

**APPENDIX C: ATTACHMENTS**

**RFQ Attachments**

<b>Attachment 1A:</b>	Pre-Development Agreement Term Sheet
<b>Attachment 1B:</b>	Form of Pre-Development Agreement
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**ATTACHMENT 1A: PRE-DEVELOPMENT AGREEMENT TERM SHEET**

*[Remainder of page intentionally left blank. Pre-Development Agreement Term Sheet follows on the next page.]*

## Attachment 1A: Pre-Development Agreement Term Sheet

This document (this “**Term Sheet**”) sets out certain anticipated principal terms and conditions that will be addressed in the Pre-Development Agreement (the “**Agreement**” or “**PDA**”) to be entered into by the Town of Islip (the “**Town**”) and its selected Developer with respect to the Opportunity at Long Island MacArthur Airport (the “**Airport**” or “**ISP**”) as described in the Request for Qualifications for Airport Terminal and Rail Integration Opportunity, dated April 8, 2025 (as amended from time to time, the “**RFQ**”).

This Term Sheet generally does not distinguish between the Existing Terminal Option and the North Terminal Option. The PDA may do so in certain instances as necessary to give effect to differences between the options and a Developer’s Stage 2 SOQ submission.

This Term Sheet does not purport to include all provisions relative to the structure or terms of the proposed PDA. The Town intends to release a complete draft form of the PDA to Shortlisted Proposers as an Addendum to the RFP. The Town will then provide Shortlisted Proposers with an opportunity for further review and comment on such draft agreement.

This Term Sheet is not intended to, and will not, create any liability or binding obligation of any Proposer or the Town. No binding agreement will exist until all necessary approvals have been obtained, including approval by the legislative body of the Town (the “**Town Board**”), and the parties have executed and delivered a definitive PDA and any related agreements.

Capitalized terms not otherwise defined herein have the meaning given to them in the RFQ.

No.	Agreement Term	Details
<b>Foundational Matters</b>		
1.	<b>Parties</b>	The PDA will be entered into by and between the Town and the Developer (each, a “ <b>Party</b> ” and collectively, the “ <b>Parties</b> ”).
2.	<b>Term of PDA</b>	<p>The PDA term (the “<b>Term</b>”) will commence upon execution by the Parties, following Town Board approval, and satisfaction of customary conditions precedent, and will end on the earliest of: execution of the Terminal Agreement and early termination without a Terminal Agreement having been executed.</p> <p>Early termination may occur as a result of default, at the Town’s election (termination for convenience), and under certain no-fault circumstances as further described in Section No. 37.</p> <p>The Town expects the pre-development phase to last 12-18 months. In line with this, the Town anticipates including an outside date for completion of PDA Work (as further described in Section No. 8) for purposes of both the Developer default provisions (e.g. if the Developer fails to meet certain milestones by date(s) certain) and the provisions addressing no-fault</p>

No.	Agreement Term	Details
		<p>termination (e.g. in the scenario when a Terminal Agreement is not executed, for no fault of the Parties, by a date certain).</p>
3.	<b>Terminal Option</b>	<p>Short Listed Proposers are required to submit a Stage 2 SOQ with respect to either, but not both, the Existing Terminal Option and the New Terminal Option. Their election as between these two options is not restricted by any preference previously indicated in their Stage 1 SOQ.</p> <p>For ease of reference in this Term Sheet:</p> <ul style="list-style-type: none"> <li>• the terminal which is the subject of the PDA is referred to as the <b>“Terminal”</b> in this Term Sheet, regardless of whether it is the North Terminal or the Existing Terminal; and</li> <li>• the potential development areas in which the Terminal and Project may be situated is referred to as the <b>“Project Area,”</b> regardless of whether it is the North Terminal Development Area or the Existing Terminal Area.</li> </ul> <p>The PDA will be executed with respect to only the option that was included in the Preferred Proposer’s Stage 2 SOQ.</p> <p>However, in very limited circumstances the Town might be willing to negotiate an alternative Terminal delivery approach as an alternative to proceeding to termination.</p>
4.	<b>Purpose of the Agreement and Relationship to the Terminal Agreements</b>	<p>The PDA will govern an initial stage of planning and development activities to support the future construction, financing, operation, and maintenance of a state-of-the-art terminal along with a dedicated passenger connection from the Terminal to Long Island Rail Road’s Ronkonkoma Station (the <b>“Station Connection”</b>) (all such development at the Airport, the <b>“Project”</b>) which activities will be exclusively performed under the terms of a successor, long-term agreement between the Town and the Developer (the <b>“Terminal Agreement”</b>).</p> <p>The Developer’s Project construction, financing, delivery, operations, and maintenance under any Terminal Agreement are referred to as the <b>“Terminal Work.”</b></p> <p>Further details regarding the Terminal Agreement may be found in <b>Annex A.</b></p>
5.	<b>Grant of Rights</b>	<p>The Town will grant the Developer the exclusive right to undertake the PDA Work (as further described in Section No. 8) and to negotiate terms for the Terminal Agreement, provided that such rights will not obligate the Town to proceed with negotiations of or enter into the Terminal Agreement or any other agreement, or otherwise grant to Developer any property or other interest in the Project Area or any right to perform Terminal Work.</p> <p>Such exclusivity and grant of rights will not limit the Town from taking any action relating to operational, management, design, construction,</p>

