the extent Equity Investments (including any extensions of equity member debt) or distributions/repayments will be made at different times by or to different ITP Equity Members, Proposers shall provide details regarding the nature and timing of such arrangements, as well as the investment profile and return for each ITP Equity Member.

4.3 Debt Commitment Letters

- 4.3.1 The Financial Plan must include a letter from each of the Proposer's lenders (each, a "**Debt Commitment Letter**") of the debt required for the Project, including any underwriters, monoline insurers, purchasers of a private placement (each of the investors or the private placement agent on behalf of investors), and federal credit programs or bank lenders,

evidencing the relevant lender's commitment to underwrite or provide the Project Debt facilities described in the Financial Plan. The District recognizes that the nature of commitment available for bank and bond facilities will differ; however, each Debt Commitment Letter must comply with the following:

- (a) Describe the Project debt facility (or facilities) totaling 100% of the debt requirement for the Project and/or hedging instrument(s) the relevant Lender will be providing and the amount(s) of debt or hedging committed, and for bond facilities, details of any underwriting commitments, including as a minimum, a volume underwriting commitment;
- (b) Indicate that the Lender has reviewed the Final RFP issued by the District and all applicable Addenda issued prior to the Financial Proposal Due Date and that the Lender has completed all material aspects of its due diligence or all appropriate and necessary relevant due diligence, including, in each case, financial, model, legal, technical and tax reviews, other than any diligence required to be undertaken thereafter under federal securities laws. The RFP and all other due diligence documents reviewed must be listed in each Lender's Debt Commitment Letter;
- (c) Acknowledge that all material inter-creditor issues, if any, with other Lenders or any sureties have been preliminarily agreed to by the relevant parties;
- (d) Confirm that:
 - (i) The required approvals from the Lender's board or credit committee have been obtained;
 - (ii) Such approvals are not, and will not be, subject to contingencies or conditions precedent, other than those customary for financings for projects similar to the Project (as described in the relevant financing documents); and
 - (iii) Drawdowns from the relevant Project debt facility will not be subject to contingencies or conditions precedent other

than those customary for financings for projects similar to the Project (as described in the relevant Debt Term Sheet);

- (e) Include an anticipated date for Financial Close, a validity period for the commitment (which validity must be no shorter than the Proposal Validity Period) evidenced by the relevant Debt Commitment Letter, and indicate the extent to which (as applicable and with respect to a bank debt financing) volume commitments, credit spreads or other debt-related fees are locked or subject to market flex provisions through such anticipated date (or any other applicable date);
- (f) Include, as applicable, with respect to a bank debt financing, the most recent ratings for the Lender (excluding underwriters) providing such Debt Commitment Letter published by all applicable Rating Agencies; and/or
- (g) If the Proposal includes the sale of debt securities in a private placement, include (i) a letter from the Proposer confirming that the private placement agent is properly registered as a broker-dealer with the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority and with states where the prospective purchasers of such securities are located and that the private placement will meet an exemption under Section 4(a) of the Securities Act of 1933, as amended, indicating which exemption is being relied upon; (ii) a list of the purchasers of the private placement; and (iii) the investment representation/mandate letters executed. Unless the Proposer provides evidence of fully-committed financing (which must include a term sheet with committed pricing relating to credit spreads that is valid for the duration of the Proposal Validity Period and must not include conditions precedent other than those customary for financings for public-private partnership projects) with its Financial Proposal in an aggregate amount not less than the total financing requirement, the Proposer should provide evidence of the private placement agent having acted on a minimum of \$300,000,000 of private placements within the past five years to finance infrastructure projects that were privately financed or

delivered under public-private partnership frameworks or similar structures.

4.4 Debt Term Sheets

4.4.1 The Financial Plan must include copies of the final term sheets for each Project debt facility (each, a “**Debt Term Sheet**”), the terms of which shall be agreed to by each lender (as evidenced by each lender’s or underwriter’s acceptance in its Debt Commitment Letter). Where drafts of Funding Agreements are available, those should be provided. To the extent that a Debt Term Sheet has been attached and incorporated into a Lender’s Commitment Letter, it does not need to be provided again separately pursuant to this Section 4.4 (Debt Term Sheets).

4.4.2 At a minimum, each Debt Term Sheet shall provide sufficient details on the following terms:

- (a) identity of lead arrangers, lead managers, and/or underwriting banks and/or debt providers that have provided commitments;
- (b) amount, type and purpose of each bank debt financing and bond financing;
- (c) the expected terms and conditions for the loan or other debt facility, such as conditions precedent to drawdown, representations and warranties, covenants and events of default;
- (d) drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date, security required (including any guarantees), and any reserve accounts;
- (e) interest rates (whether fixed or floating) specifying base rate, spreads and margins and the reference interest rates that are relevant to the Financial Proposal (and for the avoidance of doubt in the case of capital markets debt instruments, the expected interest rates shall be set forth in the preliminary financial model);
- (f) any proposed hedging arrangements in relation to interest rate risk;
- (g) maximum and average life of debt;

- (h) fees; and
- (i) detailed description of all collateral/security interests that will be pledged to the lenders by the Developer or ITP Equity Members, including any letters of credit from ITP Equity Members to the Developer and the Lead Contractor's security package.

4.5 Rating Agency Letter(s)

Should the Financial Plan include any issuance of securities by or on behalf of the Developer, the Proposer must provide such indicative credit ratings by all applicable Rating Agencies on the securities to be issued and all other debt, as the lenders shall require.

4.6 Financial Pricing Form

Proposer shall submit a Form 11 (Financial Pricing Form) that proposes the pricing for the performance of obligations per the Project Agreement. Instructions for completing Form 11 (Financial Pricing Form) are set forth in the form.

5. Preliminary Financial Model and Related Materials

5.1 General and Structural Requirements

The Preliminary Financial Model, which generates the financial projections contained in the Financial Proposal, shall be an electronic file developed in Microsoft Excel and may include standard Excel add-ins. However, the Preliminary Financial Model shall not require the use of external modules to Excel. Proposers are encouraged to make the Preliminary Financial Model as user-friendly as possible. The Preliminary Financial Model shall satisfy each of the following:

- 5.1.1 Each worksheet of the Preliminary Financial Model shall identify the version and the date of issue. If the Preliminary Financial Model Microsoft Excel file is password protected, the password shall be provided. No part of the Preliminary Financial Model (cell, column, row, sheet, macro or otherwise) shall be separately hidden, locked or protected with a password. The Preliminary Financial Model shall be formatted to facilitate printing (e.g., row and column headers should be on every page of the printout).

- 5.1.2 For all macros, all programming code shall be made visible (i.e., not password protected), well-structured and fully documented. All macros must be capable of running in all versions of Microsoft Excel.
- 5.1.3 Other than an optional title/disclaimer, the Preliminary Financial Model shall use only the following three types of worksheets:
- (a) input worksheets, which shall include data and assumptions to be hard coded but not calculations;
 - (b) calculation worksheets, which shall consist of the individual calculations that support each line of all outputs and reports, with no input cells hard coded in calculation sheets; and
 - (c) output worksheets, which shall be used to display and generate model outputs, with no input cells hard coded in output sheets and no calculations, except for simple formulas such as sums and check totals, performed.

Worksheet names shall be descriptive and not use spaces (e.g., titles such as “CashFlows” or “Cash_Flows” shall be used instead of “Cash Flows”).

Each type of cell – including input cells (i.e., cells including hard coded inputs), cells that reference other worksheets, and cells that are neither input cells nor references to other worksheets – should be formatted uniquely (i.e., font and fill color). Other color coding can also be used but should be fully explained in the model’s instruction worksheet (if used) and/or the model Assumptions and Instructions Book.

- 5.1.4 For calculation or output worksheets using time periods, the following requirements apply:
- (a) each column in a worksheet can only represent one time period (e.g., January 1 through January 31, 20XX, for column G); and
 - (b) a row shall generally contain only one formula, copied across all columns. Cells in which a different formula is used (e.g., the first column) should be clearly indicated (e.g., by color or label).

- 5.1.5 The information in the Preliminary Financial Model and the Financial Plan must be displayed on the basis of the District's fiscal year (October 1 to September 30).

5.2 Mandatory Preliminary Financial Model Elements

5.2.1 Input Data Requirements

The Preliminary Financial Model shall clearly indicate in one or more input worksheets all assumptions supporting the calculation of projections, including (to the extent applicable):

- (a) federal and local tax assumptions pertaining to the Developer;
- (b) design and construction work expenditures and other capital expenditures, including development and pursuit costs (including details of the anticipated construction S-curve on a monthly basis);
- (c) insurance-related payments, including premiums;
- (d) anticipated asset management expenditures in each modelled period of the Asset Management Period (including projections with respect to energy usage and costs);
- (e) all financial metrics for debt and associated instruments (including swaps and other hedging instruments), including base interest rates and credit spread assumptions for applicable maturities within each debt structure; and
- (f) funding source(s) and deposits into and drawdown of reserve accounts, if any.

5.2.2 Output Worksheets

- (a) The Preliminary Financial Model shall include a sources and uses table and the Developer's projected monthly cash flows for the Project for each month of the anticipated construction period. The Preliminary Financial Model may use semi-annual periods for the Asset Management Period.
- (b) Further, the Preliminary Financial Model shall include, at a minimum, each of the following output worksheets displaying

information on an annual basis with the first period covering from the Financial Closing Date to September 30th:

- (i) Developer balance sheet;
- (ii) Developer profit & loss statement; and
- (iii) Developer cash flow statement.

5.2.3 Sensitivity Analysis

- (a) The Proposer shall include a sensitivity analysis, in accordance with the following requirements, that demonstrates the strength of its proposed Financial Plan.
- (b) For the variables listed below, Proposers shall present the effect of these variations on both the expected Equity IRR and on the minimum and average debt service coverage ratios and other ratios, as applicable, as defined under the relevant debt term sheets, for all Project Debt. The Proposer should state whether any financial covenants in any Funding Agreement would be breached under scenarios (i), (ii), and (iii) below and identify the impact on the MAP_Q of scenario (iv):
 - (i) Asset Management Costs: +10% and +20% of forecasted amounts (in each year that the Proposer projects such expenditures);
 - (ii) Project Completion Schedule: six (6)-month and twelve (12)-month completion delays (not caused by Relief or Compensation Events) beyond the Guaranteed Project Final Completion Date;
 - (iii) Projected MAP_Q: -5% and -10% reduction in all expected Availability Payments earned as proposed in the Financial Plan, assuming those are related to the assessment of Deductions; and
 - (iv) Base Interest Rate Fluctuation (before Financial Close): The impact on the MAP_Q of a change of –20 basis points, +10

basis points, +25 basis points, and +50 basis points in all base interest rates at Financial Close.

5.3 Assumptions and Instructions Book

Proposers shall submit an assumptions and instructions book ("**Assumptions and Instructions Book**") providing:

- 5.3.1 the logical layout and structure of the Preliminary Financial Model, including the names of all worksheets and a description of the color coding and/or labeling scheme(s);
- 5.3.2 key financial assumptions, including base interest rates, the sources that constitute the basis of such assumptions and/or arguments about the adopted options for the construction of the Preliminary Financial Model and the execution of any related sensitivity analysis;
- 5.3.3 sufficient information and instruction regarding the operation of the Preliminary Financial Model, especially changing the base interest rates, so the District will be able to read, use and modify the data contained in the Preliminary Financial Model and to allow the District to conduct sensitivity analysis; and
- 5.3.4 a detailed description of the function and intended use of all macros.

5.4 Financial Structuring Assumptions

- 5.4.1 Assumed Financial Closing Deadline: Proposers shall assume a Financial Closing Deadline of [[●] [●], 20[●]], in their Preliminary Financial Models;
- 5.4.2 Accounting Practices: Financial information submitted by Proposers must be as internally consistent and transparent as possible in order to facilitate its evaluation. Proposers must fully reflect all financial information in accordance with GAAP (or non-GAAP, as permitted by the ITP) in preparing the Preliminary Financial Model. In no circumstances will the District be held responsible for incorrect or aggressive application of accounting standards.
- 5.4.3 Tax Regulations: Projections in accounting statements (e.g., balance sheet and profit and loss statement) must be provided in accordance with all

applicable federal and local regulations. In no circumstances will the District be held responsible for incorrect or aggressive tax assumptions.

5.4.4 Compliance with Final RFP: The Financial Plan must not contain inconsistencies with any provision included in the Final RFP, including the Project Agreement.

5.4.5 Interest Rates and Credit Spread Inputs: The Preliminary Financial Model shall be able to separately accommodate interest rates and credit spread/credit margin inputs for each and every base interest rate and maturity used in the Financial Plan (differentiating inputs for each Project debt facility, if applicable).

5.4.6 The Preliminary Financial Model must be able to be solved with multiple term structures.

5.5 Preliminary Financial Model Audit

5.5.1 Model Audit Report

- (a) Each Proposer shall cause a preliminary independent audit of its Preliminary Financial Model to be conducted by a firm engaged by the Proposer and approved by the District (the “**Model Auditor**”) (which approval shall not be unreasonably withheld, conditioned, or delayed), at the Proposer's sole cost and expense. The audit report for the Preliminary Financial Model (the “**Model Audit Report**”) shall state that the Preliminary Financial Model is (i) free of mechanical errors and (ii) consistent with the requirements in the ITP and the related representations and warranties set forth in the Project Agreement. Copies of the Model Audit Report and Model Audit Opinion (defined in Section 5.5.2(a) (Model Audit Opinion) below) shall be co-addressed to the District, and the District shall be expressly identified therein as an entity entitled to rely upon the Model Audit Report and Model Audit Opinion, subject to the Model Auditor's contractual cap on liability. The Proposer shall submit the Model Audit Report and Model Audit Opinion as part of its Financial Proposal. The Model Audit Opinion may be provided as an appendix to the Model Audit Report.

- (b) Prior to engaging the Model Auditor and in accordance with the dates set forth in the Procurement Schedule, the Proposer will provide the District with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must cover claims by the District arising from any errors or omissions by the Model Auditor in connection with the model audit). The engagement terms with the Model Auditor may limit the Model Auditor's liability to the District for the failure of the Model Auditor's opinion to identify any error(s) in the Preliminary Financial Model to five (5) years from completion of services and in an amount of no less than the lesser of (i) five million dollars (\$5,000,000) and (ii) five (5) times the amount payable to the Model Auditor for preparation of such report(s) and opinion(s); *provided* that such caps shall be effective only if the Model Auditor maintains professional liability insurance in the amount and for the duration of the cap and; *provided further* that any Lender may have an interest in the proceeds of such insurance in priority to the interest of the District therein. The Model Auditor chosen by the Proposer must be unaffiliated with the Proposer and otherwise free of any conflict of interest.
- (c) The information to be submitted by the Proposer to the District pursuant to this Section 5.5.1 (Model Audit Report) shall also include, at a minimum, the following:
 - (i) the name and address of the proposed Model Auditor;
 - (ii) a list of relevant projects for which the proposed Model Auditor has provided model auditing services;
 - (iii) a list of the Model Auditor team members; and
 - (iv) a resume for each Model Auditor team member.

