

GATEWAY PROGRAM DEVELOPMENT CORPORATION

REQUEST FOR PROPOSALS RFP No. 2019-01

Subject: **PROFESSIONAL LEGAL SERVICES (PROJECT
COUNSEL)**

Issuance Date: **April 5, 2019**

Proposal Due Date: **2:00 P.M. EST on Friday, May 3, 2019**

Email: **procurement@gatewayprogram.org**

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You may not communicate with GDC, any of its representatives (including its Trustees, Officers or employees) and any member of the selection committee about this procurement during the procurement period except by email at procurement@gatewayprogram.org. Contacting anyone other than through email at procurement@gatewayprogram.org (either directly by the proposer or indirectly through a lobbyist or other person acting on the proposer's behalf) with respect to this procurement: (1) may result in a proposer being deemed a non-responsible offeror, and (2) may result in the proposer not being awarded a contract.

1. THE OPPORTUNITY

Gateway Program Development Corporation ("GDC"), a New Jersey nonprofit corporation, hereby invites law firms ("firm" or "Proposer") to submit a proposal (the "Proposal") in response to this Request for Proposals No. 2019-01 ("RFP") to provide professional legal services ("Legal Services") in connection with the Gateway Program, as more fully described below. This RFP provides information about GDC and the Gateway Program, describes the Legal Services, and sets forth the terms and conditions under which GDC anticipates conducting this RFP, including the criteria to be used in the selection of the successful Proposer. The scope of the Legal Services to be performed by the firm(s) is set forth in Attachment E attached hereto. GDC reserves the right to select more than one Proposer to perform the Legal Services.

2. BACKGROUND

A. The Gateway Program Development Corporation

GDC was formed on November 17, 2016 as a New Jersey nonprofit corporation for the purposes of coordinating, developing, operating, financing, managing, owning or otherwise engaging in activities to effectuate the Gateway Program of rail infrastructure projects between Newark, New Jersey, and Pennsylvania Station in New York City ("PSNY"). GDC is responsible for meeting critical transportation infrastructure needs of the region's people, businesses, and visitors by efficiently undertaking the Gateway Program. GDC works closely with stakeholders, including the U.S. Department of Transportation ("USDOT"), the National Railroad Passenger Corporation ("Amtrak"), New Jersey Transit Corporation ("NJ TRANSIT"), the States of New York and New Jersey, and the Port Authority of New York and New Jersey ("PANYNJ"). GDC is governed by three trustees, one each appointed by the New York State Department of Transportation ("NYSDOT"), NJ TRANSIT and Amtrak.

B. The Gateway Program

The Gateway Program ("Gateway Program") consists of numerous rail infrastructure improvement projects between Newark, New Jersey and PSNY. The Gateway Program focuses on a 10-mile segment of the Northeast Corridor ("NEC"), and includes a program of projects that would replace and update rail infrastructure assets that, in many cases, are over 100 years old, as well as increase track, tunnel, bridge and station capacity. This segment of the NEC carries over 200,000 Amtrak and NJ TRANSIT riders daily on approximately 450 trains.

The Gateway Program's first phase includes the construction of a new tunnel, the rehabilitation of the existing tunnel, the completion of a concrete casing on the West Side of Manhattan to preserve right-of-way for the future tunnel to PSNY, and the replacement of the Portal Bridge in New Jersey. Later phases of the Gateway Program would include the replacement of the Sawtooth Bridges located in Kearny, New Jersey, and the expansion and modification of PSNY, Newark Penn Station and Secaucus Junction Station ("Bergen/Secaucus Loop") in New Jersey.

For additional information on GDC and the Gateway Program visit the GDC website:

<http://www.gatewayprogram.org>

C. Bi-State Legislation

The States of New Jersey and New York are in the process of finalizing a cooperative effort in respect of the Gateway Program to create a bi-state commission eligible to apply for financial assistance from the United States government. Legislation is currently being considered in each of New Jersey and New York that would create the Gateway Development Commission, a bi-state entity (the "Commission"), to act in the public interest and exercise essential governmental functions. The Commission will be a public authority and government sponsored authority. The Commission, like GDC, will be governed by three commissioners, one each appointed by NYSDOT, NJ TRANSIT and Amtrak. The Commission will be eligible to receive both federal loans and grants, issue bonds, and acquire property. Following its formation, the Commission will act as a coordinating agency to effectuate all aspects of the Gateway Program, including receiving and distributing public and private funding for the Gateway Program. As a result of the formation of the Commission, the Legal Services will then be performed on behalf of the Commission, in which event the successful Proposer will be required to execute a retainer agreement with the Commission in the form attached to this RFP as Attachment F.