No.	Agreement Term	Details
		<p>maintenance, funding, financing, or other activities within or relating to the Terminal Work, the Project, the Project Area, or the Airport, or from preparing for expiration or termination of the PDA.</p> <p>All Developer rights, including any exclusivity, will cease upon termination or expiration of the PDA.</p>
6.	<b>Standards of Performance</b>	<p>The Developer will perform the PDA Work (as further described in Section No. 8), and the Parties will use good faith efforts to negotiate and agree on a Terminal Agreement, in all cases by reference to the Project Assumptions, Commitments, &amp; Requirements Exhibit to the PDA (see below). These will include Developer commitments incorporated from the Developer’s Stage 2 SOQ.</p> <p>In addition, the Developer will undertake to perform all PDA Work (as further described in Section No. 8) in compliance with applicable laws, approved Key PDA Deliverables, any specifically enumerated technical standards, and good industry practice.</p>
7.	<b>Town Undertakings and Reservation of Rights</b>	<p>The Town will make reasonable efforts to collaborate with the Developer, to review deliverables, and to respond to information and access requests to facilitate due diligence.</p> <p>The Town may also undertake specific commitments related to the environmental process, negotiation of a PLA in accordance with Section No. 25, and certain other activities generally limited to its role as airport sponsor or to the Town as the lead agency and permitting body.</p> <p>The foregoing will not obligate the Town to take any action that would cause the Town to incur any material unreimbursed cost, liability, or risk or otherwise be contrary to certain public interest principles to be set forth in the PDA.</p>
<b>Predevelopment Work and Undertakings</b>		
8.	<b>Scope and Progression of the PDA Work</b>	<p>The Developer will undertake studying, planning, due diligence, analysis, preliminary engineering and design, outreach, and other responsibilities in relation to progressing the Project in advance of negotiating and agreeing to the Terminal Agreement.</p> <p>Such work (the “<b>PDA Work</b>”) is expected to include:</p> <ul style="list-style-type: none"> <li>• conduct of all PDA Work in accordance with a Town-approved Work Process Management Plan as described in Section No. 3;</li> <li>• undertaking due diligence in accordance with Section No. 10;</li> <li>• supporting completion of the environmental process in accordance with Section No. 9;</li> </ul>