This required information is subject to the submission and deadline requirements set forth in the Procurement Schedule.

5.5.2 Model Audit Opinion

- (a) As part of its Financial Proposal, the Proposer shall also provide the District with an opinion from the Model Auditor (the “**Model Audit Opinion**”) stating that the Preliminary Financial Model is suitable for use in connection with the procedures for reconciling amounts of compensation payable by the Department pursuant to Exhibit 14 (*Payment Mechanism*) of the Project Agreement. The Model Audit Opinion may be provided as an appendix to the Model Audit Report. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with GAAP. The Model Audit Opinion, on which the District shall be a co-addressee and expressly entitled to rely, may also result from an independent review of the Preliminary Financial Model required by the Proposer's Lenders. The Model Audit Opinion is to be provided at the Proposer's cost. At a minimum, the Model Audit Opinion shall affirm that:
- (i) the Preliminary Financial Model reliably, accurately, and consistently calculates profit and loss, cash flow, balance sheet projections, key financial ratios, and investors' returns;
 - (ii) assumptions and logic used within the Preliminary Financial Model are materially consistent with the terms of the Final RFP and the Financial Proposal (including the financing documents or term sheets, as applicable);
 - (iii) the size of the Availability Payments can be generated in a manner that is consistent with the Availability Payment formula set forth in Part 3 of Exhibit 14 (*Payment Mechanism*) to the Project Agreement;
 - (iv) the Preliminary Financial Model's outputs do not have any unexplainable variations or trends;
 - (v) there are not any significant inconsistencies between the operation of the macros contained in the Preliminary Financial Model and the intended purpose of the Preliminary Financial Model; and

- (vi) the Preliminary Financial Model can be used for the calculation of any payments to be made to the Developer resulting from (x) the occurrence of Compensation Events and (y) the early termination of the Project Agreement.
- (b) The Proposer assumes the risk of errors, omissions, defects and deficiencies in its Preliminary Financial Model. Any amendment to the Preliminary Financial Model required due to the results of the Preliminary Financial Model audit will be implemented without any adjustment to the MAP_Q based on the results of the model audit.

APPENDIX E

PROPOSAL EVALUATION CRITERIA AND SCORING

1. Responsiveness

Proposals will first be reviewed for (i) the responsiveness of the Proposer to the requirements set forth in the Final RFP and (ii) conformance to the instructions regarding organization and format, including confirmation that:

- (a) Form 6 (Technical Proposal Letter) is completed and executed;
- (b) professional licensing certification(s) are provided, along with proof of licensing;
- (c) contractor licensing certification is provided, along with proof of licensing;
- (d) Form 1 (Non-Collusion Affidavit) is complete and executed for each of the Proposer, the Major Non-Equity Members and the Major Participants;
- (e) Form 2 (Equal Employment Opportunity Certification) is complete and executed for each of the Proposer, the Major Non-Equity Members and the Major Participants;
- (f) Form 3 (Certification for Use of Contract Funds for Lobbying) is complete and executed for each of the Proposer, the Major Non-Equity Members and the Major Participants;
- (g) neither the Proposer nor any of its Major Non-Equity Members or Major Participants is currently debarred, voluntarily excluded, suspended, or otherwise ineligible to perform work for the District, the federal government, any state government, or any municipal government (as demonstrated by the inclusion of a complete and executed Form 4 (Debarment and Suspension Certification) for each such entity);
- (h) Form 13 (Buy America Certification) is complete and executed for each of the Proposer and the Lead Contractor;
- (i) Form 15 (Master Supplier Form) is complete and executed for each of the Proposer and the Lead Contractor;
- (j) Form 16 (Tax Certification Affidavit) is complete and executed for the Proposer, each Major Non-Equity Member and each Major Participant; and

- (k) 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 materially adverse information (to the extent applicable).

Those Proposals not responsive to the Final RFP may be excluded from further consideration. The District may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. The District, in its sole discretion, may grant leave to a Proposer to correct any nonconformity, irregularity, clerical mistake, or other error it deems appropriate.

2. Minimum Requirements Review

Following, or in conjunction with, evaluation of each Proposal for responsiveness, the District will review each Proposal based upon the following minimum requirements. A Proposer must fully meet each of the minimum requirements in order for its Proposal to be evaluated qualitatively in accordance with this Appendix E (Proposal Evaluation Criteria and Scoring).

2.1 Minimum Requirements Review – Technical Proposal

The Proposer must meet each of the following minimum requirements:

- (a) Form 14 (Conflict of Interest Disclosure Statement) is complete and executed and the information set out on such form does not materially adversely affect the Proposer's ability to carry out the Project responsibilities allocated to the Developer in the Project Agreement;
- (b) the Preliminary Project Baseline Schedule establishes a Project Final Completion Date that is on or before the date that is twenty-four months (24) following the Assumed Financial Closing Date;
- (c) the Proposer, Major Non-Equity Members, Major Participants and Key Personnel listed in the Proposal shall not have changed since submission of the Proposer's SOQ, or Proposer shall have previously advised the District of a change and received the Contracting Officer's prior written approval thereto;
- (d) the Proposal includes a statement confirming that the Proposer will obtain DBE commitments equal to or exceeding the DBE participation goals set forth in Section 1.9.1(b) (Disadvantaged Business Enterprises) of the ITP or will exercise good faith efforts to substantiate its attempts to meet such goals; and the Proposer has submitted a Preliminary DBE Participation Plan, describing the Proposer's plan and management approach for achieving the DBE goals and addressing the requirements outlined in Section 11.2 (*DBE Program Compliance*)

of the Project Agreement; *provided* that for purposes of the requirements of this Section 2.1(d), the Proposer shall not submit any price or cost information;

- (e) the narrative describing updates to Proposer's relevant experience provided in its SOQ, as required pursuant to Section 2.1.2(n) (Administrative Submittal) of Appendix C (Technical Proposal Instructions), is complete and the information set out in such narrative does not materially adversely affect the Proposer's ability to carry out the Project responsibilities allocated to the Developer in the Project Agreement; and
- (f) Form 17 (Proposer Certification) is complete and executed and the information set out on such form does not materially adversely affect the Proposer's ability to carry out the Project responsibilities allocated to the Developer in the Project Agreement.

2.2 Minimum Requirements Review – Financial Proposal

The Proposer must meet each of the following minimum requirements:

- (a) The Proposer has delivered Proposal Security in the form of one or more complete, properly executed letters of credit that comply with the requirements of Section 4.6.1 (Proposal Security) of the ITP.
- (b) Based on the information provided pursuant to Section 3 (Financial Capacity Information) of Appendix D (Financial Proposal Instructions), the financial condition and capabilities of Proposer, each of its ITP Equity Member(s), and the D&C Contractor shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer, its ITP Equity Member(s), and D&C Contractor continue to have the financial capacity to design, construct, finance, and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating the Proposer's financial capacity include the following:
 - (i) profitability;
 - (ii) capital structure;
 - (iii) ability to service existing debt;
 - (iv) ability to invest equity; and
 - (v) other commitments and contingencies.

If the Contracting Officer determines that a Proposer does not appear to have the financial capability to fulfill its obligations under the Project Agreement, he or she may, in his or her sole discretion, offer the Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to the District.

- (c) The Proposer's Financial Proposal demonstrates the following:
 - (i) that it identifies sufficient financing for the Project, including all D&C Work and Asset Management Services;
 - (ii) that it is sufficiently developed and (x) has attracted sufficient commitment and provides commitment letters from the Proposer's Lender(s), (y) that the Proposer's Lender(s) have performed the required due diligence, and (z) has attracted sufficient support and commitments from ITP Equity Members, in each case, to satisfy the District that (aa) the Financial Proposal provides value to the District and can be appropriately compared against the other Financial Proposals received and (bb) 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 Project Agreement;
 - (B) achievement of Financial Close;
 - (C) achievement of Final Completion by the Guaranteed Final Completion Date; and
 - (D) asset management throughout the Term in accordance with the requirements of the Project Agreement, including the Handback Requirements; and
 - (iii) that it contains key milestones that are consistent with the Preliminary Project Baseline Schedule and the Financial Close work plan delivered pursuant to Section 4.1.6 (Financial Close Work Plan) of Appendix D (Financial Proposal Instructions).
- (d) If the Proposer's Financial Proposal assumes the sale of debt securities in a private placement, the Financial Proposal includes:
 - (i) a letter from the Proposer confirming that the private placement agent is properly registered as a broker-dealer with the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority and with states where the prospective purchasers of such securities are located and that the private placement will meet an exemption under Section 4(a) of the Securities Act of 1933, as amended, indicating which exemption is being relied upon;

- (ii) a list of the purchasers of the private placement;
 - (iii) executed investment representation/mandate letters; and
 - (iv) evidence of the private placement agent having acted on a minimum of \$300,000,000 of private placements within the past five years to finance infrastructure projects that were privately financed or delivered under public-private partnership frameworks or similar structures.
- (e) The Proposer's Financial Proposal is likely to result in Financial Close in view of:
 - (i) the level of commitment provided by the Proposer's Lenders;
 - (ii) the reasonableness of the Proposer's cost and financing assumptions;
 - (iii) the terms and conditions of the financing;
 - (iv) the level of due diligence performed by the Proposer's Lenders;
 - (v) the conditions precedent to Financial Close included in the commitment;
 - (vi) guarantees and other security required to realize financing; and
 - (vii) the level of commitment of the ITP Equity Members.
- (f) The Proposer's Financial Proposal provides value-for-money as compared to the public sector comparator analysis of the Project.

3. Evaluation Criteria and Weighting

Each responsive Proposal that passes the minimum requirements review described above will be evaluated and scored to determine which Proposal offers the best overall value to the District. Best value will be determined using a 1,000-point scale. The Proposer's Total Proposal Score will be computed by adding the Proposer's Financial Proposal Score, which may be up to a maximum of 700 points, and its Technical Proposal Score, which may be up to a maximum of 300 points.

The Proposer's Financial Proposal Score and Technical Proposal Score will be determined using the methodology set forth in Section 4 (*Best Value Determination*) of this Appendix E (*Proposal Evaluation Criteria and Scoring*).

4. Best Value Determination

4.1 Total Proposal Score

The Proposal offering the best overall value to the District will be determined by computing the Total Proposal Score for each Proposal that passes the responsiveness review and minimum requirements review and responsibility determination using the following methodology. The Total Proposal Score (which may be up to a maximum of 1,000 points) will equal the sum of the Financial Proposal Score (which may be up to a maximum of 700 points) and the Technical Proposal Score (which may be up to a maximum of 300 points).

$$\begin{array}{r} \text{Financial Proposal Score (max. 700 points)} \\ + \text{Technical Proposal Score (max. 300 points)} \\ = \text{Total Proposal Score (max. 1,000 points)} \end{array}$$

4.2 Technical Proposal Score

The Technical Proposal score (the “**Technical Proposal Score**”) for a Proposer will be determined using the following methodology. The Technical Review Committee will evaluate Parts 2 through 5 of the Technical Proposal. Table 1 (Technical Evaluation Content, Criteria and Evaluation) lists the content, criteria and maximum available points for each part of the Technical Proposal to be evaluated. Table 2 (Adjectival Ratings, Description and Numeric Rating) lists the descriptions of the adjective and the corresponding numeric rating for each adjective. For each part of the Technical Proposal being evaluated, the Technical Review Committee will individually evaluate and then as a group assign a consensus adjectival rating and corresponding numeric rating to each numbered evaluation criterion.

The consensus adjectival rating score for each numbered evaluation factor will be multiplied by the weighting factor for that evaluation factor. For example, if an evaluation factor has a maximum of 50 points available and the Technical Review Committee awards an adjectival rating of “Good” for that factor, then the score for that factor is 4/5 of 50, or 40 points. The weighted scores for numbered evaluation factors will be summed to determine the Proposer’s total score for each of the parts of the Technical Proposal being evaluated. The total points available for each part of the Technical Proposal are set out in Table 1 (Technical Evaluation Content, Criteria and Evaluation).

The total scores for each of the parts of the Technical Proposal being evaluated will then be summed to determine the Proposer’s preliminary Technical Proposal Score, which may be a maximum of 1,000 points (the “**Preliminary Technical Proposal Score**”).