3. MINIMUM REQUIREMENTS

Proposers must have the following minimum qualifications:

- (a) Proposer¹ has a minimum of ten (10) years of experience advising on project financings, including specialized structured financings, Rule 144A bond financings, private placements, municipal market financing and private activity bonds;
- (b) Experience advising and providing support, as lead counsel, on at least two large-scale transportation infrastructure projects;
- (c) Proposer has a minimum of five (5) years of experience advising on Federal financial assistance for significant transportation projects, including the Federal Transit Administration's Section 5309 Capital Investment Grant Program and the Transportation Infrastructure Finance and Innovation Act ("TIFIA") and Railroad Rehabilitation and Improvement Financing ("RRIF") credit programs; and
- (d) Proposer has sufficient qualified legal personnel and support staff to handle multiple Legal Service matters for GDC at one time.

Complete Attachment C to document each minimum qualification above.

4. PROPOSAL CONTENT REQUIREMENTS

Each Proposal must include the required information outlined in Attachment D.

The Proposer may include in its proposal co-counsel to perform certain Legal Services. The Proposer may not utilize co-counsel other than as identified in its Proposal without the prior

¹ For this purpose, "Proposer" includes any predecessor law firm incorporated into the Proposer.

written consent of GDC. The engagement of any co-counsel shall not relieve the Proposer of any of its responsibilities under the retainer agreement, nor shall it create privity of contract between GDC and any co-counsel, unless GDC and co-counsel enter into a retainer agreement. If the Proposer uses a co-counsel to fulfill any of its obligations, the Proposer shall be responsible for the co-counsel's performance and compliance with the Proposer's retainer agreement with GDC and the requirements of all applicable laws.

5. PROPOSAL FORMAT REQUIREMENTS

To respond to this RFP, the Proposer shall submit a concise Proposal complying with the following format requirements:

A. Page limits and pagination: Proposals shall be no more than 20 pages-single-sided, or 10 pages double-sided on letter size (8-1/2x11) paper and typed in clear black ink. The page limit excludes cover page, table of contents, resumes and page dividers and pertains only to the following sections of the Proposal Content Requirements, as described further in Attachment D: (i) Firm Qualifications and Experience, (ii) Staff Qualifications and Experience, and (iii) Management Approach. Each resume shall be two-pages maximum, single-sided or one-page double-sided. Each section of the Proposal must be separated with a page divider that is labeled in accordance with the content headings outlined in the left column of Attachment C. All pages should be numbered consecutively.

B. Font Size: Proposals must use 12 point or greater font size.

C. Labels: Proposals must be clearly labeled with “[Your Firm Name]” and “Gateway Program Development Corporation RFP No. 2019-01” on the cover.

D. Method of Proposal Submission: Proposals must be emailed to procurement@gatewayprogram.org not later than the Proposal Due Date and Time set forth on the cover of this RFP.

E. Content. Each Proposal will be evaluated on content and not length. Concise and clear responses that cover all requested information are recommended. If possible, Proposers should summarize key information or points they wish to make for each response submitted at the beginning of the relevant portion of the Proposal.

F. PDF. Proposals must be converted to a portable document format (.PDF) (not scanned into .PDF). The PDF must not be password protected, or converted in such a way as to prevent us from copying text.

6. SUBMISSION OF PROPOSALS

To be responsive to this RFP, Proposals must demonstrate that the Proposer meets the minimum qualifications set forth in Section 3, contain all of the information required by Sections 4 and 5 hereof and be submitted in the manner described herein. Proposals determined to be non-responsive will not be evaluated.

Proposals submitted to GDC after the specified due date and time in the RFP shall be rejected as non-responsive. No late Proposals will be accepted.

Proposals must be emailed to procurement@gatewayprogram.org no later than 2:00 p.m. (local) on Friday, May 3, 2019.

7. INTERVIEWS

After GDC reviews the Proposals, GDC may request written clarifications from Proposers and/or request Proposers to interview with GDC to better understand a firm's Proposal. Neither a request for clarification nor the granting of an interview will provide a Proposer with an opportunity to modify its Proposal. The granting of an interview should not be taken as an indication of GDC's views on the merits of a firm's Proposal.

GDC will notify Proposers by email if they have been selected for an interview. Proposers should be aware that if selected for an interview, a Proposer may be given a short advance notice. Interviews would be limited to no more than one and a half hours. The representatives attending from the Proposer should include at least one partner whom the Proposer proposes to serve as GDC's main contact during the appointment period and any other key staff proposed to work with GDC during the appointment period. No more than six (6) individuals from a firm will be allowed to attend an interview.

8. SELECTION CRITERIA

GDC will review each firm's Proposal in its totality. The selected firm or firms, if any, will be those whose Proposals are deemed to be most advantageous to GDC's objectives.

GDC will evaluate each Proposal against the following criteria:

- (a) the qualifications and experience of the staff proposed to perform the Legal Services;
- (b) the qualifications and experience of the Proposer;
- (c) the Proposer's management approach;
- (d) the Proposer's ability to work cooperatively with other professional entities (including other law firms) and willingness and ability to identify portions of the legal work which could be undertaken by a disadvantaged, minority or women-owned business enterprise; and
- (e) the Proposer's proposed fees and charges, including a provision to GDC of no less than a 20% discount on customary fees. GDC is willing to consider alternatives to hourly billing models proposed by a Proposer.