No.	Agreement Term	Details
		<ul style="list-style-type: none"> <li>• assisting the Town in obtaining approvals including but not limited to FAA approval of the updated ALP, and providing any required documents;</li> <li>• preparing and submitting all other required deliverables, including the Key PDA Deliverables described in Section No. 11;</li> <li>• through such work, developing a funding, financing, construction, and operations plan for the Project and the Terminal Work, and securing all necessary commitments for the same;</li> <li>• procurement of critical Subcontractors, including a Construction Firm and, as applicable, any specialist Subcontractors with respect to a Station Connector, including compliance with any applicable competitive procurement requirements as described in Section No. 14; and</li> <li>• providing a basis for negotiation and agreement to the Terminal Agreement and to satisfaction of any conditions precedent to execution of the Terminal Agreement.</li> </ul> <p>The PDA Work will exclude any activity which is prohibited by law, any construction activity, and any grant of right or interest in real property or to develop the Project. The PDA Work may also restrict or condition certain activities, such as the process for submitting for permits, funding, or public financing.</p>
9.	<p><b>Status of the Environmental Process and Environmental Undertakings of the Parties</b></p>	<p>The environmental review processes for the Project pursuant to the New York State Environmental Quality Review Act (SEQR) and/or the National Environmental Protection Act (NEPA) have not been initiated.</p> <p>The SEQR and NEPA processes will require coordination and sequencing to avoid duplication and potential conflict between the two processes as provided by law. The Town initially expects that the FAA may require documentation to be prepared separately for SEQR and NEPA.</p> <p>The Developer will assume responsibility for the preparation of the environmental review documentation (including developing a coordinated SEQR/NEPA review process with joint procedures to satisfy both federal and New York State requirements only if such coordinated review process is authorized by the FAA), for working closely with the Town in the securing required approvals and permits, and for all mitigation under close supervision of the Town and the applicable regulatory agency.</p> <p>The Town will retain ultimate decision-making authority pursuant to SEQR and the FAA retains ultimate decision-making authority pursuant to NEPA. The Town will retain ultimate decision-making authority to submit the environmental documentation to the FAA.</p>

No.	Agreement Term	Details
		As to all other environmental approvals and permits, responsibility will be divided appropriately between the Town and the Developer with the Developer responsible for preparation of all required documentation in the first instance.
10.	<b>Due Diligence, Town-Provided Diligence Materials, and Design Inputs</b>	<p>The PDA will address Developer due diligence and investigation obligations and opportunities.</p> <p>The Developer will be obligated to undertake certain site diligence in order to establish a baseline for risk allocation regarding pre-existing conditions under any future Terminal Agreement, including to take into account any site management plan approved by the New York State Department of Environmental Conservation.</p> <p>In addition, the PDA will include customary provisions related to the Developer’s access to information, right to request supplemental due diligence information, and access rights to the Project Area, as well as customary limitations on the ability to rely on reference information, documents, and materials made available by the Town for diligence purposes.</p>
11.	<b>Deliverables Requirements and Key PDA Deliverables; Financial Model</b>	<p>The development, submission, and approval of various reports, plans, and other deliverables will be a principal part of the PDA Work.</p> <p>An Exhibit to the PDA will include provisions governing the submission, review and, as applicable, approval of all such deliverables, including specifically enumerated key work product to be prepared and submitted by the Developer (the “<b>Key PDA Deliverables</b>”).</p> <p>The Key PDA Deliverables will include:</p> <ul style="list-style-type: none"> <li>• a regularly updated Work Process Management Plan, as described in Section No. 12;</li> <li>• updates to plans and materials first required to be included in draft or preliminary form as part of the Stage 2 SOQ, together with such other plans and materials as are necessary to support the environmental process, to inform negotiation of the Terminal Agreement, and for any potential required approvals or permits;</li> <li>• regular monthly status reports; and</li> <li>• additional deliverables evidencing progression of design (with advancement of design to at least a 30% stage of development) and pre-construction, financing, and other activities.</li> </ul> <p>The Town also expects that as a Key PDA Deliverable, or as a separately required requirement, the Developer will prepare one or more spreadsheet-based financial models (each, a “<b>Financial Model</b>”) that will be shared with the Town and will be updated for material new information</p>