The Technical Proposal Score will be computed by multiplying the Preliminary Technical Proposal Score by 0.3, as shown below:

$$\text{Technical Proposal Score} = \text{Preliminary Technical Proposal Score} \times 0.3$$

Table 1 Technical Evaluation Content, Criteria and Evaluation	
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Management and Staffing Plan (Contents):</u> <ul style="list-style-type: none"> • Narrative • Organizational Chart • Part 5, Attachment A: Key Personnel Resumes 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Management and Staffing Plan (Criteria and Scoring):</u> <ol style="list-style-type: none"> 1. The extent to which Proposer’s project management and staffing approach (i) is fully integrated throughout the Project delivery team and (ii) demonstrates how team members will be integrated and managed in order to achieve the scope, quality, and schedule objectives set forth in the Project Agreement. (60 points maximum) 2. The extent to which the qualifications of the Key Personnel team members are suited to achieve the quality and schedule objectives set forth in the Project Agreement. (40 points maximum) 	100 Points
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Conversion Work Plan (Contents):</u> <ul style="list-style-type: none"> • Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Conversion Work Plan (Criteria and Scoring):</u> <ol style="list-style-type: none"> 1. The extent to which the Proposer’s approach to planning and carrying out the Conversion Work demonstrates the Proposer’s ability to deliver the Improved Street Light Network and the Smart City Improvements in accordance with the schedule objectives set forth in the Project Agreement given the geographic distribution and multi-asset nature of the Project. (50 points maximum) 2. The extent to which the Proposer’s approach to commissioning and testing the Improved Street Light Network and the Smart City Improvements demonstrates the Proposer’s ability to ensure the Improved Street Light Network and the Smart City Improvements will meet the relevant performance requirements set forth in the Technical Provisions. (25 points maximum) 	125 Points

Table 1 Technical Evaluation Content, Criteria and Evaluation	
3. The extent to which the Proposer’s approach for managing the sourcing of key materials and supplies, including Luminaires, supports the timely completion of the Conversion Work. (25 points maximum) 4. The extent to which the Proposer’s approach to coordinating the D&C Period Asset Management Services with the Conversion Work supports the timely completion of the Conversion Work. (25 points maximum)	
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Bundling and Phasing Plan (Contents):</u> <ul style="list-style-type: none"> Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Bundling and Phasing Plan (Criteria and Scoring):</u> 1. The extent to which the Proposer’s approach to identifying Street Light Bundles and Smart City Bundles demonstrates the Proposer’s ability to identify bundles that have independent utility. (75 points maximum) 2. The extent to which the Proposer’s approach (i) to identifying Street Light Bundles and Smart City Bundles and (ii) phasing the Conversion Work and Smart City Work promotes the equitable progress in the delivery of the Conversion Work and Smart City Work across each of the District’s Wards. (75 points maximum)	150 Points
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Systems Development Plan (Contents):</u> <ul style="list-style-type: none"> Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Systems Development Plan (Criteria and Scoring):</u> 1. The extent to which the Proposer’s approach to the design of the AMIS and RMCS demonstrates (i) the Proposer’s understanding of the relevant performance requirements set out in the Technical Provisions and (ii) the Proposer’s ability to deliver an AMIS and an RMCS that will satisfy such performance requirements. (75 points maximum) 2. The extent to which the Proposer’s approach to the design of the AMIS and RMCS demonstrates compliance with the ISO/IEC/IEEE 12207:2017 Systems and Software Engineering software lifecycle process standard. (50 points maximum)	125 Points

Table 1 Technical Evaluation Content, Criteria and Evaluation	
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Quality Management Plan (Contents):</u> <ul style="list-style-type: none"> Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Quality Management Plan (Criteria and Scoring):</u> <ol style="list-style-type: none"> The extent to which the Proposer’s approach to quality management of the design phase, conversion phase, and asset management phase of the Project demonstrates integrated quality management across all disciplines, including procedures to minimize variances from minimum standards. (75 points) The extent to which the Proposer’s approach to quality management of the design phase, conversion phase, and asset management phase of the Project effectively integrates the District’s oversight of the Project. (25 points maximum) 	100 Points
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Traffic Management Plan (Contents):</u> <ul style="list-style-type: none"> Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Traffic Management Plan (Criteria and Scoring):</u> <ol style="list-style-type: none"> The extent to which the Proposer’s traffic management approach addresses the most common circumstances expected to require traffic management. (50 points maximum) The extent to which the Proposer’s traffic management approach considers safety and minimizes disruptions and delays to the traveling public. (50 points maximum) 	100 Points
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Asset Management Plan (Contents):</u> <ul style="list-style-type: none"> Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Asset Management Plan (Criteria and Scoring):</u>	100 Points

Table 1 Technical Evaluation Content, Criteria and Evaluation	
<ol style="list-style-type: none"> 1. The extent to which the Proposer’s approach to carrying out the Asset Management Services demonstrates the Proposer’s understanding of the performance requirements set forth in the Technical Provisions. (90 points maximum) 2. The extent to which the Proposer’s energy efficiency measures (i) are clearly and adequately described and (ii) demonstrate sustainability and technological innovation. (5 points maximum) 3. The extent to which the Proposer’s approach to managing the transition of responsibility for Asset Management Services to the District at the end of the term demonstrates the Proposer’s ability to satisfy the Handback Requirements. (5 points maximum) 	
Content	
<u>Part 2, Preliminary Performance Plans: Preliminary Public Information and Communications Plan (Contents):</u> <ul style="list-style-type: none"> • Narrative 	
Criteria	Maximum Points
<u>Part 2, Preliminary Performance Plans: Preliminary Public Information and Communications Plan (Criteria and Scoring):</u> <ol style="list-style-type: none"> 1. The extent to which the Proposer’s approach to public information and communications demonstrates (i) that the Proposer understands the importance of stakeholder engagement, information sharing, and communications during all phases of the Project and (ii) that the Proposer can effectively support the District’s communications and stakeholder engagement efforts. (25 points maximum) 	25 Points
Content	
<u>Part 3: Conceptual Design Narrative and Visualizations (Contents):</u> <ul style="list-style-type: none"> • Narrative • Part 5, Attachment B: Conceptual Design and Visualizations 	
Criteria	Maximum Points
<u>Part 3: Conceptual Design Narrative and Visualizations (Criteria and Scoring):</u> <ol style="list-style-type: none"> 1. The extent to which the Proposer’s Conceptual Design Narrative and Visualizations adequately explains the Proposer’s approach to developing the Design Manual. (50 points maximum) 2. The extent to which the Proposer’s proposed design (i) satisfies the goals and objectives for the Project, described in <u>Section 1.1.3 (Project Goals)</u> 	100 Points

Table 1 Technical Evaluation Content, Criteria and Evaluation	
of the ITP and (ii) will otherwise deliver improvements that will benefit the public. (50 points maximum)	
Content	
Part 4: Preliminary Project Baseline Schedule (Contents): <ul style="list-style-type: none"> Narrative Part 5, Attachment C: Preliminary Project Baseline Schedule 	
Criteria	Maximum Points
Part 4: Preliminary Project Baseline Schedule (Criteria and Scoring): <ol style="list-style-type: none"> The extent to which the Preliminary Project Baseline Schedule and narrative demonstrate that the Proposer has a comprehensive understanding of the activities necessary to achieve Final Completion in a timely fashion. (50 points maximum) The extent to which the Proposer's approach to scheduling demonstrates the Proposer's ability to effectively manage the interface between its various team members. (25 points maximum) 	75 Points

Table 2 Adjectival Ratings, Description and Numeric Rating		
Adjectival Rating	Description	Numeric Rating
Excellent	Exceeds most, if not all requirements; no deficiencies	5
Good	Meets requirements and exceeds some requirements; no deficiencies	4
Acceptable	Meets requirements; no deficiencies	3
Minimally Acceptable	Marginally meets the minimum requirements; minor deficiencies which may be correctable	2
Poor	Marginally meets the minimum requirements; major deficiencies which may be correctable	1
Unacceptable	Fails to meet minimum requirements—e.g., no demonstrated capacity, major deficiencies which are not correctable; the Proposer did not address the evaluation factor	0

4.3 Financial Proposal Score

The Financial Proposal score (the “**Financial Proposal Score**”) for a Proposer will be determined using the following methodology. The Proposer will provide a schedule of anticipated Quarterly Availability Payments, Expected Electricity Costs, Milestone Payments, and the Smart City Payments (assuming no Deductions) in Table 6 of Form 11 (Financial Pricing Form). The Proposers should note that, although each Proposer will also provide its D&C Contract Price on Form 11 (Financial Pricing Form), the District will not include such information in computing the Financial Proposal Score. Rather, for purposes of computing the Financial Proposal Score, the Proposer’s price (the “**Financial Price**”) will be calculated by discounting the values in column G of Table 6 of Form 11 (Financial Pricing Form) back from the proposed payment date of those values (column A of Table 6 of Form 11 (Financial Pricing Form)) to the Setting Date. The discount rate for this calculation will be 3.6%.

The Financial Review Committee will calculate the Financial Price on the following basis:

- (a) for purposes of the Financial Price calculation, payment of the Availability Payments will be assumed to be made when such payments are earned by the Developer;
- (b) all Availability Payments occurring during any Calendar Quarter will be assumed to be made at the end of that Calendar Quarter for purposes of the calculation in Table 6 of Form 11 (Financial Pricing Form).

Once the Financial Review Committee has calculated the Financial Price, the Financial Review Committee will calculate the Financial Proposal Score using the following formula:

$$\text{Financial Proposal Score} = \frac{\text{Lowest Financial Price Proposed}}{\text{Proposer's Financial Price}} \times 700$$

APPENDIX F

SUMMARY AND CHECKLIST OF PROPOSAL CONTENTS

RFP Components	Forms (if any)	RFP Section Cross-Reference
Technical Proposal		
Part 1 - Executive Summary and Administrative Submittal (10 page limit)		
1. Executive Summary	--	Appendix C, Section 2.1.1
2. Administrative Submittal	--	Appendix C, Section 2.1.2
(a) Technical Proposal Letter	Form 6	Appendix C, Section 2.1.1(a)
(b) Professional Engineer Licensing Certification – Design	--	Appendix C, Section 2.1.2(b)
(c) Contractor Licensing Certification	--	Appendix C, Section 2.1.2(c)
(d) Qualification Confirmation	--	Appendix C, Section 2.1.2(d)
(e) Non-Collusion Affidavit	Form 1	Appendix C, Section 2.1.2(e)
(f) Equal Employment Opportunity Certification	Form 2	Appendix C, Section 2.1.2(f)
(g) No Use of Contract Funds for Lobbying	Form 3	Appendix C, Section 2.1.2(g)
(h) Debarment and Suspension Certification	Form 4	Appendix C, Section 2.1.2(h)
(i) Buy America Certification	Form 13	Appendix C, Section 2.1.2(i)
(j) Conflict of Interest Disclosure Statement	Form 14	Appendix C, Section 2.1.2(j)
(k) Confidential and Proprietary Information Designation	--	Appendix C, Section 2.1.2(k)
(l) Supplier Information Form	Form 15	Appendix C, Section 2.1.1(l)
(m) Tax Certification	Form 16	Appendix C, Section 2.1.2(m)
(n) Updates to Relevant Experience Provided in SOQ	--	Appendix C, Section 2.1.2(n)
(o) Proposer Certification Form	Form 17	Appendix C, Section 2.1.2(o)
Part 2 – Preliminary Performance Plans (Together with Parts 3 and 4, 100 page limit)		
1. Preliminary Management and Staffing Plan	--	Appendix C, Section 2.2.1

2. Preliminary Conversion Work Plan	--	Appendix C, Section 2.2.2
3. Preliminary Bundling and Phasing Plan	--	Appendix C, Section 2.2.3
4. Preliminary Systems Development Plan	--	Appendix C, Section 2.2.4
5. Preliminary Quality Management Plan	--	Appendix C, Section 2.2.5
6. Preliminary Traffic Management Plan	--	Appendix C, Section 2.2.6
7. Preliminary Asset Management Plan	--	Appendix C, Section 2.2.7
8. Preliminary Public Information and Communications Plan	--	Appendix C, Section 2.2.8
9. Preliminary DBE Participation Plan	--	Appendix C, Section 2.2.9
Part 3 – Conceptual Design and Visualizations		
1. Conceptual Design Narrative	--	Appendix C, Section 2.3.1
Part 4 – Preliminary Project Baseline Schedule		
1. Description of proposed schedule methodology	--	Appendix C, Section 2.4.1
Part 5 – Attachments (Each included with the Proposer’s Technical Proposal) (No page limit)		
1. Attachment A – Key Personnel Resumes	--	Appendix C, Section 2.5.1(a) Appendix C, Annex 1
2. Attachment B – Conceptual Design Visualizations	--	Appendix C, Section 2.3.2 Appendix C, Section 2.5.1(b)
3. Attachment C – Preliminary Project Baseline Schedule	--	Appendix C, Section 2.4.2 Appendix C, Section 2.5.1(c)
Financial Proposal		
Divider Tab A – Organizational Information		
1. Summary of Proposer’s organization and financial plan	Form 10	Appendix D, Section 2.1.2(a)
2. Correspondence issued by the District approving Organizational Changes (if any), with brief description (2 page limit)	--	Appendix D, Section 2.1.2(a)
Divider Tab B – Financial Capacity Information		
1. Audited Financial Statement and Interim Audited Financial Statements	--	Appendix D, Section 3.1.1(a)

2. Credit Ratings	--	Appendix D, Section 3.1.1(b)
3. Material Changes in Financial Condition	--	Appendix D, Section 3.1.1(c)
4. Off-Balance Sheet Liabilities	--	Appendix D, Section 3.1.1(d)
Divider Tab C – Financial Plan		
1. Financial Plan Memorandum	--	Appendix D, Section 4.1
2. Details of Equity Commitment	--	Appendix D, Section 4.2
3. Debt Commitment Letters	--	Appendix D, Section 4.3
4. Debt Term Sheets	--	Appendix D, Section 4.4
5. Rating Agency Letters	--	Appendix D, Section 4.5
6. Financial Pricing Form	Form 11	Appendix D, Section 4.6
Divider Tab D – Preliminary Financial Model and Related Materials		
1. Preliminary Financial Model	--	Appendix D, Section 5.1, Appendix D, Section 5.2
2. Assumptions and Instruction Book	--	Appendix D, Section 5.3
3. Model Audit Opinion and Model Audit Report	--	Appendix D, Section 5.5
Divider E – Proposal Security		
1. Proposal Security	Form 8	ITP, Section 4.6.1
Divider F – Other Financial Proposal Information		
1. Financial Proposal Letter	Form 7	Appendix D, Section 2.1.2(f)
2. Interest Rate and Credit Spread Submittal	Form 9	ITP, Section 6.1 ITP, Section 6.3
3. Form of Waiver of Protest and Proposal Preparation Stipend Agreement	Form 12	ITP, Section 7.4

APPENDIX G

FORMS

FORM 1

NON-COLLUSION AFFIDAVIT

[TO BE EXECUTED BY THE PROPOSER AND, EACH MAJOR NON-EQUITY MEMBER AND EACH MAJOR PARTICIPANT]

STATE OF _____ COUNTY OF _____

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

A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity/entities are the _____ of _____, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or a sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against the District or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and further the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Neither the price(s) nor the amount of this bid and neither the approximate price(s) nor approximate amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

D. The bid of the Proposer is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

E. [Name of Firm], its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows: []

F. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after the closing under the Project Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this __ day of __, 202__.

Notary Public in and for said County and State

[Seal]

My commission expires: _____.

FORM 2

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[TO BE EXECUTED BY THE PROPOSER, EACH MAJOR NON-EQUITY MEMBER AND EACH MAJOR PARTICIPANT]

BUSINESS LETTERHEAD HERE

ASSURANCE OF COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

MAYOR'S ORDER 85-85, "COMPLIANCE WITH EQUAL OPPORTUNITY REQUIREMENTS IN CONTRACTS," EFFECTIVE JUNE 10, 1985, THE RULES IMPLEMENTING MAYORS ORDER 85-85, 33 DCR 4952 (PUBLISHED AUGUST 15, 1986), AND THE DC HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01, ET SEQ. ("D.C. HUMAN RIGHTS ACT") ARE HEREBY INCLUDED AS PART OF THIS BID/PROPOSAL. THEREFORE, EACH BIDDER/OFFEROR SHALL INDICATE BELOW THEIR WRITTEN COMMITMENT TO ASSURE COMPLIANCE WITH MAYOR'S ORDER 85-85, THE IMPLEMENTING RULES, AND THE D.C. HUMAN RIGHTS ACT. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL RESULT IN REJECTION OF THE RESPECTIVE BID/PROPOSAL.