9. THE RETAINER AGREEMENT

If GDC makes an award pursuant to this RFP, the award will be conditioned upon the selected firm entering into a written agreement with GDC, specifying the Legal Services to be performed, in the form of the draft retainer agreement attached to this RFP as Attachment F. A firm's submission of a Proposal in response to this RFP will constitute agreement on the part of the selected firm to the form of the retainer agreement.

Legal Services to be performed by the Firm(s) may be funded in whole or in part through an operating administration of the USDOT, such as the Federal Transit Administration (“FTA”). If federal funding is provided, then federally mandated terms and conditions will be required as part of the retainer agreement and will be applicable to the performance of the Legal Services described in Attachment E.

10. QUESTIONS

Proposers may submit questions relating to this RFP to GDC no later than 2:00 p.m. EST on Thursday, April 18, 2019. Questions should be directed to procurement@gatewayprogram.org. Emails must have **GDC – Professional Legal Services (Project Counsel) Selection Process** in the subject line. All questions and responses will be posted on the GDC website indicated in Section 2 above.

11. ADDITIONAL INFORMATION

- A. Firms will be required to submit an executed Agreement on Terms of Discussion (Attachment A) with its Proposal.
- B. Firms will be asked to submit signed certifications entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information" (Attachment G) and "Non-Collusive Proposing, and Code of Ethics Certification, Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent or Other Fees" (Attachment H) with its Proposal.
- C. The firm and each employee assigned to work under the retainer agreement may be required to sign a non-disclosure agreement.
- D. Except as expressly provided in Attachment A, information submitted to GDC orally or in writing in response to this RFP or thereafter will not be considered as given in confidence and will be the property of GDC and may be used or disclosed by GDC at any time without compensation or other obligation.
- E. GDC may consult references familiar with the firm regarding its prior work, and other information related to its response.
- F. No rights accrue to any firm except under a duly authorized retainer agreement with GDC for performance of the Legal Services.
- G. Proposers are advised to monitor <http://www.gatewayprogram.org> for RFP updates and addenda.
- H. Proposal preparation costs are not reimbursable by GDC, nor are costs of participating in any interview with GDC, and GDC shall have no obligation to a Proposer except under a duly authorized retainer agreement executed by GDC.
- I. GDC reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, to retain one or more Proposers, to waive defects in Proposals, to undertake discussions and modifications with one or more Proposers and to proceed with that

Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve GDC.

ATTACHMENT A

**PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL)
GATEWAY PROGRAM DEVELOPMENT CORPORATION**

AGREEMENT ON TERMS OF DISCUSSION

GDC's receipt or discussion of any information (including information contained in any Proposal, ideas, strategies, models, drawings or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on GDC or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between GDC and us). Any such information given to GDC before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to GDC rights to any matter that is the subject of valid existing or potential letters patent.

Any information (including information contained in any proposal, ideas, strategies, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of GDC's Open Records Policy adopted by GDC's Board of Trustees, which may be found on the GDC website at:

<http://www.gatewayprogram.org/wp-content/uploads/content/dam/nec/gdc-board-items/GDC-Open-Records-Policy-final.pdf>

The foregoing applies to any information, whether or not given at the invitation of GDC.

(Firm)

(Signature)

(Title)

(Date)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY. DO NOT RETYPE.

ATTACHMENT B

**PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL)
GATEWAY PROGRAM DEVELOPMENT CORPORATION**

FIRM PROFILE

1. Firm Name (print or type):

2. Business Address (to receive mail for this selection process):

3. Business Telephone Number: _____

4. Business Fax Number: _____

5. Firm website: _____

6. Federal Employer Identification Number (EIN): _____

7. Date (MM/DD/YYYY) Firm was Established: ____ / ____ / ____

8. Officer or Principal of Firm and Title:

9. Name, telephone number, and email address of contact for questions:

ATTACHMENT C

**PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL)
GATEWAY PROGRAM DEVELOPMENT CORPORATION**

PROPOSER MINIMUM REQUIREMENTS

Provide current or past work experience performed by the Proposer and attorneys demonstrating the following minimum qualifications:

- (a) Proposer² has a minimum of ten (10) years of experience advising on project financings, including specialized structured financings, Rule 144A bond financings, private placements, municipal market financing and private activity bonds;
- (b) Experience advising and providing support, as lead counsel, on at least two large-scale transportation infrastructure projects;
- (c) Proposer has a minimum of five (5) years of experience advising on Federal financial assistance for significant transportation projects, including the Federal Transit Administration's Section 5309 Capital Investment Grant Program and the Transportation Infrastructure Finance and Innovation Act ("TIFIA") and Railroad Rehabilitation and Improvement Financing ("RRIF") credit programs; and
- (d) Proposer has sufficient qualified legal personnel and support staff to handle multiple Legal Service matters for GDC at one time.