No.	Agreement Term	Details
		and will be developed in a manner that supports PDA Work and informs the negotiation and agreement of a Terminal Agreement.
12.	<b>Work Process Management Plan</b>	<p>The Developer’s “<b>Work Process Management Plan</b>” will provide a foundational basis for the Developer to manage, and the Town to oversee and provide input on, the progression of the PDA Work.</p> <p>The Work Process Management Plan is expected to include the following:</p> <ul style="list-style-type: none"> <li>• a work performance and management plan;</li> <li>• a schedule for the performance of the Work;</li> <li>• tracking for deliverables;</li> <li>• discussion of the division of responsibility among the Developer’s team, including Principal Participants, Key Personnel, and any Subcontractors; and</li> <li>• such additional narrative and summary elements as are necessary to give effect to the purpose of the plan.</li> </ul>
13.	<b>Transparency Principle</b>	Developer will be required to conduct the development and refinement of any financial, pricing, or economic information, inputs, outputs, calculations, or assumptions, including any costs estimates, forecasts, and projects, incorporated or relied on in the Key Deliverables and in conjunction with any competitive procurement or Subcontractor selection, using a transparent “open book” and “over-the-shoulder review” process.
14.	<b>Developer-Managed Competitive Solicitations</b>	<p>Subject to review and comment by the Town on all bidding procedures and documents, the Town expects to require the Developer to solicit competitive bids from at least prospective Construction Firms and, to the extent required by applicable law or otherwise, certain other Subcontractors.</p> <p>Procurement of a Construction Firm will be a condition precedent to execution of a Terminal Agreement. Any such procurement must also require compliance with the PLA to be developed and negotiated in accordance with Section No. 25.</p> <p>In connection with this, the Town reserves the right to elect to competitively procure categories of future Terminal Work on behalf of the Developer and/or the Project (with the Developer in such cases acting as the Town’s agent) to the extent necessary for compliance with applicable law with respect to public works.</p>
15.	<b>Design Management</b>	<p>Acting on behalf of the Town, the Developer will coordinate and manage the progression of all design work by the Lead Design Firm, including to conform to all other Town-approved Key PDA Deliverables.</p> <p>To the extent necessary to maintain compliance with State law, including the Education Law §§ 7302-7303, design work will be coordinated and</p>

No.	Agreement Term	Details
		<p>undertaken in accordance with a tri-party agreement among the Town, the Developer (as the Town’s designated Project manager), and the Lead Design Firm (such agreement, the “<b>Design Direct Agreement</b>”). The anticipated principal terms and conditions of such agreement are set forth in <b>Annex B</b> to this Term Sheet.</p> <p>The Town reserves the right to require additional equivalent agreements with respect to any firm providing engineering design and architectural services within the scope of the applicable laws and regulations.</p>
16.	<b>Interactions with Third Parties</b>	<p>The PDA will include provisions governing interactions with Airport and Town employees, Airlines, the County and LIRR, and other third parties, including those with existing agreements with the Airport and the Town and in connection with the pursuit of public sources of funding and financing.</p>
17.	<b>Negotiation of the Terminal Agreement</b>	<p>Following approval of certain Key PDA Deliverables to be identified in the PDA, the Town will initiate the process to negotiate the Terminal Agreement, including by preparing for discussion a draft Terminal Agreement. The Parties will then endeavor in good faith to negotiate and mutually agree on the terms of the Terminal Agreement in accordance with the following.</p> <p>For purposes of negotiating the Terminal Agreement, Parties will acknowledge and agree that agreement will, unless otherwise agreed:</p> <ul style="list-style-type: none"> <li>• substantially conform to the form or terms of the Terminal Agreement attached as an Exhibit to the PDA (for which purposes the Town has not yet determined whether such Exhibit will include a form of agreement or an indicative term sheet);</li> <li>• be negotiated by reference to and, to the extent applicable, including commitments set forth in, the Stage 2 SOQ the Project Assumptions, Commitments, &amp; Requirements, and Key PDA Deliverables; and</li> <li>• incorporate such additional, supplemental, replacement, and/or alternative terms and conditions as the Town determines are necessary to comply with law or any agreement binding on the Town.</li> </ul> <p>The Parties will agree that, unless waived by the Town, certain conditions must be satisfied as a condition precedent to execution of the Terminal Agreement, including completion of the environmental process and receipt of Town Board approval.</p>
18.	<b>Milestones and Deadlines</b>	<p>The Town anticipates that the PDA will establish deadlines for certain Key PDA Deliverables and other critical elements of the PDA Work (e.g. design deliverables, updates to financial plans and models, etc.).</p>