I, _____, THE AUTHORIZED REPRESENTATIVE OF

_____ (VENDER/COMPANY), HEREINAFTER REFERRED TO AS "THE CONTRACTOR," CERTIFY THAT THE CONTRACTOR IS FULLY AWARE OF ALL OF THE PROVISIONS OF MAYOR'S ORDER 85-85, EFFECTIVE JUNE 10, 1985, THE RULES IMPLEMENTING MAYOR'S ORDER 85-85, AND THE D.C. HUMAN RIGHTS ACT. I FURTHER CERTIFY AND ASSURE THAT THE CONTRACTOR WILL FULLY COMPLY WITH ALL APPLICABLE PROVISIONS REFERENCED HEREIN IF AWARDED THE D.C. GOVERNMENT CONTRACT REFERENCED BY THE CONTRACT NUMBER ENTERED BELOW. FURTHER, THE CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT THE AWARD OF SAID CONTRACT AND ITS CONTINUATION ARE SPECIFICALLY CONDITIONED UPON THE CONTRACTOR'S COMPLIANCE WITH THE ABOVE-CITED PROVISIONS.

NAME OF CONTRACTOR

NAME OF AUTHORIZED REPRESENTATIVE

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CONTRACT NUMBER/SOLICITATION NUMBER/BID NUMBER

DATE

BUSINESS LETTERHEAD HERE

EEO POLICY COMMITMENT

_____ (NAME OF CONTRACTOR/BUSINESS) SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF THEIR ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, OR DISABILITY.¹

_____ (NAME OF CONTRACTOR/BUSINESS) AGREES TO EQUAL EMPLOYMENT OPPORTUNITY FOR ALL APPLICANTS AND THAT ALL EMPLOYEES ARE TREATED EQUALLY DURING EMPLOYMENT, WITHOUT REGARD TO THEIR ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, OR DISABILITY. THE EQUAL EMPLOYMENT OPPORTUNITY SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: (A) EMPLOYMENT, UPGRADING, OR TRANSFER; (B) RECRUITMENT OR RECRUITMENT ADVERTISING; (C) DEMOTION, LAYOFF, OR TERMINATION; (D) RATES OF PAY, OR OTHER FORMS OF COMPENSATION; AND (E) SELECTION FOR TRAINING AND APPRENTICESHIP.

_____ (NAME OF CONTRACTOR/BUSINESS) AGREES TO POST IN CONSPICUOUS PLACES THE ABOVE PROVISIONS CONCERNING NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.

_____ (NAME OF CONTRACTOR/BUSINESS) SHALL STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT PURSUANT TO MAYOR'S ORDER 85-85, "COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS IN CONTRACTS" AND THE RULES IMPLEMENTING MAYORS ORDER 85-85, SUBSECTIONS 1103.2 THROUGH 1103.10 OF 33 DCR 4952 (PUBLISHED AUGUST 15, 1986).

_____ (NAME OF CONTRACTOR/BUSINESS) AGREES TO PERMIT ACCESS TO ALL BOOKS, RECORDS, AND ACCOUNTS PERTAINING TO ITS EMPLOYMENT PRACTICES, AND TO REQUIRE EACH SUBCONTRACTOR TO PERMIT ACCESS TO BOOKS AND RECORDS.

_____ (NAME OF CONTRACTOR/BUSINESS) AGREES TO COMPLY WITH ALL GUIDELINES FOR EQUAL EMPLOYMENT OPPORTUNITY APPLICABLE IN THE DISTRICT OF COLUMBIA, INCLUDING MAYOR'S ORDER 85-85, THE RULES IMPLEMENTING MAYORS ORDER 85-85, AND THE DC HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01, ET SEQ.

_____ (NAME OF CONTRACTOR/BUSINESS) SHALL INCLUDE AS EXPRESS CONTRACTUAL PROVISIONS THE LANGUAGE CONTAINED IN SUBSECTIONS 1103.2 THROUGH 1103.10 OF 33 DCR 4952

¹ Familial status, source of income, place of residence, and place of business are not currently protected under the employment section of the D.C. Human Rights Act, D.C. Code §2-1402.11.

(PUBLISHED AUGUST 15, 1986), SO THAT SUCH PROVISIONS SHALL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

NAME OF AUTHORIZED OFFICIAL AND TITLE

DATE

SIGNATURE OF AUTHORIZED OFFICIAL

FIRM/ORGANIZATION

EMPLOYER INFORMATION REPORT

[See attached]

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA DC Office of Contracting and Procurement Employer Information Report (EEO)						Reply to: Office of Contracting and Procurement 441 4th Street, NW, Suite 700 South Washington, DC 20001 Washington, DC 20001									
Instructions: Two (2) copies of DAS 84-404 or Federal Form EEO-1 shall be submitted to the Office of Contracting and Procurement. One copy shall be retained by the Contractor.															
Section A – TYPE OF REPORT															
1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX)															
Single Establishment Employer (1) . Single-establishment Employer Report						Multi-establishment Employer: (2) <input type="checkbox"/> Consolidated Report (3) <input type="checkbox"/> Headquarters Report (4) <input type="checkbox"/> Individual Establishment Report (submit one for each establishment with 25 or more employees) (5) <input type="checkbox"/> Special Report									
1. Total number of reports being filed by this Company. _____															
Section B – COMPANY IDENTIFICATION (To be answered by all employers) OFFICIAL												OFFICIAL USE ONLY			
1. Name of Company which owns or controls the establishment for which this report is filed												a.			
Address (Number and street)				City or Town			Country		State		Zip Code			b.	
b. Employer Identification No.															
2. Establishment for which this report is filed.												OFFICIAL USE ONLY			
a. Name of establishment												c.			
Address (Number and street)				City or Town			Country		State		Zip Code			d.	
b. Employer Identification No.															
3. Parent of affiliated Company															
a. Name of parent or affiliated Company				b. Employer Identification No.											
Address (Number and street)				City or Town			Country			State		Zip Code			
Section C - ESTABLISHMENT INFORMATION															
1. Is the location of the establishment the same as that reported last year? Yes No Did not report Report on combined basis last year basis						2. Is the major business activity at this establishment the same as that reported last year? Yes No No report last year Reported on combined						OFFICIAL USE ONLY			
2. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or service provided, as well as the principal business or industrial activity).												e.			
3. MINORITY GROUP MEMBERS: Indicate if you are a minority business enterprise (50% owned or 51% controlled by minority members). Yes No															

SECTION D – EMPLOYMENT DATA

Employment at this establishment – Report all permanent, temporary, or part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zero. *In columns 1, 2, and 3, include ALL employees in the establishment Including those in minority groups*

JOB CATEGORIES	TOTAL EMPLOYEES IN ESTABLISHMENT			MINORITY GROUP EMPLOYEES								
	Total Employees Including Minorities (1)	Total Male Including Minorities (2)	Total Female Including Minorities (3)	MALE				FEMALE				
				Black (4)	Asian (5)	American Indian (6)	Hispanic (7)	Black (8)	Asian (9)	American Indian (10)	Hispanic (11)	
Officials and Managers												
Professionals												
Technicians												
Sales Workers												
Office and Clerical												
Craftsman (Skilled)												
Operative (Semi-Skilled)												
Laborers (Unskilled)												
Service Workers												
TOTAL												
Total employ reported in previous report												
(The trainee below should also be included in the figures for the appropriate occupation categories above)												
Formal On-The-Job Trainee	White collar	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Production											

1. How was information as to race or ethnic group in Section D obtained?
a. Visual Survey c. Other Specify _____
b. Employment Record _____

2. Dates of payroll period used _____
3. Pay period of last report submitted for this establishment. _____

Section E – REMARKS Use this Item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units, and other pertinent information.

Section F - CERTIFICATION

Check 1. > All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)
One 2. > This report is accurate and was prepared in accordance with the instructions.

Name of Authorized Official	Title	Signature	Date
Name of person contact regarding This report (Type of print)	Address (Number and street)		
Title	City and State	Zip Code	Telephone Number Extension

INFORMATION CITED HEREIN SHALL BE HELD IN CONFIDENCE.

FORM 3

CERTIFICATION FOR USE OF CONTRACT FUNDS FOR LOBBYING

[TO BE EXECUTED BY THE PROPOSER, EACH MAJOR NON-EQUITY MEMBER AND EACH MAJOR PARTICIPANT]

I, _____, hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Proposer/Company Name)

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

☐ If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions, and will include a copy of said form in its proposal or bid or submit it with the executed agreement or subcontract.

☐ The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) that exceed \$100,000 and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. § 3801, *et seq.*, are applicable thereto.

Name of Proposer/Company Name _____

Type or print name _____

Signature of authorized representative _____ Date __/__/

Signature of notary and SEAL _____

FORM 4

DEBARMENT AND SUSPENSION CERTIFICATION

[TO BE EXECUTED BY THE PROPOSER, EACH MAJOR NON-EQUITY MEMBER AND EACH MAJOR PARTICIPANT]

_____, being duly sworn (or under penalty of perjury under the laws of the United States), certifies that, except as noted below, [●] or any person associated therewith in the capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds):

- (a) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or District department or agency;
- (b) has not within a three (3)-year period preceding this Proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempt to obtain, or performing a public (federal, state or District) transaction or contract under a public transaction; violation of federal, state, or District antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or District) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) has not been within a three (3)-year period preceding this Proposal had one or more public transactions (federal, state or District) terminated for cause or default.

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

Contractor

Authorized Official

Title

Date

The penalties for making false statements are prescribed in the Program Fraud Civil Remedies Act of 1986 (Public Law 99-509, 31 U.S.C. §§ 3801-3812).

Subscribed and sworn before me this _____ day of _____ at _____
(City and State).

Notary Seal

Notary Public

FORM 5

CLARIFICATION REQUEST FORM

Clarification Request Form - Technical

District of Columbia Smart Street Lighting Project

Proposer: _____

Date: _____

Clarifications Submitted: T[•] — T[•]

No.	Document (ITP, PA, TPs)	Section	Question	Category (1, 2, 3)	Confidential (Y/N)
T1					
T2					
T3					
T4					
T5					
T6					
T7					

Clarification Request Form — Legal/Commercial

District of Columbia Smart Street Lighting Project

Proposer: _____

Date: _____

Clarifications Submitted: L[•] – L[•]

No.	Document (ITP, PA, TPs)	Section	Question	Category (1, 2, 3)	Confidential (Y/N)
L1					
L2					
L3					
L4					
L5					
L6					
L7					

Clarification Request Form — Financial

District of Columbia Smart Street Lighting Project

Proposer: _____

Date: _____

Clarifications Submitted: F[•] – F[•]

No.	Document (ITP, PA, TPs)	Section	Question	Category (1, 2, 3)	Confidential (Y/N)
F1					
F2					
F3					
F4					
F5					
F6					
F7					

FORM 6

TECHNICAL PROPOSAL LETTER

Name of Proposer: _____ (the “**Proposer**”)

Date: _____ 20[•]

Todd Allen, Esq.
Office of Contracting and Procurement
441 4th Street, NW, Suite 330 South
Washington, D.C. 20001

On behalf of the Proposer, the undersigned submit the documents described in Paragraph 1 of this Technical Proposal Letter (collectively, the “**Technical Proposal**”) in response to the Final/Approved Request for Proposals for Delivery of the Smart Street Lighting Project (the “**RFP**”) issued by the District of Columbia Office of Public-Private Partnerships (“**OP3**”). All capitalized terms used but not defined in this Technical Proposal Letter shall have the meanings set forth in the ITP.

The Technical Proposal, together with the enclosed Financial Proposal, collectively constitute the Proposal (the “**Proposal**”). The Proposer represents that all statements made, and information continued in the Technical Proposal are true, correct and accurate as of the date of this Technical Proposal Letter.

1. Enclosed with this Technical Proposal Letter is the Technical Proposal of the Proposer, consisting of all documents and information required by Appendix C (*Technical Proposal Instructions*) of the ITP.
2. The Technical Proposal, together with the Proposer’s Financial Proposal to be delivered on or before the Financial Proposal Due Date, collectively constitute its Proposal.
3. In consideration for the District supplying the Proposer, at its request, with the RFP and agreeing to examine and consider the Proposal, each of the undersigned, jointly and severally, undertakes to keep our Proposal (composed of our Technical Proposal and Financial Proposal) open for acceptance initially for 270 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability

company/consortium on whose behalf the Proposal is submitted, without obtaining the prior written consent of the District, in the District's absolute discretion.

4. The following individual(s) is/are authorized to enter into negotiations with the District on behalf of the Proposer and the Developer in connection with the RFP, the Project and the Project Agreement:

[insert names, titles]

5. [The Proposer acknowledges receipt of following Addenda and sets of responses:

- a. Addendum #1 issued [•];
- b. Addendum #2 issued [•];
- c. **[List any additional Addenda];**
- d. Responses issued [•];
- e. Responses issued [•]; and
- f. **[List any additional responses]²**

6. If selected as the Preferred Proposer by the District, the Proposer agrees to do the following or (where applicable) cause the Developer to do the following:

- a. enter into negotiations with the District solely as provided in Section 7 (*Finalization of the Project Agreement and Closing*) of the ITP;
- b. enter into the Project Agreement without varying or amending its terms (except for (i) minor changes, additions and modifications necessary to create a complete and legally binding contract; (ii) additions or modifications to those provisions that require information regarding the Preferred Proposer's corporate and financing structure, provided that such additions or modifications are consistent with the terms of the form of the Project Agreement and the RFP in the District's absolute discretion; (iii) additions or modifications required in order to incorporate terms or concepts, including ATCs, provided by the Preferred Proposer that have been approved or required by the District for inclusion in the Project Agreement; and (iv) additions or

² **Note to Draft:** Ensure all Addenda and sets of responses are listed. Do not include this language if no Addenda or sets of responses are issued.

modifications required to complete the schedules, exhibits, appendices or forms, as applicable, in the Project Agreement); and

c. perform its obligations as set forth in the ITP and the Project Agreement, including compliance with all commitments contained in the Proposal.

7. The Proposer certifies that:

a. its Technical Proposal is submitted without reservation, qualification, assumptions, deviations or conditions;

b. it has carefully examined and is fully familiar with all of the provisions of the RFP, has reviewed (i) all materials provided in the Data Room, (ii) the Addenda and (iii) the District's responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by the Developer and does not contain internal inconsistencies, errors or omissions;

c. it has carefully checked all the words, figures and statements in the Technical Proposal;

d. it has conducted such other field investigations and additional design development as is prudent and reasonable in preparing its Technical Proposal;

e. it has notified the District of any deficiencies in or omissions from the RFP or other documents provided by the District and of any unusual site conditions observed; and

f. each of it, the Major Non-Equity Members and Major Participants is qualified to lawfully conduct business in the District as of the date of this Technical Proposal Letter.