Note - Duplicate this form as necessary

Client Name/ Contracting Entity	
Lead Attorney	
Contract Start Date	
Contract End Date	
Brief Description of Scope of Work	
Client Contact Name / Title*	
Client Contact Email Address	

² For this purpose, "Proposer" includes any predecessor law firm incorporated into the Proposer.

Client Contact Phone Number	
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Client Name/ Contracting Entity	
Lead Attorney	
Contract Start Date	
Contract End Date	
Brief Description of Scope of Work	
Client Contact Name / Title*	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Lead Attorney	
Contract Start Date	
Contract End Date	
Brief Description of Scope of Work	
Client Contact Name / Title*	
Client Contact Email Address	
Client Contact Phone Number	

*Note – Client Contact must be a present employee of the referenced entity.

ATTACHMENT D

PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL) GATEWAY PROGRAM DEVELOPMENT CORPORATION

PROPOSAL CONTENT REQUIREMENTS

Each Proposal must contain the following, presented in this expected order:

Content	Description
Signed Copy of <u>Attachment A</u>	Agreement on Terms of Discussion
Signed Copy of <u>Attachment B</u>	Firm(s) Profile
Signed Copy of <u>Attachment C</u>	Proposer Minimum Requirements - Demonstrate your compliance with the minimum qualification requirements listed in Section 3 of this RFP (Proposer Minimum Requirements)
Signed Copy of <u>Attachment G</u>	Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information
Signed Copy of <u>Attachment H</u>	Non-Collusive Proposing, and Code of Ethics Certification, Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent or Other Fees
Transmittal Letter	Submit a transmittal letter on your Firm's letterhead, signed by an authorized representative of the Firm. The transmittal letter must include the full name, address and telephone number, facsimile number and e-mail address of the point of contact for the Firm for purposes of this RFP.
Firm Qualifications and Experience	In this section of your Proposal, briefly describe your Firm's qualifications and experience as required to provide the Legal Services. Your response must include: 1. A brief description of the Proposer and its

organizational structure;

2. The number of years the Proposer has served as counsel on transaction matters related to projects of similar complexity as the Gateway Program (For more information about the Gateway Program, see Section 2 above (Background));

3. The Proposer's demonstrated track record of agility and speed on large, complex projects;

4. The Proposer's experience with the following types of matters primarily in the State of New Jersey and the State of New York, but also in other states and jurisdictions:

- (a) Infrastructure Finance Law;
- (b) Project Finance Law;
- (c) Regulatory Rail Law;
- (d) Real Estate Law, including the financing of complex real estate transactions;
- (e) Construction Law;
- (f) Labor Law;
- (g) Insurance Law;
- (h) Tax Law;
- (i) Environmental Law;
- (j) Public Procurement Law;

5. The Proposer's experience on public transportation projects and rail industry projects, including transit or inter-city passenger rail procurement and finance and inter-agency experience;

6. Experience with drafting procurement documents, including but not limited to Request for Proposals (RFPs), design-build contracts either with or without a maintenance component or a financing component, and other project documents, including governance documents;

7. Experience with drafting and/or negotiating financing documents on projects of similar size and complexity as the Gateway Program, whether loans from USDOT or other federal agencies, tax-exempt and taxable bonds, and bank loans;

8. Experience with advising on various types of insurance requirements and related provisions for a

	<p>design and construction infrastructure /transportation projects, including but not limited to: professional liability insurance (including errors and omissions); general liability and other types of insurance; as well as insurance programs, such as Owner Controlled Insurance Programs (OCIP) and Contractor Controlled Insurance Programs (CCIP);</p> <p>9. Experience with the methods of evaluation for RFPs, including selection criteria and process, for complex infrastructure/transportation project;</p> <p>10. The Proposer’s qualifications, knowledge and experience relating to PANYNJ, NJ TRANSIT, Amtrak, New York State Department of Transportation (“NYSDOT”) other similar regional transportation agencies, or other bi-state agencies; discuss how this experience adds value to GDC.</p> <p>11. Three client references, including names of contacts, their emails, and telephone numbers.</p>
<p>Staff Qualifications and Experience</p>	<p>In this section of your Proposal:</p> <p>(a) Provide a complete list of all attorneys who would be substantially involved in providing the Legal Services including a description of their qualifications and past relevant experience, particularly their experience on alternative delivery and/or design and construction of large, complex projects, and experience with drafting procurement and contract documents.</p> <p>(b) Provide detailed resumes of the attorneys in your Firm who will be substantially involved in providing the Legal Services, the specific function each will perform, their qualifications to perform the function, and the extent to which any such attorneys participated in any of the services referred to in the Firm’s response under “Firm Qualifications and Experience” above.</p>
<p>Management Approach</p>	<p>In this section of your Proposal:</p> <p>1. The project needs legal advisors that are prepared to work at high speed. Describe your Firm's plan to allocate resources and manage staff to meet a demanding schedule.</p> <p>2. Include information on the organizational structure</p>