No.	Agreement Term	Details
		The Town is considering allowing Shortlisted Proposers to competitively submit their schedules for achievement of such milestones.
<b>Reimbursement and Compensation</b>		
19.	<b>Reimbursement for Town Costs and Expenses</b>	<p>The Town anticipates requiring the Developer to pay the Town a defined amount in the form of a pre-development rights fee, as partial reimbursement for certain previously incurred procurement costs and expenses, upon execution of the PDA.</p> <p>In addition, the Town may include, as a condition precedent to any Terminal Agreement, payment in order to reimburse the Town for certain other costs and expenses incurred in connection with the Project, subject to a not-to-exceed amount. Such payment would be due upon execution of the Terminal Agreement or at a later date to be agreed, such as financial close.</p> <p>In addition, in limited circumstances including termination of the PDA due to Developer default, the Town may seek to recover (including through set-off) such amounts from the Developer.</p>
20.	<b>Compensation for PDA Work Generally</b>	<p>Other than the PDA Termination Reimbursement Payment (as defined in Section No. 21), the Town does not intend to provide compensation for PDA Work on a current or milestone (deliverables) basis during the Term of the PDA.</p> <p>The Developer will be expected to perform the PDA Work at risk in consideration of its right to negotiate and enter into a Terminal Agreement.</p>
21.	<b>PDA Termination Reimbursement Payment</b>	<p>In the event that the PDA terminates or expires without a successor Terminal Agreement being agreed and executed, in those circumstances in which no Developer default has occurred the Town will reimburse the Developer for certain permissible reimbursable costs (the “<b>PDA Termination Reimbursement Payment</b>”). Such payment will be net of amounts owed to the Town.</p> <p>The PDA Termination Reimbursement Payment will be subject to a defined cap. The cap on compensation will vary to take into account the reason for termination and the amount of work performed to date.</p> <p>The Town anticipates requesting that Shortlisted Proposers to propose the required amounts for such caps as part of their Stage 2 SOQs.</p>
22.	<b>Compensation for Engineering and Architectural Services included in the PDA Work</b>	<p>The Town intends to pay for engineering and architectural services through the Developer as Town’s agent (advancing such payments, on the Town’s behalf, pending reimbursement through the PDA Termination Reimbursement Payment or at financial close, as applicable), and without such arrangement altering the duties and responsibilities governing the relationship of the Parties as set forth in any Design Direct Agreement.</p>

No.	Agreement Term	Details
		The Town reserves the right to adjust the provisions relating to payment of the Lead Design Firm under the terms of the Design Direct Agreement to the extent necessary to comply with law.
<b>Key Personnel, Subcontracting, and Labor Compliance</b>		
23.	<b>Restrictions on Personnel and Principal Participant Changes</b>	To include customary provisions restricting changes in named Key Personnel and Principal Participants.
24.	<b>Personnel and Subcontracting Generally</b>	To include customary provisions regarding the standards for employing personnel and Subcontractors, and providing that the Developer is responsible for the conduct of all such personnel and Subcontractors.
25.	<b>Project Labor Agreement Requirements</b>	<p>In accordance with New York State law, including, as applicable, Labor Law § 222 and General Municipal Law § 101, the Town will require the Developer and any Construction Firm (and any other Subcontractor performing applicable work within the scope of General Municipal Law § 101, including potentially any Connector Systems Firm) to enter into a project labor agreement (“PLA”) during and for the covered public work.</p> <p>The PLA is expected to be developed and negotiated as part of the pre-development process and in advance of solicitation and selection of any Construction Firm or other covered Subcontractor. The Town will undertake development of the PLA in consultation with the Developer.</p>
<b>Changes to the PDA Work and Relief Events</b>		
26.	<b>Changes</b>	<p>To include customary provisions allowing for changes in certain circumstances.</p> <p>Town reviews, comments, inputs, and other actions in the ordinary course of coordinating the PDA Work and negotiating the Terminal Agreement will not constitute changes.</p>
27.	<b>Force Majeure and Other Relief Events</b>	<p>The PDA will define events which will entitle the Developer to relief from its obligations and/or schedule relief, but not compensation.</p> <p>All such events will be subject to timely notice, efforts to mitigate, and an absence of Developer fault.</p>
<b>Compliance Matters and Public Interest Protections</b>		
28.	<b>Compliance with Federal, State, and Local Requirements</b>	<p>The PDA, by reference to an Exhibit, will require the Developer to perform the PDA Work in accordance with applicable law and comply with any federal, State, and local requirements incorporated into the PDA.</p> <p>The Town continues to consider whether such terms would anticipate use of federal funding and financing. Additional details regarding this assumption will be provided in an Addendum to the Shortlisted Proposers.</p>