8. The Proposer represents that all statements made and information provided in the SOQ previously delivered by it to the District (as amended, resubmitted or updated by the enclosed Technical Proposal) are true, correct and accurate in all material respects as of the date of this Technical Proposal Letter, except as otherwise specified in the enclosed Technical Proposal.

9. The Proposer understands that all costs and expenses incurred by it in preparing the Proposal and participating in the Procurement Process will be borne solely by the Proposer, except any Stipend that may be paid in accordance with the Stipend Agreement and Section 7.4 (*Stipend*) of the ITP.

10. The Proposer consents to the District's disclosure of its Proposal to any Persons as (i) permitted by this RFP or (ii) required by Applicable Law. The Proposer acknowledges and agrees

to the disclosure terms described in Section 2.5 (*Public Disclosure*) of the ITP. The Proposer expressly waives any right to contest such disclosures.

11. The Proposer agrees that:

- a. the District will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal;
- b. the District's acceptance of the Proposal does not constitute any statement or determination as to its completeness, responsiveness or compliance with the requirements of the RFP, including the Project Agreement; and
- c. in the event a substantive difference is identified (other than the differences permitted by the District pursuant to Section 3 (*Alternative Technical Concepts*) of the ITP), at any time prior to or following Commercial Close, between the Proposer's Proposal and any provision in the Project Agreement (including the Technical Provisions), the provisions of the Project Agreement will prevail and the Proposer will not be entitled to alter its Proposal, as applicable.

12. The Proposal will be governed by and construed in all respects according to the law of the District of Columbia.

13. The Proposer's business address is:

_____ (No.)	_____ (Street)	_____ (Floor or Suite)
_____ (City) (Country)	_____ (State or Province)	_____ (ZIP or Postal Code)

State/Country of Organization (if applicable): _____

[Remainder of page intentionally left blank]

[ENTITY NAME]

By:

Name:

Title:

[ENTITY NAME]

By:

Name:

Title:

[ENTITY NAME]

By:

Name:

Title:

[Update and add additional signature blocks as necessary]

FORM 7

FINANCIAL PROPOSAL LETTER

Name of Proposer: _____ (the “**Proposer**”)

Date: _____ 20[•]

Todd Allen, Esq.
Office of Contracting and Procurement
441 4th Street, NW, Suite 330 South
Washington, D.C. 20001

On behalf of the Proposer, the undersigned submit the documents described in Paragraph 1 of this Financial Proposal Letter (collectively, the “**Financial Proposal**”) in response to the Final/Approved Request for Proposals for Delivery of the Smart Street Lighting Project (the “**RFP**”) issued by the District of Columbia Office of Public-Private Partnerships (“**OP3**”). All capitalized terms used but not defined in this Financial Proposal Letter shall have the meanings set forth in the ITP.

The Financial Proposal, together with the enclosed Technical Proposal, collectively constitute the Proposal (the “**Proposal**”). The Proposer represents that all statements made, and information contained in the Financial Proposal are true, correct and accurate as of the date of this Financial Proposal Letter.

1. Enclosed with this Financial Proposal Letter is the Financial Proposal of the Proposer, consisting of all the documents and information required by Appendix D (*Financial Proposal Instructions*) of the ITP.
2. The Financial Proposal, together with the Proposer’s Technical Proposal to be delivered on or before the Technical Proposal Due Date, collectively constitute its Proposal.
3. In consideration for the District supplying the Proposer, at its request, with the RFP and agreeing to examine and consider the Proposal, each of the undersigned, jointly and severally, undertakes to keep the Proposal open for acceptance initially for 270 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf the Proposal is submitted, without obtaining the prior written consent of the District, in the District’s absolute discretion.

4. Further to Section 6.3.3 (*Credit Spread Risk Sharing*) of the ITP, the Proposer confirms that it [is/is not] seeking Credit Spread Risk Sharing (as defined in the ITP) in connection with its Proposal.

5. The following individual(s) is/are authorized to enter into negotiations with the District on behalf of the Proposer and the Developer in connection with the RFP, the Project and the Project Agreement:

[insert names, titles]

6. [The Proposer acknowledges receipt of following Addenda and sets of responses:

- a. Addendum #1 issued [•];
- b. Addendum #2 issued [•];
- c. **[List any additional Addenda];**
- d. Responses issued [•];
- e. Responses issued [•]; and
- f. **[List any additional responses]³**

7. If selected as the Preferred Proposer by the District, the Proposer agrees to do the following or (where applicable) cause the Developer to do the following:

- a. enter into negotiations with the District solely as provided in Section 7 (*Finalization of the Project Agreement and Closing*) of the ITP;
- b. enter into the Project Agreement without varying or amending its terms (except for (i) minor changes, additions and modifications necessary to create a complete and legally binding contract; (ii) additions or modifications to those provisions that require information regarding the Preferred Proposer's corporate and financing structure, provided that such additions or modifications are consistent with the terms of the form of the Project Agreement and the RFP in the District's absolute discretion; (iii) additions or modifications required in order to incorporate terms or concepts, including ATCs, provided by the Preferred Proposer that have been approved or required by the District for inclusion in the Project Agreement; and (iv) additions or

³ **Note to Draft:** Ensure all Addenda and sets of responses are listed. Do not include this language if no Addenda or sets of responses are issued.

modifications required to complete the schedules, exhibits, appendices or forms, as applicable, in the Project Agreement); and

c. perform its obligations as set forth in the ITP and the Project Agreement, including compliance with all commitments contained in the Proposal.

8. The timely and complete performance of the foregoing obligations by the Proposer is secured by the Proposal Security, an original copy of which is enclosed with this Financial Proposal. In submitting its Proposal, the Proposer understands and agrees that the disposition of, and the Parties' respective rights with respect to, the Proposal Security will be subject to the terms of Section 4.6 (*Proposal Security and Closing Security*) of the ITP. The Proposer further acknowledges that the forfeit of the Proposal Security in accordance with Section 4.6 (*Proposal Security and Closing Security*) of the ITP constitutes liquidated damages and not a penalty.

9. The Proposer certifies that:

a. its Proposal is submitted without reservation, qualification, assumptions, deviations or conditions;

b. the Availability Payments and estimates shown in the Preliminary Financial Model are:

i. consistent with the Technical Proposal; and

ii. form the basis for all loan commitments and Rating Agency Letters included in the Proposal;

c. it has carefully examined and is fully familiar with all of the provisions of the RFP, has reviewed (i) all materials provided in the Data Room, (ii) the Addenda and (iii) the District's responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by the Developer and does not contain internal inconsistencies, errors or omissions;

d. it has carefully checked all the words, figures and statements in its Financial Proposal;

e. it has conducted such other field investigations and additional design development as is prudent and reasonable in preparing its Financial Proposal; and

f. it has notified the District of any deficiencies in or omissions from the RFP or other documents provided by the District and of any unusual site conditions observed.

10. The Proposer understands that the District will be under no obligation to make a selection of any Proposer in response to the RFP. Should an initially selected Preferred Proposer fail to

execute (or cause the entity identified as the Developer to execute) the Project Agreement in accordance with the requirements of the RFP, the District reserves the right, in the District's absolute discretion, to select an alternative Preferred Proposer to execute the Project Agreement.

11. The Proposer understands that all costs and expenses incurred by it in preparing the Proposal and participating in the Procurement Process will be borne solely by the Proposer, except any Stipend that may be paid in accordance with the Stipend Agreement and Section 7.4 (*Stipend*) of the ITP.

12. The Proposer consents to the District's disclosure of its Proposal to any Persons as (i) permitted by this RFP or (ii) required by Applicable Law. The Proposer acknowledges and agrees to the disclosure terms described in Section 2.5 (*Public Disclosure*) of the ITP. The Proposer expressly waives any right to contest such disclosures.

13. The Proposer agrees that:

a. the District will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal;

b. the District's acceptance of the Proposal does not constitute any statement or determination as to its completeness, responsiveness or compliance with the requirements of the RFP, including the Project Agreement;

c. in the event a substantive difference is identified, at any time prior to or following Commercial Close, between the Proposer's Proposal and any provision in the Project Agreement (including the Technical Provisions), the provisions of the Project Agreement will prevail and the Proposer will not be entitled to alter its Proposal, as applicable; and

d. under the procurement protest procedures set forth in Section 8 (*Protest Procedures*) of the ITP, if the Proposer files a protest of this procurement or award of the Project Agreement under this procurement and that protest is denied or is otherwise unsuccessful, the Proposer will forfeit its Stipend and shall be liable to the District for the District's reasonable and documented costs incurred to defend against or resolve the protest, including reasonable legal consultant fees and costs, and any unavoidable damages sustained by the District as a consequence of the protest.

14. The Proposal will be governed by and construed in all respects according to the law of the District of Columbia.

[ENTITY NAME]

By:

Name:

Title:

[ENTITY NAME]

By:

Name:

Title:

[ENTITY NAME]

By:

Name:

Title:

[Update and add additional signature blocks as necessary]

FORM 8

PROPOSAL SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER	[●] <i>[Name and address of banking institution with offices in the City of New York, New York or Washington, D.C.]</i>
PLACE FOR PRESENTATION OF DRAFT	[●] <i>[Name and address of bank/branch—must be in the City of New York, New York or Washington, D.C.]</i>
APPLICANT	[●]
BENEFICIARY	The Government of the District of Columbia c/o District of Columbia Office of Public-Private Partnerships John A. Wilson Building 1350 Pennsylvania Avenue NW, Suite 533 Washington, D.C. 20004
PROJECT	Smart Street Lighting Project
LETTER OF CREDIT NUMBER	[●]
DATE AND PLACE OF ISSUE	[●]
AMOUNT	\$10,000,000
EXPIRATION DATE	[●] <i>[Insert date that is 275 days after the Financial Proposal Due Date]</i>

Issuer hereby issues this Irrevocable Standby Letter of Credit (this “**Letter of Credit**”) in favor of the Beneficiary in the amount of \$10,000,000 (such amount, the “**Stated Amount**”), 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 District shall certify to Issuer that the District is entitled to draw on this Letter of Credit.

This Letter of Credit shall be honored by Issuer if presented at [Bank/Branch—Name and Address] on or before *[Insert date that is 275 days after the Financial Proposal Due Date]* (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.

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 District of Columbia and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the District of Columbia.

With respect to any suit, action or proceedings relating to this Letter of Credit ("**Proceedings**"), we irrevocably (i) agree and acknowledge that all Proceedings shall be subject to the exclusive jurisdiction of any court of competent jurisdiction located in the District of Columbia, and (ii) 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)

FORM 9

INTEREST RATE AND CREDIT SPREAD SUBMITTAL

Proposer Name: _____

Table 1: Interest Rate Submittal

The Proposer shall show its selected indices and the base interest rates underlying the debt financing proposed in its Financial Proposal and Preliminary Financial Model on the table below. The Proposer also shall provide supporting information for the base interest rates, such as a Bloomberg terminal screenshot or other independently verifiable source.

	Baseline Interest Rate Identification/ description	Amount of Financing Instrument	Maturity	Baseline Interest Rate
[Project Debt Facility 1]				
[Project Debt Facility 2]				
[Project Debt Facility 3]				
[Project Debt Facility 4]				
[Project Deb Facility 5]				

With respect to any Bond Financing, provide Table 2 and/or Table 3 below for each credit rating category requested. The Proposer also must provide supporting information such as screen shots, data on comparable bonds, or any other materials the Proposer believes is relevant to supporting its assumptions.

Table 2: Preliminary Market Scale

The Proposer shall identify its anticipated bond structure for each assumed credit rating, including type of Project Debt instrument and serial term structure, Base Interest Rates and indices, final and average maturities, coupon, yield-to-worst credit spreads and call dates.

Facility #1: _____

Maturity	Amount of Financing Instrument	Targeted Indicative Credit Ratings	Benchmark Index	Serial/ Term	Approximate Average Life of the Financing Instrument (for the Entire Bond Issuance)	Benchmark Interest Rate (%)	Coupon	Yield to Worst (YTW) (%)	Yield to Worst Credit Spread (YTW) (%)	Call Date
[Period 1]										
[Period 2]										
[Period 3]										

For additional facilities, please duplicate the table above as necessary.

Table 3: Preliminary Base Scale

Using the yields shown in Table 2, the Proposer shall provide the estimated yield-to-call credit spreads, yield-to-maturity credit spreads and call dates on a semi-annual basis for each assumed credit rating, as applicable.

Facility #1: _____

Maturity	Benchmark Index	Amount of Financing Instrument	Targeted Indicative Credit Ratings	Benchmark Interest Rate (%)	Yield to Call (YTC)(%)	YTC Credit Spread (%)	Yield to Maturity (YTM)	YTM Credit Spread (%)	Call Date
[Period 1]									
[Period 2]									
[Period 3]									

For additional facilities, please duplicate the table above as necessary.

FORM 10

FINANCIAL PLAN SUMMARY

SOURCES AND USES OF FUNDS

Sources of Funds	Total	Percent of total	Model reference
Bank/Bond (Non-PAB or Private Placement)			
PABs			
Private Placement			
Equity			
Interest earned on accounts			
Availability Payments			
[]			
[]			
Total Sources of Funds	-		

Uses of Funds	Total	Percent of total	Model reference
Development Costs			
Capital Expenditures			
Financing Costs			
Working Capital			
Reserves (Describe)			
Reserve 1 (As Needed)			
Reserve 2 (As Needed)			
Reserve 3 (As Needed)			
Reserve 4 (As Needed)			
Tax paid/(refunded)			
[]			
[]			
Total Uses of Funds			

EQUITY INVESTMENT ANALYSIS AND DESCRIPTION

Firm/con sortium member	Equity investment		Description	Model reference
	Equity Amount	% over total equity		
TOTAL	-		-	

FINANCING DATA

KEY FINANCING DATA

Key financing data	Value	Model reference
NPV of project cash flows (Maximum Milestone Payments and Annual Maximum Availability Payments)		
Nominal post-SPV-tax project IRR		
Real post-SPV-tax project IRR		
Nominal pre-SPV-tax project IRR		
Real pre-SPV-tax project IRR		
Nominal post-SPV-tax equity IRR (Base Case Equity IRR)		
Real post-SPV-tax equity IRR		
Nominal pre-SPV-tax equity IRR		
Real pre-SPV-tax equity IRR		
Nominal debt IRR		
Real debt IRR		
Minimum Debt Service Coverage Ratio (DSCR)		
Average DSCR		
Minimum Project Life Coverage Ratio (PLCR)		
Average PLCR		
Minimum LLCR		
Average LLCR		

Debt type*	Amount	Base rate**

PROPOSAL DEVELOPMENT COSTS*

Cost Item	Total	Model reference
Proposer's Financial Advisor		
Proposer's Development Fee		
Proposer's Legal Advisor		
Proposer's Project Company set-up costs		
Proposer's Tax & Accounting Advisor		
Proposer's Insurance Advisor		
Proposer's Model Audit Costs		
Finance – Legal Costs		
Finance – Technical Advisor		
Finance – Insurance Advisor		
Finance – Credit Rating Costs		
[]		
[]		
TOTAL		

* Advisory costs for engagements that preclude fee disclosure may be bundled together for purposes of completing the table. For advisory engagements that do not preclude fee disclosure, advisory costs should be provided as outlined in the table.