	<p>of the proposed team assigned to GDC and how this structure would provide benefit to GDC.</p> <p>3. Prepare an organization chart for the provision of Legal Services that identifies the key individuals, their office address, function, task responsibility and reporting relationships.</p> <p>4. Indicate how you will assure commitment to GDC of key personnel and your plan for providing equally qualified personnel in the event a key person becomes unavailable during the progress of the work.</p> <p>5. Describe the Proposer's ability to provide sufficient qualified legal personnel and support staff to handle multiple Legal matters for GDC at one time. Describe the Proposer's approach to assigning, managing and budgeting the work, including the approach for assigning, managing, and budgeting the work of other firms and co-counsel.</p> <p>6. Include a discussion on collaboration technology, and how your Firm leverages workflow and collaboration technologies to maximize efficiencies and minimize costs. Discuss which technologies your Firm recommends using to communicate and collaborate with GDC.</p> <p>7. GDC wishes to encourage Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly or as sub firms, sub-consultants, and sub-contractors. Please describe your Firm's affirmative action program and activities. Please also describe whether your Firm currently utilizes, or proposes to utilize an DBE, MBE or WBE to perform certain work in the performance of the Legal Services.</p> <p>8. Describe the Proposer's approach to working cooperatively with other professional entities (including other law firms) on the project, and willingness and ability to identify portions of the work which could be undertaken by a disadvantaged business enterprise.</p> <p>9. Describe the Proposer's approach for avoiding conflicts of interest.</p>
Pending Legal Matters	In this section of your Proposal which may be marked

	<p><u>“CONFIDENTIAL”:</u></p> <p>(a) Identify any pending legal proceedings to which your Firm is a party and any such proceedings known to be contemplated by government authorities or private parties involving the Firm.</p> <p>(b) Disclose any civil or criminal actions, suits, proceedings, arbitrations, investigations of, against or involving the Firm or its principals or employees (in their capacity as principals or employees) occurring over the past five years or, to the Firm’s knowledge, threatened, by or before any bar association, governmental or non-governmental authority or agency (including, without limitation, any court of competent jurisdiction, any regulatory agency, or any relevant arbitral body).</p> <p>(c) Provide a list of all sanctions or fines imposed on the Firm during the last 24 months in connection with any proceeding of the type described immediately above in (b).</p> <p>(d) Provide a list and description of any pending or anticipated proceedings by private parties against your Firm (individually or in the aggregate) that the Firm has determined may have a material adverse impact on the current financial status or operations of the Firm (note that this requirement is in addition to the requirements set forth in Attachment H (Certification of No Investigation)).</p>
Conflicts of Interest	<p>In this section of your Proposal, disclose to GDC any actual or potential conflict of interest that this assignment might present, particularly relating to the Gateway Program or its stakeholders, including actual or potential conflicts with Amtrak, PANYNJ, NYSDOT, NJTRANSIT or USDOT, and how the Firm would propose to deal with such conflict. In this regard, please identify the names and addresses of:</p> <p>(i) any private entities, public agencies or quasi-public entities from whom the Proposer acts as general outside counsel, or for which it regularly handles matters; (ii) any parties that the firm reasonably thinks may respond to the</p>

	<p>RFQs for the Gateway Program, that the firm has represented or currently represents; and (iii) any other entity that may have an interest in the Gateway Program. GDC reserves the right to disqualify the Proposer if any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The determination regarding any question(s) of conflict of interest shall be final.</p>
<p>Fees and Charges</p>	<p>Firms should be aware that in no event will the rate paid by GDC exceed 80% of the normal and customary rates for any attorney, non-attorney law clerk, paralegal or other paraprofessional. Discounts in excess of 20% are strongly encouraged. The Firm should indicate the extent to which your proposed billing rates are discounted below 20% of the Firm's normal and customary rates as of the due date for Proposals in response to this RFP. Fees and charges proposed to be invoiced in connection with this RFP must comply with the cost principles of Subpart E (<i>Cost Principles</i>) of 2 Code of Federal Regulations part 200.</p> <p>In this section of your Proposal, include:</p> <ul style="list-style-type: none"> (a) Staff rates per hour for partners, associates, and non-attorney law clerks, paralegals, or other paraprofessionals that would be provided to GDC during the periods of the contract, which partners, and associates are expected to perform which services, to the extent reasonably projectable, and how these services would be billed. (b) For each attorney whose resume is provided, your normal hourly rate and the hourly rate you propose to charge GDC. (c) Projected services to be provided by each attorney whose resume is provided. (d) For each non-attorney law clerk, paralegal or other paraprofessional, your normal hourly rate and the hourly rate you propose to charge GDC. (e) Costs of any anticipated clerical support, if billed

