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April 8, 2026

Via Email Only

Chris.mellado@foley.com

Re: *The JV's Response to the State's First Deficiency Letter to Defendant JV*

Dear Chris:

We write on behalf of the State of Rhode Island (the "State") in response to your April 6, 2026 letter regarding the Barletta/Aetna I-195 Washington Bridge North Phase 2 JV's ("JV") interrogatory answers and responses to the State's first set of document requests.

We write to address the principal issues raised in your letter, using your headings for ease of reference.

I. Timing / Conferral History

Your letter references the State's March 17, 2026 correspondence and the timing of the parties' ensuing conferral efforts. While we disagree with any suggestion that the State has delayed or waived its right to seek adequate discovery responses, we do not believe the parties' competing schedules warrant further debate in writing. Both sides are now engaged in the required dialogue. The State's focus is on ensuring that the JV's responses comply with the Rhode Island Superior Court Rules of Civil Procedure and provide the information to which the State is entitled.

II. The JV's Interrogatory Responses Must Address the JV's Knowledge, Actions, and Contentions

The State's interrogatories seek the JV's factual knowledge, information, and contentions regarding the Washington Bridge and the work at issue in this litigation. While the 2021 Design-Build Contract and Bridge Technical Criteria ("BTC") undoubtedly define certain aspects of the JV's scope of work, they do not substitute for complete interrogatory responses.

Directing the State to the contract and BTC, without providing narrative responses that (a) identify specific provisions, (b) explain how the JV understood and implemented those

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provisions, and (c) address the JV's knowledge of conditions on the bridge, is insufficient. The Rules require the JV to provide "such information as is available to the party" in response to properly framed interrogatories; they do not permit a responding party to avoid answering by simply pointing to large categories of documents or to the text of the contract itself.

Further, the fact that the State served similar interrogatories and document requests on multiple defendants does not render the discovery "disproportionate" or "one-size-fits-all" in any improper sense. The JV is a central defendant with a substantial role in the design-build project. The State is entitled to obtain the JV's own information and contentions, even if other defendants receive similar discovery tailored to their respective roles. To the extent individual interrogatories or requests do not fit the JV's role, the State is prepared, as always, to consider reasonable clarifications or limitations—but not wholesale refusal to answer.

III. Expert Opinion and Hypothetical Questions

Your letter asserts that several interrogatories improperly seek "expert opinion" by asking what "should have been done," what "industry standards" required, or what a "reasonable" program or method would have entailed. We disagree that such questions are categorically improper at this stage.

Under Rule 33, interrogatories may properly seek the responding party's contentions and the factual bases for those contentions, including the party's views regarding standards of care and reasonable practices. To the extent the JV contends that its conduct complied with applicable standards, or that responsibility lies with others, it must disclose the factual and, to a reasonable extent, the conceptual bases for those positions. That includes, for example:

- what inspection methods the JV contends were appropriate or necessary;
- what inspection frequency or scope the JV contends was reasonable;
- what "industry standards" the JV contends governed its work.

The JV cannot both (a) assert defenses and counterclaims that necessarily invoke standards of reasonableness and professional practice, and (b) refuse to answer interrogatories that probe those same standards as beyond the scope of lay discovery. Interrogatories asking what "should have been done" in light of the JV's actual knowledge and responsibilities are a standard part of contention and liability discovery.

Your letter also suggests that the JV's response to Interrogatory No. 9, which places responsibility on RIDOT as the "authority having jurisdiction," suffices as a factual answer. The State is not asking the JV to opine as a retained expert; it is asking what the JV understood, at the time, to be appropriate inspection frequency and scope, and what it did or did not do in light of

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that understanding. The JV must answer those questions based on the knowledge and information held by its personnel and consultants during the relevant period.

Similarly, in response to Interrogatory No. 10, reference to the Lichtenstein report and the State's alleged failure to provide it does not fully answer what "methods should have been employed" according to the JV's own view and knowledge. The JV must describe the methods it contends were appropriate and the factual basis for that contention, irrespective of any separate argument that the State possessed additional information.

IV. Vagueness Objections

The JV objects that certain terms—such as "descriptions of deterioration," "structural deficiency," "fracture-critical elements," "risk assessments," and "critical areas"—are vague. These are not esoteric or idiosyncratic phrases; they are standard concepts in bridge engineering, inspection practice, and structural evaluation, and they are terms frequently used by both parties' experts and by industry authorities.