FORM 11

FINANCIAL PRICING FORM

The Proposers should note that, although each Proposer will provide its D&C Contract Price and Asset Management Contract Price below in the Summary Cost Tables, the District will not include such information in computing the Financial Proposal Score. Rather, for purposes of computing the Financial Proposal Score, the Proposer's Financial Price will be equal to the sum of all proposed Availability Payments (assuming no Deductions), Expected Electricity Costs, Milestone Payments, and the Smart City Payments (assuming no Deductions). See Section 4.3 (Financial Proposal Score) of Appendix E (Proposal Evaluation Criteria and Scoring) for more detailed information on how the Financial Review Committee will calculate the Financial Price.

SUMMARY COST TABLES

Summary Cost Tables instructions

In Table 1A (D&C Contract Price Costs), indicate, in figures, the lump sum labor and non-labor capital cost for each Project element listed. In Table 1B (Cumulative D&C Contract Price Costs) provide the cumulative D&C Contract Price based on a cumulative quarterly curve of cost expenditures. Costs for the Smart City Improvements should be excluded from Tables 1A and 1B.

In Table 1C (Smart City Contract Price Costs), indicate, in figures, the lump sum labor and non-labor capital cost for each Smart City element listed. In Table 1D (Cumulative Smart City Contract Price Costs), provide the cumulative Smart City Contract Price based on a cumulative quarterly curve of cost expenditures.

In Table 2A (Asset Management Costs), indicate, in figures, the expected annual lump sum costs for each element listed, for the Asset Management Period. In Table 2B (Asset Management Price Assumptions), indicate any key assumptions underlying the Asset Management costs. Energy costs linked to the Smart City Improvements should be excluded from Table 2A (Asset Management Costs).

In Table 3 (Miscellaneous Unit Prices), indicate, in figures, the lump sum labor and non-labor capital cost for each item of work listed. Such unit prices will serve as the basis for: (i) the Lead Paint Remediation Unit Price; (ii) the Remedial Action Unit Price; (iii) the MPD Camera Installation Unit Price; (iv) the Small Cell Inspection Unit Price; (v) the reconnection of MPD cameras per Section 10.7.5(b)(i) of the Technical Provisions; and (vi) the Structural Analysis Unit Price.

In Table 4A (Unit Pricing for Luminaires), indicate, in figures, the unit price for each Luminaire type specified in the Technical Proposal. In Table 4B (Unit Pricing for Nodes), indicate, in figures, the unit price for each RMCS connection node type specified in the Technical Proposal. In Table 4C (Unit Pricing for Gateways), indicate, in figures, the unit price for each gateway type specified in the Technical Proposal. Such unit pricing will serve as a basis for the Change in Costs included

as part of any Compensation Event pursuant to Section 32.11(e) (*Expansion of the Street Light Network*) of the Project Agreement.

Table 1: D&C Costs

Table 1A: D&C Contract Price Costs		
Cost Category	D&C Contract Price (\$ nominal)	
Mobilization		
SPV Oversight/Construction Management/Construction Engineering		
QA/QC		
Design		
LED Conversion- Maintenance of Traffic		
Construction- Monitoring/Metering System		
Construction- Replacing Fixtures with LED		
State of Good Repair – Maintenance of Traffic		
State of Good Repair – Pole Shaft		
State of Good Repair – Brackets and Arms		
State of Good Repair – Luminaires		
State of Good Repair – Glare Shield		
State of Good Repair – Handhole		
State of Good Repair – T-Base/Base Cover		
State of Good Repair – Anchor Bolts		
State of Good Repair – Foundation		
	Labor Cost	Non-Labor Cost
Subtotals	\$	\$
	\$ _____	

Totals	(D&C Contract Price)		
Option for Addition of Pole Tilt Sensors for Upright Pedestal and Twin 20 Lighting Units	Unit Price	Labor	Total
	\$	\$	\$

Table 1B: Cumulative D&C Contract Price Costs		
Cost Category	Quarter	D&C Contract Price (\$ nominal)
Construction Year 1	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
Construction Year 2	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
Totals		\$ _____ (Total D&C Contract Price for Project)

Table 1C: Smart City Contract Price Costs		
Cost Category	Smart City Contract Price (\$ nominal)	
Mobilization		
SPV Oversight/Construction Management/Construction Engineering		
QA/QC		
Wireless Access Points Installation – Maintenance of Traffic		
Wireless Access Points Installation – Installation Work		
	Labor Cost	Non-Labor Cost
Subtotals	\$	\$
Totals	\$ _____ (Smart City Contract Price)	

Table 1D: Cumulative Smart City Contract Price Costs		
Cost Category	Quarter	Smart City Contract Price
Construction Year 1	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
Construction Year 2	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
Totals		\$ _____ (Total Smart City Contract Price for Project)

Table 2: Asset Management Costs

Table 2A: Asset Management Costs										
Cost Category	Quarterly Expenditure Plan									
	Yr1/ Q1	Yr1/ Q2	Yr1/ Q3	Yr1/ Q4	Yr2/ Q1	Yr2/ Q2	Yr2/ Q3	Yr2/ Q4	Yr3/ Q1	Yr3/Q 2
Program Management Staffing										
Overhead and Administrative										
LED Conversion-Lamps										
LED Conversion-Power Modules										
RMCS Infrastructure-Annual Fee										
RMCS Infrastructure-Asset Management										
AMIS Infrastructure-Annual Fee										
AMIS Infrastructure-Asset Management										
Other Non-routine Asset Management Costs										
Expansion of Street Light Network (per Exhibit 10 to the Project Agreement)										
Totals										

Table 2A: Asset Management Costs										
Cost Category	Quarterly Expenditure Plan									
	Yr3/ Q3	Yr3/ Q4	Yr4/ Q1	Yr4/ Q2	Yr4/ Q3	Yr4/ Q4	Yr5/ Q1	Yr5/ Q2	Yr5/ Q3	Yr5/Q 4
Program Management Staffing										
Overhead and Administrative										
LED Conversion-Lamps										
LED Conversion-Power Modules										
RMCS Infrastructure-Annual Fee										
RMCS Infrastructure-Asset Management										
AMIS Infrastructure-Annual Fee										
AMIS Infrastructure-Asset Management										
Other Non-routine Asset Management Costs										
Expansion of Street Light Network (per Exhibit 10 to the Project Agreement)										
Totals										

Table 2A: Asset Management Costs										
Cost Category	Quarterly Expenditure Plan									
	Yr6/ Q1	Yr6/ Q2	Yr6/ Q3	Yr6/ Q4	Yr7/ Q1	Yr7/ Q2	Yr7/ Q3	Yr7/ Q4	Yr8/ Q1	Yr8/Q 2
Program Management Staffing										
Overhead and Administrative										
LED Conversion-Lamps										
LED Conversion-Power Modules										
RMCS - Annual Fee										
RMCS – Asset Management										
Other Non-routine Asset Management Costs										
Street Light Network Expansion (per Exhibit 10 to the Project Agreement)										
Totals										

Table 2A: Asset Management Costs										
Cost Category	Quarterly Expenditure Plan									
	Yr8/ Q3	Yr8/ Q3	Yr9/ Q1	Yr9/ Q2	Yr9/ Q3	Yr9/ Q4	Yr10 /Q1	Yr10 /Q2	Yr10 /Q3	Yr10 /Q4
Program Management Staffing										
Overhead and Administrative										
LED Conversion-Lamps										
LED Conversion-Power Modules										
RMCS - Annual Fee										
RMCS – Asset Management										
Other Non-routine Asset Management Costs										
Street Light Network Expansion (per Exhibit 10 to the Project Agreement)										
Totals										

Table 2A: Asset Management Costs										
Cost Category	Quarterly Expenditure Plan									
	Yr11 /Q1	Yr11 /Q2	Yr11 /Q3	Yr11 /Q4	Yr12 /Q1	Yr12 /Q2	Yr12 /Q3	Yr12 /Q4	Yr13 /Q1	Yr13 /Q2
Program Management Staffing										
Overhead and Administrative										
LED Conversion-Lamps										
LED Conversion-Power Modules										
RMCS Infrastructure-Annual Fee										
RMCS Infrastructure-Asset Management										
AMIS Infrastructure-Annual Fee										
AMIS Infrastructure-Asset Management										
Expansion of Street Light Network (per Exhibit 10 to the Project Agreement)										
<u>Totals</u>										

Table 2A: Asset Management Costs										
Cost Category	Quarterly Expenditure Plan									
	Yr13 /Q3	Yr13 /Q4	Yr14 /Q1	Yr14 /Q2	Yr14 /Q3	Yr14 /Q4	Yr15 /Q1	Yr15 /Q2	Yr15 /Q3	Yr15 /Q4
Program Management Staffing										
Overhead and Administrative										
LED Conversion-Lamps										
LED Conversion-Power Modules										
RMCS Infrastructure-Annual Fee										
RMCS Infrastructure-Asset Management										
AMIS Infrastructure-Annual Fee										
AMIS Infrastructure-Asset Management										
Expansion of Street Light Network (per Exhibit 10 to the Project Agreement)										
<u>Totals</u>										

Table 3: Miscellaneous Unit Prices

Work	Unit Price
Remedial Action with respect to lead paint on Poles (the “Lead Paint Remediation Unit Price”)	
Remedial Action with respect to Hazardous Environmental Conditions other than lead paint on Poles (e.g., removal of sludge, fuel, petroleum, or petroleum by-product, etc. from manholes and disposal thereof) (the “Remedial Action Unit Price”)	
Reconnection of an MPD CCTV Camera during the D&C Period (Pricing for work undertaken per Section 10.7.5(b)(i) of the Technical Provisions)	
Installation of an MPD CCTV Camera during the Asset Management Period (price per linear foot of 10 gauge wire to be specified separately) (the “MPD Camera Installation Unit Price”)	
Inspection of Lighting Units as part of installation of small cell networking equipment, as further described in Section 10.10 of the Technical Provisions (the “Small Cell Inspection Unit Price”)	
Structural analysis and design work for Poles owned by third parties prior to the installation of wireless access points, as further described in Section 9.2(c) of the Technical Provisions (the “Structural Analysis Unit Price”)	

Table 4A: Unit Pricing for Luminaires

Luminaire Type*	Unit Price

* Include row for each type of Luminaire specified in Technical Proposal.

Table 4B: Unit Pricing for Nodes

Node Type*	Unit Price

* Include row for each type of node specified in Technical Proposal.

Table 4C: Unit Pricing for Gateways

Gateway Type*	Unit Price	No. of Gateways to be Used

* Include row for each type of gateway specified in Technical Proposal.

**FINANCIAL PRICE PROPOSAL FORM
MAXIMUM AVAILABILITY PAYMENT**

Maximum Availability Payment

Proposers shall submit the percentage of the quarterly Maximum Availability Payment to be linked to the INF in the range of 0% to 60% (as indicated in Section 3(a) of Exhibit 14 (*Payment Mechanism*) to the Project Agreement). The remainder of the quarterly Maximum Availability Payment (“MAP_Q”), in the range of 100% to 40% (depending on the amount proposed to be linked to the INF), shall be fixed. (Note, the dollar figures below in items no. 1, 2 and 3 should be in real terms.)

1. Portion of MAP_Q that is linked to INF:

\$ _____ and _____ %.

2. Portion of MAP_Q that is not linked to INF:

\$ _____ and _____ %.

3. Total MAP_Q as of the Financial Proposal Due Date (sum of item no. 1 and item no. 2 above):

\$ _____.

Expected Electricity Consumption

Proposers shall submit the Expected Electricity Consumption, the Set Electricity Price, and the Expected District Electricity Costs (Expected Electricity Consumption multiplied by the Set Electricity Price) for each Calendar Quarter during the Term. Expected Electricity Consumption relates only to the Improved Street Light Network and should not include any electricity consumption related to the Smart City Improvements. The Lumen Chart and RFP schedule for hours of operation should be used to develop the Expected Electricity Consumption (Column B). The RFP schedule for hours of operation equates to the following expected quarterly hours of operation, totaling four thousand three hundred twenty (4,320) hours per year: (i) Q1—one thousand one hundred eighty-five (1,185) hour; (ii) Q2—nine hundred four (904) hours; (iii) Q3—nine hundred sixty-four (964) hours; and (iv) Q4—one thousand two hundred sixty-seven (1,267) hours. For purposes of filling out column C, “Set Electricity Price (\$/kWh)”, please use a representative escalation rate of 2.5% per annum.

[illegible]

FINANCIAL PRICE PROPOSAL FORM

NPV Calculation

Form 11-18

This Table 6 (District Payments) requires Proposers to insert the dollar amount of the "indexed payment portion" and "fixed payment portion" of their Availability Payment for each Calendar Quarter.

This Table 6 (District Payments) additionally requires Proposers to insert the dollar amount of the sum total of Expected District Electricity Costs for each Calendar Quarter from Table 5 (Expected District Electricity Costs), as well as proposed Milestone Payments and the Smart City Payments.

Proposers shall provide a completed version of Table 6 (District Payments) in Proposer's Financial Model. For purposes of filling out column B, "Indexed payment portion of Maximum Availability Payment", please use a representative escalation rate of 2.5% per annum.

Table 6: District Payments

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>	<u>Column D</u>	<u>Column E⁴</u>	<u>Column F⁵</u>	<u>Column G</u>
Calendar Quarter	Indexed payment portion of Maximum Availability Payment	Fixed payment portion of Maximum Availability Payment	Expected District Electricity Costs	Milestone Payments	Smart City Payments	Availability Payment + Expected District Electricity Costs + Milestone Payments + Smart City Payment
	(\$ nominal)	(\$ nominal)	(\$ nominal)	(\$ nominal)	(\$ nominal)	(Column B plus Column C plus Column D plus Column E plus Column F)
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$

⁴ **Note to Draft:** The quantum of Milestone Payments will be provided by the District, if applicable, in Table 1 of Exhibit 14 (*Payment Mechanism*) to the Project Agreement.

⁵ **Note to Draft:** The quantum of the Smart City Payment is to be bid by Proposer in Table 1C of this Form 11.