	<p>separately.</p> <p>(f) A schedule of all disbursements which you anticipate will result in a charge to GDC.</p> <p>(g) A statement of whether you would be willing to agree to caps on fees on an issue by issue basis.</p> <p>(h) Each type of issue or category of work, and all other expenses or costs associated with the performance of the Legal Services.</p> <p>(i) Proposed measures to control and monitor the cost of services, such as limiting the number of attorneys assigned to a matter</p> <p>(j) State any special considerations with respect to billing or payment of fees and expenses that your Firm offers and that you believe would differentiate it from other firms responding to this RFP, and make your Firm's services more cost effective for GDC.</p>
Professional Liability Insurance	<p>Firm(s) must provide a statement confirming that Firm(s) maintains professional liability insurance (and the stated limits of such policy) and that any legal services rendered by the Firm(s) to GDC would be covered by this policy.</p>

ATTACHMENT E

PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL) GATEWAY PROGRAM DEVELOPMENT CORPORATION

SCOPE OF LEGAL SERVICES

OBJECTIVES AND SCOPE OF THE ASSIGNMENT

GDC is seeking to retain one or more law firms to provide certain legal services relating to the development and implementation of the Gateway Program, including developing and finalizing key governance, procurement, transaction, funding and financing and real estate documents.

The selected firm could potentially provide certain legal services, at the General Counsel's discretion, in the following areas (the "Legal Services"):

A. Governance

1. Advise on, negotiate and draft, governance and/or project development agreements among GDC, NJ TRANSIT, Amtrak and PANYNJ setting forth the rules and responsibilities of each of NJ TRANSIT, Amtrak and PANYNJ with respect to GDC and the terms and conditions upon which GDC is to deliver and implement the Gateway Program, including financing, funding, construction, delivery, operations and maintenance, and setting out each entity's rights and obligations with respect to the Gateway Program;
2. Following formation of the Commission, advise on, negotiate and draft, bylaws, rules and regulations for the Commission;
3. Advise, draft and review GDC's procurement/project manuals, contracts and other documents to ensure Federal compliance and be consistent with industry best practices.

B. Project Development and Procurement

1. Provide advice on the development of project delivery methodology, including comparing procurement and contract packaging alternatives;
2. Provide advice and guidance on matters relating to procurement – including risk allocation, contract packaging, and project delivery method – for the Gateway Program, including, but not limited to, Design-Bid-Build ("DBB"), Design-Build

("DB"), Design-Build-Maintain ("DBM"), Design-Build-Operate-Maintain ("DBOM"), Construction Manager at Risk ("CMR") and Public Private Partnerships ("P3"; DBB, DB, DBM, DBOM, CMR and P3 are collectively referred to as the "Project Delivery Methods");

3. Advise on, and negotiate and draft, any third-party agreements and early works agreement for GDC related to the projects in the Gateway Program;
4. Provide advice in relation to the development of the Request for Qualifications ("RFQ") and Request for Proposals ("RFP"), including preparing relevant contracts for each Project Delivery Method selected, as well as advising on evaluation criteria and methodology, and the procurement process for the Gateway Program.
5. Assist in review of, and analysis for, compliance with the criteria and requirements set forth in the RFQ and RFP;
6. Participate in collaborative dialogue meetings with proposers during the procurement;
7. Assist with, and advise on, interactions with proposers, including any Request for Clarification and/or alternative technical concepts processes during the RFP phase;
8. Advise on, and negotiate agreement(s) for the operation, maintenance and/or rehabilitation, including lifecycle maintenance, relating to the Gateway Program, as may be required;
9. Advise on various types of insurance for design and construction infrastructure/transportation projects, including but not limited to: professional liability insurance (including errors and omissions); general liability and other types of insurance; as well as insurances programs, such as Owner Controlled Insurances Programs (OCIP) and Contractor Controlled Insurance Programs (CCIP);
10. Advise on all aspects of labor law relating to projects in the Gateway Program, and assist in negotiations with all stakeholders regarding labor arrangements for the projects, including but not limited to any project labor agreements that may be entered into relating to the projects;
11. Provide written opinions and papers, as requested, on certain matters pertaining to the Gateway Program, including but not limited, to certain project risks, design and construction matters, financial matters relating to proposer entities, and operations and contractual arrangements.

C. Funding and Financing

1. Provide advice in relation to the financing and funding strategy and structure as

required in accordance with Project Delivery Method selected;

2. Assist in preparing and negotiating required documentation for selected financing and funding method(s);
3. Advise on, and negotiate funding commitments to GDC in connection with, the financing relating to the Gateway Program;
4. Advise on, and negotiate GDC funding agreements for use in the construction of the Gateway Program, including drafting of related construction and other project agreements;
5. Advise on, and negotiate and draft, applications and funding and financing agreements for the Gateway Program, including Federal credit programs (e.g., Transportation Infrastructure Finance and Innovation Act (TIFIA)/Railroad Rehabilitation & Improvement Financing (RRIF) Programs), municipal market financing such as private activity bonds, taxable bond formats including 144a and 4(2), bank loans, and equity contributions, as may be required;
6. Assist in the preparation and review of funding and financing documentation; participate in the negotiation of terms of funding/financing; ensure terms are consistent with any statutory criteria and/or regulations; provide ongoing legal support and advice for the funding/financing as may be required;
7. Assist in the preparation of information required for submission to the credit rating agencies and participate in the rating agency presentations if required;
8. Review all funding/financing closing documentation and be responsible for and represent GDC at one or more financial closings.