No.	Agreement Term	Details
29.	<b>Subordination Principle</b>	<p>The PDA will be subordinate to the provisions of any existing or future agreements between the Town and the U.S. federal government and the Grant Assurances.</p> <p>In the event that the PDA conflicts with or violates the Grant Assurances, the Town will promptly notify the Developer of such conflict or violation, and work with the Developer to amend, alter, or otherwise modify the terms of the PDA in order to resolve such conflict or violation in a manner reasonably acceptable to both the Town and the Developer.</p>
30.	<b>Town Oversight</b>	<p>The Town will maintain customary rights to conduct audits and inspections. The PDA will also include customary provisions regarding the maintenance of records.</p> <p>In addition, the Town will reserve the right to increase its oversight of the Project and/or suspend the PDA Work and/or request a remedial plan in the event that there are material defects in the PDA Work, a Developer default, or other material fault event has occurred and not been cured.</p>
31.	<b>Public Records Law Requirements</b>	<p>The PDA will include rules necessary to comply with New York State Freedom of Information Law (FOIL) requirements, including to provide for the submission of confidential and proprietary information, similar to Section 11 of the RFQ.</p>
32.	<b>Additional Security Compliance Matters</b>	<p>The PDA will include customary provisions related to additional compliance matters such as recordkeeping, audits, data security, and the handling of sensitive security information, as well as compliance with security directives and other orders issued by the TSA, with the Airport Security Program, and with all other laws and regulations related to Airport security.</p>
33.	<b>Indemnification</b>	<p>The Town will not indemnify the Developer.</p> <p>Subject to customary exclusions and qualifications, the Developer will indemnify the Town.</p>
34.	<b>Insurance Requirements</b>	<p>The PDA, by reference to an Exhibit, will require the Developer to furnish customary insurance coverage with specified limits.</p> <p>The Developer is not expected to be required to provide security for the performance of the PDA Work.</p>
35.	<b>Performance Security Requirements</b>	<p>The Town expects to require the Developer to maintain a bond or letter of credit in an appropriate amount to secure the Developer's obligation to perform the PDA Work and enter into any negotiated and agreed Terminal Agreement, upon which the Town may draw upon in the event of a default.</p>
<b>Defaults and Termination</b>		
36.	<b>Developer Defaults</b>	<p>The PDA will include usual and customary events of default by the Developer, subject to applicable notice and cure periods.</p>

No.	Agreement Term	Details
37.	<b>Termination Due to Failure to Proceed</b>	<p>In addition to provisions governing termination due to default and for Town convenience, the PDA will include provisions allowing the Town, in its discretion, to terminate the PDA if certain no-fault circumstances have occurred and are continuing.</p> <p>Such circumstances will include the following:</p> <ul style="list-style-type: none"> <li>• The Town determines that required Project funding is not and will not be available.</li> <li>• The Town determines through the environmental process that the benefits of the Project do not outweigh its environmental impacts, or that any material element of the Project cannot proceed substantially in the form proposed by Developer.</li> <li>• The Town receives any notice or directive from the FAA, the U.S. Environmental Protection Agency, or any other authority having jurisdiction which precludes proceeding with the PDA Work, or any other material element of the Project, or with the Terminal Agreement and the Terminal Work.</li> <li>• The Project, or any material element of the Project, is not financially feasible, or otherwise requires a material subsidy, funding, financing, or other payment, or other form of commitment and support from the Town or another governmental authority.</li> <li>• Extended force majeure or unanticipated events.</li> <li>• The Terminal Agreement not having been agreed and made effective by an outside date certain.</li> </ul> <p>In addition, Developer will be permitted to request that the Town initiate termination for any of the above reasons.</p>
38.	<b>Termination Process and Payments</b>	<p>The PDA will include customary notice and process provisions governing termination. In addition, the Town will pay the PDA Termination Reimbursement Payment in accordance with Section No. 21.</p>
39.	<b>Post-Termination or Expiry Activities</b>	<p>The PDA will include customary provisions to facilitate the termination and handover process, including provisions for the assignment and transfer of Subcontracts, permits, records, warranties, and work product.</p>
<b>General Provisions and Legal Matters</b>		
40.	<b>Work Product and Intellectual Property Rights</b>	<p>The PDA will include customary provision governing Town ownership of work product including deliverables (which work product will be consider “work for hire,” and licensing of associated intellectual property rights in deliverables.</p>
41.	<b>Transfer Restrictions</b>	<p>Except as expressly permitted, Developer or any Equity Member will not directly or indirectly transfer any of Developer’s interest in and to the PDA</p>