Draft for Public Review and Comment

Form 11-20

mm-dd-yyyy	\$	\$	\$	\$		\$
mm-dd-yyyy	\$	\$	\$	\$		\$

Financial Price: \$ _____

FORM 12

FORM OF WAIVER OF PROTEST AND PROPOSAL PREPARATION STIPEND AGREEMENT

This Waiver of Protest and Proposal Preparation Stipend Agreement (this **“Agreement”**) is entered into as of **[insert date]**, between:

1. The District of Columbia Office of Contracting and Procurement, acting by and through the District of Columbia Office of Public-Private Partnerships (**“OP3”** or the **“District”**), and

2. **[●]** (the **“Proposer”**),

(each a **“Party”** and, together, the **“Parties”**).

RECITALS:

(A) The Proposer is one of the proposers shortlisted to submit Proposals for the District of Columbia Smart Street Lighting Project (the **“Project”**).

(B) The Proposer wishes to submit a Proposal in response to the Final/Approved Request for Proposals for the Project issued by OP3 on **[●]**, as amended (the **“RFP”**), in accordance with the Instructions to Proposers included in the RFP (the **“ITP”**).

(C) The ITP provides for the execution and delivery of a Waiver of Protest and Proposal Preparation Stipend Agreement between the District and the Proposer.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINED TERMS

1.1 Capitalized terms not otherwise defined in this Agreement have the meanings set forth in the ITP.

1.2 In this Agreement:

“Proposer’s Eligible Costs” means the actual, reasonable and documented out-of-pocket development costs actually incurred by the Proposer in preparing its Proposal and participating in the Procurement Process after **[_____ , 20__]**.

“Work Product” means all intellectual property and work product submitted by or on behalf of the Proposer to the District during the Procurement Process and in connection with its Technical Proposal (including all ATCs, written and electronic correspondence, exhibits, photographs,

reports, printed material, tapes, disks, patents, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications and other graphic and visual aids generated by or on behalf of the Proposer for the purpose of developing its Proposal during the Procurement Process).

2. SERVICES AND PERFORMANCE

2.1 By executing this Agreement, the Proposer has irrevocably elected to accept payment of a Stipend, subject to the terms of this Agreement and the ITP.

2.2 The District retains the 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 will be determined pursuant to the ITP.

2.3 The Proposer grants the District an irrevocable nonexclusive, transferable, fully paid up and royalty-free right and license to use, reproduce and modify all Work Product for the Project and any other projects in the District of Columbia. The Proposer acknowledges that this Agreement contains sufficient consideration for the District's use of the Proposer's Work Product. The Proposer shall provide any further documentation of this transfer that the District requests. The Proposer shall secure the same agreement from all subcontractors creating Work Product for the Project. Neither Proposer nor any of its team members shall copyright any of the Work Product. The foregoing rights of the District will not apply to Work Product that is expressly required to be returned to the Proposer under the RFP Documents.

2.4 The Proposer shall deliver its Work Product to the District no later than the earlier of:

(a) 15 days after the District notifies the Proposer in writing of the cancellation of the procurement; and

(b) the Technical Proposal Due Date.

2.5 The District's use of the Work Product under this Agreement (as opposed to the District's use of such Work Product if the Proposer executes the Project Agreement with the District) is at the District's sole risk and discretion, and shall in no way be deemed to confer liability on the Proposer. Further, the Proposer makes no warranties, express or implied, as to the conduct, completeness, success or particular results of the Work Product, or the condition, merchantability, or fitness for a particular purpose of the Work Product.

3. COMPENSATION AND PAYMENT

3.1 Except as set forth in this Agreement and Section 7.4 (Stipend) of the ITP, if the District cancels the procurement fewer than 30 days prior to the Technical Proposal Due Date, the Proposer will be eligible to receive a Stipend in an amount that equals the lesser of (i) the Proposer's Eligible Costs duly invoiced in accordance with Section 3.3 (Compensation and Payment) of this Agreement and (ii) the amount of two hundred fifty thousand dollars (\$250,000) (the "**Maximum Cancellation Stipend Amount**").

3.2 Except as set forth in this Agreement and Section 7.4 (Stipend) of the ITP, if after the Technical Proposal Due Date the District selects a Preferred Proposer or cancels the procurement, each unsuccessful Proposer that submits a compliant and responsive Technical Proposal and a compliant and responsive Financial Proposal by the relevant due date in accordance with the requirements of the Final RFP will be eligible to receive a Stipend in an amount that equals the lesser of (i) the Proposer's Eligible Costs duly invoiced in accordance with Section 3.3 (Compensation and Payment) of this Agreement and (ii) the amount of five hundred thousand dollars (\$500,000) (the "**Maximum Stipend Amount**").

3.3 To receive a Stipend payment under Section 3.1 or 3.2 (Compensation and Payment):

- (a) the Proposer must return an executed Agreement to the District at any time prior to or concurrently with such Proposer's submission of its Proposal; and
- (b) the Proposer must submit the following to the District:
 - (i) an invoice in the form of Annex 1 (Form of Invoice for Payment of Stipend Amount) to this Agreement, including the waiver and release language set forth in such invoice;
 - (ii) copies of documentation evidencing the Proposer's Eligible Costs claimed (which shall be subject to the District's reasonable review and concurrence), within 90 days after receiving notice from the District of the applicable circumstance referred to in Section 3.1 or 3.2 (Compensation and Payment).
- (c) Such invoice shall be submitted by the Proposer to the District not earlier than:
 - (i) the date of notice from the District that it has cancelled the procurement fewer than thirty (30) days before the Technical Proposal Due Date; or
 - (ii) the date of notice from the District that Preferred Proposer has been selected.
- (d) Such invoice must be submitted by the Proposer to the District no later than ninety (90) days following notice as described in Section 3.3(c)(i) or 3.3(c)(ii) (Compensation and Payment).

3.4 Subject to Section 7.8 (Miscellaneous), any Stipend payable pursuant to this Agreement and Section 7.4 (Stipend) of the ITP will become due and payable sixty (60) days after the date the Proposer submits to the District the invoice and other documentation required in accordance with Section 3.3(b) (Compensation and Payment).

3.5 Except as provided in this Agreement and Section 7.4 (Stipend) of the ITP, the Proposer will not be entitled to compensation for or reimbursement of any of its costs in connection with the RFP.

3.6 If a Preferred Proposer is selected, and the District later cancels the procurement or terminates negotiation with the Preferred Proposer for the convenience of the District and through no fault of the Preferred Proposer, prior in each such case to the occurrence of the Commercial Closing Date, the District will pay the Preferred Proposer (following the Preferred Proposer's execution of a Stipend Agreement) a Stipend up to the Maximum Stipend Amount. Notwithstanding the foregoing, the Preferred Proposer shall not be entitled to a Stipend if: (i) the Commercial Closing Date occurs; (ii) the Preferred Proposer fails to proceed with the Commercial Closing Date for any reason other than (a) the Preferred Proposer's failure to satisfy one or more conditions precedent to the occurrence of the Commercial Closing Date set forth in the Project Agreement, the failure of which does not arise or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law, or willful misconduct of the Preferred Proposer or (b) the District's election to cancel the procurement after the selection of a Preferred Proposer, which election does not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law, or willful misconduct of the Preferred Proposer; or (iii) there exist any of the conditions for forfeiture of the Preferred Proposer's Proposal Security.

4. **WAIVER**

The Proposer acknowledges and agrees that by executing this Agreement, and subject to payment by the District of the amount invoiced in accordance with Section 3.3 (*Compensation and Payment*) of this Agreement, the Proposer without further action or notice:

(a) irrevocably waives in full all rights to protest the selection by the District of a Preferred Proposer; and

(b) fully, unconditionally and irrevocably releases the District of Columbia, including without limitation, the District of Columbia Department of Transportation, the District of Columbia Office of Public-Private Partnerships, and the District of Columbia Office of the Chief Technology Officer, from any and all claims and causes of action arising out of the procurement of the Project and/or the selection of a Preferred Proposer, whether known or unknown.

5. **INDEMNITIES**

5.1 Subject to Section 5.2 (Indemnities), the Proposer shall indemnify, defend and hold harmless the District of Columbia and the officers, agents, representatives, employees and contractors of each of the foregoing (collectively, the “**Indemnified Parties**”) from all claims, losses, damages, costs, judgments, fees, penalties, charges, or expenses (including reasonable and documented attorneys’ fees and costs) asserted, incurred, suffered or awarded as a result of (i) any 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 relating to the Work Product that (ii) arise out of or are caused by any acts or omissions, negligence, fault, willful misconduct, violation of law or breach of the ITP or this Agreement by the Proposer or its ITP Equity Members, Major Participants, Major Non-Equity Members or other team members, or their respective agents, employees or representatives. The District’s failure to notify the Proposer of a claim shall not release Proposer of the duty to defend described above.

5.2 The Proposer shall not be liable under Section 5.1 (Indemnities) for damages arising out of injury or damage to persons or property directly caused by or resulting from (i) the sole negligence or willful misconduct of an Indemnified Party or (ii) the District’s use of the Work Product.

5.3 The indemnity in Section 5.1 (Indemnities) will survive the expiration or termination of this Agreement.

6. **ASSIGNMENT**

6.1 Subject to Section 6.2 (Assignment), the Proposer must not assign, transfer, pledge, sell, or otherwise convey this Agreement without the District’s prior written consent, in its absolute discretion. Any such assignment without the required consent of the District will be null and void and may, in the District’s absolute discretion, disqualify the Proposer from further consideration for the procurement process and the Project.

6.2 This Agreement may be assigned to the special purpose vehicle formed by the Proposer for the purposes of the Project without the prior written consent of the District. The Proposer shall provide the District with prior written notice of such assignment.

6.3 The District may assign, transfer, pledge, sell or otherwise convey this Agreement:

(a) without the Proposer’s consent, to any Person that succeeds to the governmental powers and authority of the District; and

(b) to any other Person with the prior written consent of the Proposer.

Where consent is required but not given, any such assignment of this Agreement shall be null and void.

7. MISCELLANEOUS

7.1 The Proposer and the District agree that the Proposer, its ITP Equity Members, Major Participants and other team members and their respective employees are not agents or representatives of the District, the District of Columbia Office of Public-Private Partnerships, the District of Columbia Department of Transportation or the District of Columbia Office of the Chief Technology Officer as a result of this Agreement.

7.2 All words used in this Agreement in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.

7.3 This Agreement, together with the ITP, embodies the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties to this Agreement with respect to their subject matter.

7.4 It is understood and agreed to by the Parties to this Agreement that the invalidity or unenforceability of any such clause, provision, Section, subsection or part will not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, Section, subsection or part.

7.5 The words “including”, “includes” and “include” mean “including, without limitation”, “includes, without limitation” and “include, without limitation”, respectively.

7.6 This Agreement will be governed by and construed in accordance with the laws of the District of Columbia. The Proposer consents to the jurisdiction of any court of the District of Columbia, 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 Applicable Law.

7.7 This Agreement 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.

7.8 Any obligation of the District to pay money under this Agreement shall be subject to appropriation thereof by the Council of the District of Columbia.

[Remainder of page intentionally left blank]

The Parties have signed this Agreement on the date stated in the introductory clause.

[DISTRICT OF COLUMBIA OFFICE OF CONTRACTING AND PROCUREMENT, ACTING BY AND
THROUGH THE DISTRICT OF COLUMBIA OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS]

By: _____

Name: _____

Title: _____

[PROPOSER]

By: _____

Name: _____

Title: _____

ANNEX 1

FORM OF INVOICE FOR PAYMENT OF STIPEND AMOUNT

Reference is made to the Instructions to Proposers (the “ITP”) related to the Request for Proposals for the Smart Street Lighting Project (the “Project”) issued on [●] by the District of Columbia Office of Public-Private Partnerships.

Reference is also made to the Waiver of Protest and Proposal Preparation Stipend Agreement (the “Stipend Agreement”) dated _____, 20[●], between the District of Columbia Office of Contracting and Procurement, acting by and through the District of Columbia Office of Public-Private Partnerships (the “District”) and [_____] (the “Proposer”).

Capitalized terms not otherwise defined in this invoice will have their respective meanings set forth in the Stipend Agreement.

Pursuant to Section 7.3 (Stipend) of the ITP and the Stipend Agreement, the Proposer requests payment of [] U.S. dollars (\$[]), reflecting the lesser of (i) the Maximum Cancellation Stipend Amount and (ii) the Proposer’s Eligible Costs or the lesser of (i) the Maximum Stipend Amount and (ii) the Proposer’s Eligible Costs, as applicable.

Attached to this invoice is supporting documentation for the Proposer’s Eligible Costs.

The Proposer represents and warrants to the District that the Proposer is eligible for payment pursuant to Section 7.4 (Stipend) of the ITP and the Stipend Agreement.

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

CERTIFICATION

The undersigned Proposer 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 District of Columbia, as set forth in Section 4 (Waiver) of the Stipend Agreement, is in full force and effect; and

(c) this entire invoice and all other supporting documentation are each, and collectively, true, correct and complete.

Proposer:

By:

Name:

Title:

FORM 13

BUY AMERICA CERTIFICATION

[To be completed by the Proposer and its Lead Contractor]

SOLICITATION NO.:

PROJECT NAME:

**BUY AMERICA CERTIFICATION
(IRON OR STEEL MATERIALS)**

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993]

General Requirement

In accordance with 23 C.F.R. § 635.410(b), all steel or iron materials for permanent incorporation on the project must be manufactured in the United States.

1. To qualify:
 - a. All manufacturing processes, including application of a coating, for these materials must occur in the United States; and
 - b. coating includes all processes that protect or enhance the value of the material to which the coating is applied.
2. This requirement does not apply to temporary elements of the project, such as temporary sheet piling, falsework, detour bridges, and the like.
3. When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

In accordance with 23 C.F.R. § 635.410(c), a state may request a waiver of these requirements if:

1. The application of the provisions would be inconsistent with the public interest; or
2. Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

Certification of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 23 C.F.R. § 635.410(b).
Company_____

Name_____Title_____

Signature_____Date_____

SOLICITATION NO.:

PROJECT NAME:

**BUY AMERICA CERTIFICATION
(IRON OR STEEL MATERIALS)**

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993]

(Page 2 of 2)

Certification with Non-Compliance with Buy America Requirements

If a bidder or offeror cannot comply with the Buy America requirements in 23 C.F.R. § 635.410(b), but believes that it qualifies for a waiver under 23 C.F.R. § 635.410(c), the bidder or offeror must provide the Contracting Officer, along with its bid/proposal, with a list of iron and steel materials for which a waiver is requested along with a justification for why a waiver is appropriate. The District will, at its sole discretion, make the determination of whether to request a waiver from FHWA. If the District does not request a waiver from FHWA, the bidder or offeror may not use the steel or iron materials. Any decision by the FHWA with regard to waiver is final.