If the JV believed any particular interrogatory was unclear, the appropriate step under the Rules was to seek clarification, not to object broadly and refuse to answer. In any event, the JV and its consultants plainly have the expertise to interpret these terms in the ordinary course of their professional use on this project and in similar work.

The JV must provide substantive responses based on a good-faith, reasonable construction of the terminology, rather than treating the questions as unintelligible.

V. Contention and Damages Interrogatories

The JV's practice of directing the State to "pleadings, Answer, Affirmative Defenses, Counterclaim, and contract documents" is not an adequate substitute for a true contention interrogatory response.

Rule 33 expressly contemplates that contention interrogatories may be answered during discovery, and that parties may be required to state their positions and the principal facts on which they rely. The JV must, in its own words, identify:

- the specific theories of liability, fault allocation, and causation it asserts;
- the specific contract provisions, facts, and events that it contends support those positions; and
- a reasonably detailed explanation of how those alleged facts support its asserted damages, offsets, or other relief.

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The State acknowledges that discovery is ongoing and that the JV may supplement its contentions as appropriate under Rule 26(e). That does not relieve the JV of the obligation to provide its current contentions based on information known today, rather than merely pointing the State to voluminous pleadings and contract documents and reserving all rights to elaborate later.

VI. Document Production and Form of Responses

The State acknowledges the JV's two document productions to date and the volume of materials produced. The issue raised in the State's March 17 letter is not whether the JV has produced documents, but whether its written responses comply with Rule 34 and the parties' ESI Protocol.

1. Affirmative Statement Regarding Existence of Responsive Documents

Rule 34 requires the responding party to state, for each request, whether inspection and related activities will be permitted as requested, or whether the request is objected to in whole or in part, and the basis for any objection. Where documents are being produced, the responding party must clearly indicate whether the production is complete or whether additional responsive documents are being withheld on the basis of specific objections.

The JV's current responses, which simply lodge objections and then refer generally to large-scale productions, do not clearly answer the basic question: for each request, does the JV possess responsive documents, and, if so, has it produced them in full or is it withholding any categories of documents based on an objection? The State is entitled to that clarity.

The State's request that the JV "confirm whether responsive documents exist" for each request is not a mere "formality." It is fundamental to determining:

- whether the JV's search was complete for that category; and
- whether any responsive materials have been withheld so that the State may assess the need for motion practice.

2. Objections and Narrowing of Requests

Your letter suggests that, where the JV objected to the scope of certain requests, it nonetheless produced "documents it reasonably identified as responsive," and that this should resolve the State's concerns. Without a clear statement of the narrowing applied—search terms, custodians, date ranges, or other limits—the State cannot know what, if anything, has been withheld based on those objections.

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The State is requesting that the JV:

- identify, for each objected-to request, any specific categories of responsive documents it has withheld; and
- describe, in reasonable detail, the search parameters and limitations applied (custodians, time periods, file types, and search terms where applicable).

This is necessary both for transparency and for evaluating proportionality under Rule 26(b).

3. ESI Protocol

You note that the ESI Protocol contemplates that the requesting party “will first propose search terms, date ranges, and custodians.” The State will provide its requested search terms to the JV by EOB April 9, 2026, and will be amenable to narrowing its scope if requested and deemed reasonable by the State. That said, the protocol does not relieve the JV of its independent obligation to conduct a reasonable search for responsive materials using the sources and methods it knows are most likely to locate relevant documents within its possession, custody, or control.

The State asks the JV to identify:

- the custodians searched to date;
- the date ranges applied;
- the principal search terms or filters used; and
- any key sources not yet searched (e.g., project-wide shared drives, consultant repositories, non-email communications platforms).

4. Privilege

The JV states that no documents have been withheld on grounds of privilege and that, accordingly, no privilege log has been served. If that remains the case, the State asks that the JV expressly confirm, in writing, that: (a) no responsive documents have been withheld on the basis of attorney-client privilege, work-product doctrine, or any other protection; and (b) should that change, the JV will timely serve a privilege log compliant with the Rules.

VII. Path Forward

The State’s goal is to avoid unnecessary motion practice by securing the information to which it is entitled.

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Finally, the State requests that the JV provide the above requested items. If the JV disagrees, please note your disagreement in writing so that the State may assess its next steps, if any are warranted.

As always, thank you for your professional courtesies in resolving these matters.

Sincerely,

Takisha Richardson

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