D. Real Estate

Advise on, negotiate and draft, agreements and documents related to real estate matters, including real estate title transfers and easements, leases and supplements thereto, subtenant agreements, and property development agreements.

E. Ancillary Revenue Opportunities

Advise on, and assist with negotiating and preparing documents for ancillary revenue opportunities.

F. Other

1. Assist with any other legal matters pertaining to the Gateway Program, as requested;

2. Furnish necessary legal memoranda and render necessary opinions, as appropriate;
and
3. Attend meetings, presentations, as requested.

The firm may include in its proposal co-counsel to perform certain Legal Services. The firm may not utilize co-counsel other than as identified in its proposal without the prior written consent of GDC. The engagement of any co-counsel shall not relieve the firm of any of its responsibilities under the retainer agreement, nor shall it create privity of contract between GDC and any co-counsel unless GDC and co-counsel enter into a retainer agreement. If the firm uses a co-counsel to fulfill any of its obligations, the firm shall be responsible for the co-counsel's performance and compliance with the retainer agreement with GDC and the requirements of all applicable laws.

GDC reserves the right to retain more than one firm to perform the Legal Services.

DRAFT FORM OF RETAINER AGREEMENT

[Date]

[Attorney Name, Esq.]

[Firm]

[Address]

[City, State, Zip]

Re: []

Dear Mr./Ms. _____:

This letter will confirm the arrangement governing the retention of the firm of _____ (the "Firm") by Gateway Program Development Corporation ("GDC"), to provide to GDC the legal services to and as requested by the General Counsel of GDC or her designee ("General Counsel"), pertaining to the Gateway Program.

Any advice rendered by the Firm, whether oral or written, and all materials prepared by the Firm in providing such legal services, shall be rendered directly to the General Counsel, on a confidential, and attorney-work product basis. This retainer may be terminated by either party upon thirty (30) business days' written notice to the other party.

GDC will pay to the Firm for all legal services provided under this retainer, on the basis of the Firm's regular hourly rates as set forth in Attachment F-1, F-2 and F-3; provided, however, that (i) the fees billed to GDC will include a ___% discount from such rates; (ii) the rates set forth in Attachment D-1 shall remain in effect until at least January 1, 2020; (iii) the rates set forth in Attachment D-2 shall remain in effect until at least January 1, 2021; (iv) the rates set forth in Attachment D-3 shall remain in effect until at least January 1, 2022; (v) the fees billed to GDC will not exceed \$_____ in the aggregate under this retainer (as such limitation may be increased from time to time in a written amendment to this retainer); and (vi) no travel will be reimbursed by GDC without the prior written approval of the General Counsel. Fees and charges invoiced to GDC must comply with the cost principles of Subpart E (*Cost Principles*) of 2 Code of Federal Regulations part 200. The Firm will bill GDC for such legal services and disbursements, where practicable, on a monthly basis, and shall maintain accurate records substantiating all items for which compensation is sought. Such records shall be provided to GDC upon request. Any proposed revision to the hourly charges described above shall be provided to the General Counsel at least twenty (20) business days prior to its effective date but in no event shall the rates be adjusted during the calendar year 2019.

The Firm shall provide the General Counsel with a proposed budget detailing the Firm's estimate of the legal fees and expenses associated with each matter to be undertaken by the Firm at the inception

of the Firm's provision of legal services with respect to such matter. The Firm shall also provide the General Counsel with a quarterly update of such budget reflecting any revisions to the Firm's prior estimates during the pendency of such matter. All such budgets are subject to approval by GDC's General Counsel.

This retention is made upon the understanding that, during the period of the retention (i) the Firm will not accept employment or be otherwise retained by any other party whose interests may be in conflict with those of GDC; (ii) the Firm will not represent a party in, or provide any advice in connection with, a lawsuit brought against the Governor of New Jersey and/or the Governor of New York in their official capacities; (iii) the Firm will make no disparaging public comments regarding the Governor of New Jersey and/or the Governor of New York; (iv) neither any Trustee nor any officer, agent, representative or employee of GDC shall be held personally liable by the Firm under any term or provision of this retainer or because of the execution or attempted execution of this retainer by GDC or because of any breach thereof; and (v) this retention shall be governed by and construed in accordance with the laws of the State of New Jersey.

This retainer shall be effective from and after _____, 2019 until December 31, 2021.

Please confirm the foregoing arrangements by indicating your acceptance on the enclosed counterpart of this letter and returning such counterpart to me.

Very truly yours,

Diana V. Lopez
General Counsel

Enclosure

ACCEPTED:

[Firm Name]

By: _____
[Attorney Name], Esq.