The bidder or offeror hereby certifies that it cannot comply with the requirements of 23 C.F.R. § 635.410(b), but it may qualify for an waiver of the requirements under 23 C.F.R. § 635.4109(c) and shall submit with its bid/proposal a list of steel and iron materials for which waiver is requested along with a justification for waiver.

Company_____

Name_____ Title_____

Signature_____ Date_____

CONFLICT OF INTEREST DISCLOSURE STATEMENT

The Proposers are advised that, in accordance with the District's conflicts of interest rules, certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with the District in connection with the Project development, Project procurement, and document preparation. Capitalized terms used but not defined in this Conflict of Interest Disclosure Statement shall have their respective meanings set forth in the RFP.

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, the Major Participants, the Major Non-Equity Members, proposed consultants, and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) that may result in, or could be viewed as, an organizational conflict of interest in connection with this RFP.

The Proposer should disclose (i) any current contractual relationships with the District, (ii) any past, present, or planned contractual or employment relationships with any District member, officer, or employee; and (iii) any other circumstances that might be considered to create a financial interest in the contract by any District member, officer, or employee if the Proposer is awarded the contract. The Proposer should also disclose matters such as ownership of ten percent or more of the stock of, or having directors in common with, any of the District's consultants and subconsultants on the Project. The Proposer should also disclose contractual relationships with the District's consultants and subconsultants in the nature of a joint venture, as well as relationships wherein a District consultant or subconsultant is a contractor or consultant (or Subcontractor or Subconsultant) to the Proposer or a member of the Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

[illegible]

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

_____, 202[]

Date

FORM 15

MASTER SUPPLIER FORM

<p align="center"><i>District of Columbia Government</i></p> <p align="center"><i>Master Supplier Information Collection Template</i></p>

Vendor Name (Legal Name):

Vendor Number (I + Tax ID): 1 _____

Phone Number (including area codes and extensions): _____

General E-mail Address: _____

Website Address: _____

W9 Tax ID Number: _____

CBE?: Yes ☐ No ☐ CBE Number: _____ (Choose matching items for **Supplier** and **Ownership** Types).

Contact Name: _____

Contact E-Mail Address: _____

Supplier/Vendor Type: _____

Ownership Type: _____

Supplier/Vendor Type

1=DC Employee	4=Local Government	7=Other
2=Federal Agency	5=Vendor-Business	8=CBE
3=State Agency	6=Vendor=Individual	

Ownership Type

A=State Corporation	I=Individual Recipient	R=Foreign
C=Professional Corp.	L=CBE	S=Sole Ownership
E=State Employee	M=Medical Corporation	T=Partnership
F=Financial Institution	O=Out of State Corporation	U=Non-Profit
G=Government Entity	P=Professional Association	

Business License Information

Type: _____ (Business, Professional, Other)

License Number _____

Mail Code = 000 = Supplier Headquarters Address (Cannot be a PO Box)

Address: _____

City: _____ State: _____ Zip Code: _____

Mail Code = 200 = Payment Remittance Address if Different from 000

Address: _____

City: _____ State: _____ Zip Code: _____

Mail Code = 300 = Purchase Order Address if Different from 000 (Cannot be a PO Box)

Address: _____

City: _____ State: _____ Zip Code: _____

**ALL ITEMS IN THIS AREA MUST BE COMPLETED TO RECEIVE ELECTRONIC
PURCHASE ORDERS**

DUN & Bradstreet No. (DUNS): _____

(To apply for a your DUNS number call 1-866-705-5711 Required for all Email and Fax Purchase Order forwarding requests.)

ANID Number:

(Please register at supplier.ariba.com; **This is a required field.**)

Do you want the purchase order forwarded by e-mail or fax? Email ☐ Fax ☐

(Please choose only one; We do not support the ARIBA Online option.)

Ordering E-Mail Address (Send Purchase Orders): _____

Ordering Fax Number (Send Purchase Orders): _____

Does the Vendor Accept Purchase Cards: Yes ☐ No ☐

FORM 16

TAX CERTIFICATION AFFIDAVIT

[See attached]

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of the Chief Financial Officer

Office of Tax and Revenue



TAX CERTIFICATION AFFIDAVIT

THIS AFFIDAVIT IS TO BE COMPLETED ONLY BY THOSE WHO ARE REGISTERED TO CONDUCT BUSINESS IN THE DISTRICT OF COLUMBIA.

Date

**Name of Organization/Entity
Business Address (include zip code)
Business Phone Number(s)**

**Principal Officer Name and Title
Square and Lot Information
Federal Identification Number
Contract Number
Unemployment Insurance Account No.**

"I hereby authorize the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue; consent to release my tax information to an authorized representative of the District of Columbia agency from which I am seeking to enter into a contractual relationship. I understand that the information released under this consent will be limited to whether or not I am in compliance with the District of Columbia tax laws and regulations as of the date found on the government request. I understand that this information is to be used solely for the purpose of determining my eligibility to enter into a contractual relationship with a District of Columbia agency. I further authorize that this consent be valid for one year from the date of this authorization."

I hereby certify that I am in compliance with the applicable tax filing and payment requirements of the District of Columbia.

The Office of Tax and Revenue is hereby authorized to verify the above information with the appropriate government authorities. The penalty for making false statements is a fine not to exceed \$5,000.00, imprisonment for not more than 180 days, or both, as prescribed by D.C. Official Code § 47-4106.

Signature of Authorizing Agent

Title

FORM 17

PROPOSER CERTIFICATION FORM

[See attached]

PROPOSER CERTIFICATION FORM

COMPLETION

The person(s) completing this form must be knowledgeable about the proposer's business and operations.

RESPONSES

Every question must be answered. Each response must provide all relevant information that can be obtained within the limits of the law. Individuals and sole proprietors may use a Social Security number but are encouraged to obtain and use a federal Employer Identification Number (EIN). Provide any explanation at the end of the section or attach additional sheets with numbered responses. Include the proposer's name at the top of each attached page.

GENERAL INSTRUCTIONS

This form contains four (4) sections. Section I concerns the proposer's responsibility; Section II includes additional required certifications; Section III relates to the Buy American Act (if applicable); and Section IV requires the proposer's signature.

SECTION I. PROPOSER RESPONSIBILITY CERTIFICATION

Instructions for Section I: Section I contains eight (8) parts. Part 1 requests information concerning the proposer's business entity. Part 2 inquires about current or former owners, partners, directors, officers or principals. Part 3 relates to the responsibility of the proposer's business. Part 4 concerns the proposer's business certificates and licenses. Part 5 inquires about legal proceedings. Part 6 relates to the proposer's financial and organizational status. Part 7 requires the proposer to agree to update the information provided. Part 8 relates to disclosures under the District of Columbia Freedom of Information Act (FOIA).

PART 1: PROPOSER INFORMATION

Legal Business Entity Name:	Solicitation #:	
Address of the Principal Place of Business (street, city, state, zip code)	Telephone # and ext.:	Fax #:
Email Address:	Website:	

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity and EIN used in the last five (5) years and the status (active or inactive).

Type:	Name:	EIN:	Status:

1.1 Business Type (Please check the appropriate box and provide additional information if necessary.):

<input type="checkbox"/> Corporation (including PC)	Date of Incorporation:
<input type="checkbox"/> Joint Venture	Date of Organization:
<input type="checkbox"/> Limited Liability Company (LLC or PLLC)	Date of Organization:
<input type="checkbox"/> Nonprofit Organization	Date of Organization:
<input type="checkbox"/> Partnership (including LLP, LP or General)	Date of Registration or Establishment:
<input type="checkbox"/> Sole Proprietor	How many years in business?:
<input type="checkbox"/> Other	Date established?:

If "Other," please explain:

1.2 Was the proposer's business formed or incorporated in the District of Columbia?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If "No" to Subpart 1.2, provide the jurisdiction where the proposer's business was formed or incorporated. Attach a Certificate or Letter of Good Standing from the applicable jurisdiction and a certified Application for Authority from the District, or provide an explanation if the documents are not available.

State _____ Country _____

<p>1.3 Please provide a copy of each District of Columbia license, registration or certification that the proposer is required by law to obtain (other than those provided in Subpart 1.2). If the proposer is not providing a copy of its license, registration or certification to transact business in the District of Columbia, it shall either:</p> <p>(a) Certify its intent to obtain the necessary license, registration or certification prior to prequalification pursuant to Act 20-550, Public-Private Partnership Act of 2014 (P3 Act); or</p> <p>(b) Explain its exemption from the requirement.</p>	
PART 2: INDIVIDUAL RESPONSIBILITY	
<p><i>Additional Instructions for Section 1, Parts 2 through 8: Provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).</i></p> <p>Within the past five (5) years, has any current or former owner, partner, director, officer, principal or any person in a position involved in the administration of funds, or currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the proposer with any government entity:</p>	
2.1 Been sanctioned or proposed for sanction relative to any business or professional permit or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.2 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District, state, or municipal statutes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.3 Been proposed for suspension or debarment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.4 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.5 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or a plea bargain for:	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>(a) Any business-related activity; or</p> <p>(b) Any crime the underlying conduct of which was related to truthfulness?</p>	
2.6 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 2.	
PART 3: BUSINESS RESPONSIBILITY	
Within the past five (5) years, has the proposer:	
3.1 Been under suspension, debarment, voluntary exclusion or determined ineligible under any federal, District or state statutes?	
3.2 Been proposed for suspension or debarment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.3 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.4 Been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime, or subject to a judgment or plea bargain for:	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>(a) Any business-related activity; or</p> <p>(b) Any crime the underlying conduct of which was related to truthfulness?</p>	
3.5 Been disqualified or proposed for disqualification on any government permit or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.6 Been denied a contract award or had a bid or proposal rejected based upon a non-responsibility finding by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.7 Had a low bid or proposal rejected on a government contract for failing to make good faith efforts on any Certified Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.8 Been suspended, cancelled, terminated or found non-responsible on any government contract, or had a surety called upon to complete an awarded contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 3.	
PART 4: CERTIFICATES AND LICENSES	
Within the past five (5) years, has the proposer:	
4.1 Had a denial, decertification, revocation or forfeiture of District of Columbia certification of any Certified Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for "Yes" in Subpart 4.1.	
4.2 Please provide a copy of the proposer's District of Columbia Office of Tax and Revenue Tax Certification Affidavit.	

PART 5: LEGAL PROCEEDINGS	
Within the past five (5) years, has the proposer:	
5.1 Had any liens or judgments (not including UCC filings) over \$25,000 filed against it which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 5.1, provide an explanation of the issue(s), relevant dates, the Lien Holder or Claimant's name, the amount of the lien(s) and the current status of the issue(s).	
5.2 Had a government entity find a willful violation of District of Columbia compensation or prevailing wage laws, the Service Contract Act or the Davis-Bacon Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please provide an explanation for each "Yes" in Part 5.	
PART 6: FINANCIAL AND ORGANIZATIONAL INFORMATION	
6.1 Within the past five (5) years, has the proposer received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.1, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
6.2 Within the past five (5) years, has the proposer had any liquidated damages assessed by a government entity over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.2, provide an explanation of the issue(s), relevant dates, the government entity involved, the amount assessed and the current status of the issue(s).	
6.3 Within the last seven (7) years, has the proposer initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.3, provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "initiated," "pending" or "closed".	
6.4 During the past three (3) years, has the proposer failed to file a tax return or pay taxes required by federal, state, District of Columbia or local laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.4, provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the proposer failed to file/pay and the current status of the tax liability.	
6.5 During the past three (3) years, has the proposer failed to file a District of Columbia unemployment insurance return or failed to pay District of Columbia unemployment insurance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.5, provide the years the proposer failed to file the return or pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).	
6.6 During the past three (3) years, has the proposer failed to comply with any payment agreement with the Internal Revenue Service, the District of Columbia Office of Tax and Revenue and the Department of Employment Services?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.6, provide the years the proposer failed to comply with the payment agreement, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s).	
6.7 Indicate whether the proposer owes any outstanding debt to any state, federal or District of Columbia government.	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to Subpart 6.7, provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
6.8 During the past three (3) years, has the proposer been audited by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(a) If "Yes" to Subpart 6.8, did any audit of the proposer identify any significant deficiencies in internal controls, fraud or illegal acts; significant violations of provisions of contract or grant agreements; significant abuse; or any material disallowance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(b) If "Yes" to Subpart 6.8(a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	

PART 7: RESPONSE UPDATE REQUIREMENT

7.1 The proposer shall update any response provided in Section I of this form during the term of this contract:

- (a) Within sixty (60) days of a material change to a response; and
(b) Prior to the exercise of an option year contract.

☐ Yes ☐ No

PART 8: FREEDOM OF INFORMATION ACT (FOIA)

8.1 Indicate whether the proposer asserts that any information provided in response to a question in Section I is exempt from disclosure under the District of Columbia Freedom of Information Act (FOIA), effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531, et seq.). Include the question number(s) and explain the basis for the claim. (The District will determine whether such information is, in fact, exempt from FOIA at the time of request for disclosure under FOIA.)

SECTION II. ADDITIONAL REQUIRED PROPOSER CERTIFICATIONS

Instructions for Section II: Section II contains two (2) parts. Part I requests information concerning District of Columbia employees. Part 2 relates to equal employment opportunity requirements.

¹ Note that the PPRA, as amended by the P3 Act, expressly does not apply to OP3 procurements except for PPRA Sections, 202, 415, Title VII, and Title X.

PART 1. DISTRICT EMPLOYEES NOT TO BENEFIT

The proposer certifies that:

1.2 Reserved

1.3 The following person(s) listed may benefit from this contract.

(a) _____

(b) _____

PART 2: EQUAL OPPORTUNITY OBLIGATIONS

2.1 I hereby certify that I am fully aware of the contents of Mayor's Order 85-85 and the Office of Human Rights' regulations in Chapter 11 of the DCMR, and agree to comply with them while performing this contract.

SECTION III. Reserved

SECTION IV. CERTIFICATION

Instruction for Section IV: This section must be completed by all proposers.

I, [_____], as the person authorized to sign these certifications, hereby certify that the information provided in this form is true and accurate.

Name [Print and sign]:	Telephone #:	Fax #:
Title:	Email Address:	

Date: _____

The District of Columbia is hereby authorized to verify the above information with appropriate government authorities. Penalty for making false statements is a fine of not more than \$1,000.00, imprisonment for not more than 180 days, or both, as prescribed in D.C. Official Code § 22-2405. Penalty for false swearing is a fine of not more than \$2,500.00, imprisonment for not more than three (3) years, or both, as prescribed in D.C. Official Code § 22-2404.