No.	Agreement Term	Details
		<p>in whole or in part, including through an equity transfer or a change of control, without the prior written consent of the Town in its discretion, provided that a Permitted Equity Transfer which is not otherwise prohibited by law and which would not be made to a Person who or which is disqualified, suspended, or debarred or who or which is subject to a proceeding to suspend or debar from bidding, proposing, or contracting with any governmental authority, will not be subject to the Town’s prior approval.</p> <p>For such purposes a “<b>Permitted Equity Transfer</b>” will be limited to certain open market transactions, transfers within certain fund structures, upstream reorganizations, and certain transfers among affiliates which do not result in a change of control.</p>
42.	<b>Remedies and Liability</b>	To include customary provisions regarding restrictions on remedies and liability, including a waiver of consequential damages and a requirement for joint and several liability of constituent members of joint ventures.
43.	<b>Governing Law</b>	The Agreement will be governed in accordance with the laws of the State of New York.
44.	<b>Miscellaneous</b>	Necessary “boilerplate” and other miscellaneous provisions, including regarding disputes.
<b>Exhibits</b>		
45.	<b>List of Exhibits</b>	<p>To include exhibits of materials not otherwise incorporated into the main body of the Agreement, including:</p> <ul style="list-style-type: none"> <li>• Rules of Interpretation &amp; Construction</li> <li>• Definitions</li> <li>• Representations &amp; Warranties</li> <li>• Opportunity Goals (from the RFQ)</li> <li>• Project Assumptions, Commitments, &amp; Requirements</li> <li>• Deliverables</li> <li>• Form of or Indicative Term Sheet for Terminal Agreement</li> <li>• Form of Design Direct Agreement</li> <li>• Insurance Requirements</li> <li>• Federal, State, &amp; Town Requirements</li> <li>• Other Requirements</li> <li>• Proposed Project Area</li> </ul>

No.	Agreement Term	Details
46.	<b>Project Assumptions, Commitments, &amp; Requirements</b>	<p>This Exhibit will be comprised of three parts.</p> <p>The Project Requirements will list technical and similar requirements and standards.</p> <p>The Project Commitments will include extracts from the Stage 2 SOQ.</p> <p>The Project Assumptions will include a list of foundational assumptions relevant to the Shortlisted Proposers in preparing and submitting a Stage 2 SOQ and, subsequently, for purposes of performing PDA Work, to the extent such assumptions are not otherwise provided through incorporation of the form of, or term sheet for, the Terminal Agreement. This will include:</p> <ul style="list-style-type: none"> <li>• A restatement of assumptions on which Shortlisted Proposers will be entitled to rely for purposes of preparing and submitting a Stage 2 SOQ, which assumptions are already otherwise incorporated in the RFQ.</li> <li>• A list of supplemental, modified, or additional assumptions which Shortlisted Proposers will be entitled to rely on for purposes of preparing and submitting a Stage 2 SOQ, including key commercial assumptions.</li> </ul> <p>The Town may initially release, through an Addendum, the Project Assumptions as an Exhibit to the RFQ. In addition to being incorporated in the PDA, elements of them may likewise be incorporated into the Terminal Agreement.</p>

### **Annex A: Terminal Agreement Term Sheet**

The following reflects an initial high-level summary of the Terminal Agreement. The Town invites Proposers to submit comment regarding which terms of the future Terminal Agreement should be included in future updates to this term sheet and/or in any future Exhibit to the PDA, each as issued by Addendum, in order to facilitate preparation and delivery of a Stage 2 SOQ.