Date: _____

ATTACHMENT F-1

Fee Schedule – until January 1, 2020

Partners \$_____ per hour

Associates \$_____ per hour

Legal Assistants \$_____ per hour

Itemized Other Staff, as appropriate \$_____ per hour

ATTACHMENT F-2

Fee Schedule
January 2, 2020 through January 1, 2021

Partners \$_____ per hour

Associates \$_____ per hour

Legal Assistants \$_____ per hour

Itemized Other Staff, as appropriate \$_____ per hour

ATTACHMENT F-3

Fee Schedule
January 2, 2021 through January 1, 2022

Partners \$_____ per hour

Associates \$_____ per hour

Legal Assistants \$_____ per hour

Itemized Other Staff, as appropriate \$_____ per hour

ATTACHMENT G

**PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL)
GATEWAY PROGRAM DEVELOPMENT CORPORATION**

**CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTITRUST),
INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND
DISCLOSURE OF OTHER INFORMATION**

By submitting a Proposal, each Firm and each person signing on behalf of any Firm certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that the Firm and each parent and/or affiliate of the Firm has not:

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Firm;
- C. received a less than satisfactory rating on a public or government contract;
- D. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- E. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- F. had any business or professional license suspended or revoked or, within the five years prior to submission of the Proposal, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- G. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- H. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

Signed: _____

Print Name: _____

Title: _____

Firm: _____

ATTACHMENT H

PROFESSIONAL LEGAL SERVICES (PROJECT COUNSEL) GATEWAY PROGRAM DEVELOPMENT CORPORATION

NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES

By submitting a Proposal, each Firm and each person signing on behalf of any Firm certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

- A. the fees and charges in its Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such fees and charges with any other Firm or with any competitor;
- B. the fees and charges quoted in its Proposal have not been and will not be knowingly disclosed directly or indirectly by the Firm to any other Firm or to any competitor prior to the official opening of such Proposal;
- C. no attempt has been made and none will be made by the Firm to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restricting competition;
- D. the Firm has not made any offers or agreements or taken any other action with respect to any GDC employee or former employee or immediate family member of either which would constitute a breach of ethical standards, nor does the Firm have any knowledge of any act on the part of a GDC employee or former GDC employee relating either directly or indirectly to the Firm which constitutes a breach of ethical standards;
- E. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Firm for the purpose of securing business has been employed or retained by the Firm to solicit or secure its selection pursuant to this RFP on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;
- F. the Firm has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this RFP; and
- G. no person or organization has been retained, employed or designated on behalf of the Firm to impact any GDC determination with respect to (i) the solicitation, evaluation or

award of this RFP; or (ii) the preparation of specifications or request for submissions in connection with this RFP.

The foregoing certifications shall be deemed to be made by the Firm as follows:

* if the Firm is a corporation, such certification shall be deemed to have been made not only with respect to the Firm itself, but also with respect to each parent, affiliate, director, and officer of the Firm, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Firm with an ownership interest in excess of 10%;

* if the Firm is a partnership, such certification shall be deemed to have been made not only with respect to the Firm itself, but also with respect to each partner with an ownership interest in excess of 10%.

Moreover, the foregoing certifications in Attachments G and H, if made by a corporate Firm, shall be deemed to have been authorized by the Board of Directors of the Firm, and such authorization shall be deemed to include the signing and submission of the Proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Firm cannot make the foregoing certifications, the Firm shall so state and shall furnish with the signed Proposal a signed statement, which sets forth in detail the reasons therefor. If the Firm is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its Proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph G if the Firm cannot make the certification, it shall provide, in writing, with the signed Proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a financial interest in this RFP. Such disclosure is to be updated, as necessary, up to the time of award of this RFP. As a result of such disclosure, GDC shall take appropriate action up to and including a finding of non-responsibility or disqualification from participating in this RFP process.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsibility.

Notwithstanding that the Firm may be able to make the foregoing certifications at the time the Proposal is submitted, the Firm shall immediately notify GDC in writing prior to award and during the term of the Retainer Agreement, if the Firm is selected pursuant to this RFP process, of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Firm with full knowledge that they would become a part of the records of GDC and that GDC will rely on their truth and accuracy in its selection pursuant to this RFP process. In the event that GDC should determine at any time prior or subsequent to the award of this RFP that the Firm has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify GDC of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any

circumstance with respect to any item in the foregoing certifications required to be disclosed, GDC may determine that the Firm is not a responsible Firm with respect to its Proposal or the RFP or with respect to future responses on GDC RFPs or other solicitations and may exercise such other remedies as are provided to it by the RFP with respect to these matters. In addition, Firms are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing under applicable law. Firms are also advised that the inability to make such certification will not in and of itself disqualify a Firm, and that in each instance GDC will evaluate the reasons therefor provided by the Firm.

Signed: _____

Print Name: _____

Title: _____

Firm: _____

* * *