<b>No.</b>	<b>Agreement Term</b>	<b>Details</b>
<b>1.</b>	<b>Term</b>	Not to exceed forty (40) years from Project completion and commencement of the Terminal lease.
<b>2.</b>	<b>Granting Clause</b>	To authorize Terminal Work and, upon completion, grant a lease with respect to the completed Terminal, for purposes of performing operations and maintenance work.
<b>3.</b>	<b>Scope</b>	Provisions governing scope, including to definitively allocate obligations and liabilities with respect to the Terminal and the Airport as between the Parties, and to address interface between the Terminal and Terminal Work, the Airport, and other facilities, projects, and Airport development.
<b>4.</b>	<b>Financial Close</b>	To include a provision to require achievement of financial close of Project financing by a date certain, with such obligation to be secured by a surety bond or other acceptable security. To also include customary provisions to address failures to achieve financial close.
<b>5.</b>	<b>Construction and Commissioning</b>	To include provisions governing, and enabling Town oversight of, Terminal and Station Connector construction and commissioning, including an appropriate longstop date.
<b>6.</b>	<b>Operations and Maintenance</b>	To include provisions governing standards for operations and maintenance of the Terminal and any Station Connector, as well as related activities including with respect to marketing and air service development.
<b>7.</b>	<b>Economic Terms</b>	To include permission to collect and retain specified permitted Project revenues. Provisions for the payment of rent to the Town, in addition to other potential economic terms with respect to tax, increases in rent over time, revenue sharing, and similar terms.
<b>8.</b>	<b>Relief Events</b>	Customary provisions allocating risk and providing the Developer with relief and, in certain circumstances, compensation as a result of specified unanticipated events.
<b>9.</b>	<b>Public Interest Protections</b>	Customary and legally required compliance provisions, together with provisions to protect the public interest, including with respect to: indemnification; insurance and bonding; intervention and the suspension of the work; security; records, inspections, and audits; FOIL; and transfer restrictions.
<b>10.</b>	<b>Additional Provisions</b>	All other necessary and customary provisions, including with respect to default, termination, and disputes.

## Annex B: Design Direct Agreement Term Sheet

The Town expects to require that any Design Direct Agreement will:

- include each of the Town, the Developer, and the Lead Designer (and any other Subcontractor performing engineering design and architectural services within the scope of the applicable laws and regulations including the Education Law), with ultimate design liability expected to be owed to the Town to the extent required by law;
- to the extent permitted by law, delegate to the Developer, acting as the Town's agent, authority to manage, coordinate, and inform the Lead Designer's work including to coordinate the PDA Work as a whole, including for the purpose of achieving outcomes in line with a customary design-build-finance-operate-maintain scope of work, provided that the agreement shall include legally required reservations of rights for the Town to review and approve design work;
- provide for payment based on rates and terms customary for such service, as will be disclosed to and agreed by the Town through the Stage 2 SOQ submission or subsequently;
- include provisions to manage the interface between the Developer and the Lead Designer, including to reduce the risk to the Town associated with claims that could arise between such parties;
- include customary design warranties;
- provide for payment in accordance with Section No. 22 of the Term Sheet;
- permit or require assignment to the Developer, and/or the Construction Firm for purposes of forming a joint venture, in each case to the extent such assignment is permitted under law at the time;
- and, directly or indirectly, include all other necessary and customary provisions.

The Town is considering options for developing the form of agreement to be included in an Exhibit to the PDA, including a short-form agreement to include standard terms and conditions presented by Shortlisted Proposers, a longer form agreement to include all essential terms, and a limited direct agreement assuming that the Developer would have a separate form of engagement with the Lead Designer.

The Town invites Proposers to submit comment regarding which terms of the future Design Direct Agreement should be included in future updates to this term sheet and/or in any future Exhibit to the PDA, each as issued by Addendum, in order to facilitate preparation and delivery of a Stage 2 SOQ, as well as the preferred approach to developing the complete agreement to attach as an Exhibit to the PDA as among the options listed above (or other options).

**ATTACHMENT 1B: FORM OF PRE-DEVELOPMENT AGREEMENT**

*[To be released following the announcement of Shortlisted Proposers through the issuance of an Addendum during Stage 2.]*

**ATTACHMENT 2: FORM OF TERMINAL AGREEMENT**

*[To be released following the announcement of Shortlisted Proposers through the issuance of an Addendum during Stage 2.]*

**ATTACHMENT 3: MAP OF NORTH DEVELOPMENT AREA**



**ATTACHMENT 4: MAP OF SOUTH TERMINAL AREA**

