DESIGN, BUILD, AND FINANCE AGREEMENT
for the
I-285 / I-20 WEST INTERCHANGE PROJECT

Between

State Road and Tollway Authority,

a body corporate and politic and an instrumentality and public corporation of the State of Georgia

and

LEGACY INFRASTRUCTURE CONTRACTORS, LLC

Dated as of October 10, 2024

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LIST OF EXHIBITS

DESIGN, BUILD AND FINANCE AGREEMENT
FOR THE I-285 / I-20 WEST INTERCHANGE PROJECT

This Design, Build, and Finance Agreement for the I-285 / I-20 West Interchange Project (this "Project Agreement") is entered into and effective as of October 10, 2024 (the "Effective Date"), by and between the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia ("Authority"), and Legacy Infrastructure Contractors, LLC, a Georgia limited liability company ("Developer").

R E C I T A L S

A. Pursuant to the O.C.G.A. § 32-10-60, *et seq.* (the "Authority Act"), particularly § 32-10-60(5) of the Authority Act, Authority is authorized to undertake certain "project[s]," approved by Authority and the Georgia Department of Transportation ("GDOT").

B. Pursuant to § 32-10-63(5) of the Authority Act, Authority is permitted to make "contracts, leases, or conveyances as … legitimate and necessary" to carry out the purpose for which it was created.

C. Pursuant to the Authority Act, GDOT, as grantor, and Authority, as grantee, entered into that certain Estate for Years (I-285 / I-20 West Interchange Project), on October 10, 2024 relating to the conveyance of the real property interests needed by Authority to advance the development of the hereinafter referenced Project (the "Estate for Years"), as contemplated in the Authority Act and the Official Code of Georgia Annotated (the "Code") § 44-6-100.

D. The State of Georgia (the "State") desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and the Georgia Legislature has enacted O.C.G.A. § 32-2-78 *et seq.*, and GDOT has adopted Chapter 672-17 of the Rules and Regulations of GDOT (the "Rules"), to accomplish that purpose.

E. Pursuant to Article IX, Section III, Paragraph I (a) of the Constitution of the State, GDOT and Authority are permitted to enter into intergovernmental contracts, and pursuant to O.C.G.A. § 32-2-61, GDOT is expressly permitted to enter into intergovernmental contracts, including with Authority, concerning the joint or separate use of facilities and the provision of services (among other things).

F. GDOT and Authority are parties to that certain Intergovernmental Agreement (I-285 / I-20 West Interchange Project) dated as of October 10, 2024 (the "Intergovernmental Agreement") setting forth certain terms and conditions pursuant to which, among other things, (i) the Parties will assist one another in connection with the development, design, construction, financing, and implementation of the Project, (ii) Authority has memorialized its acceptance of the RFP (defined below) selection recommendation made by the State Transportation Board, and (iii) Authority has designated GDOT as the project manager and agent (for purpose of this Project Agreement, the "project manager") for Authority with respect to the transactions contemplated herein.

G. The State Transportation Board (acting for and on behalf of GDOT) and Authority have each passed a joint resolution (the "Joint Resolution"), dated April 20, 2023 and June 26, 2023, respectively, pursuant to which (i) GDOT and Authority have (a) approved the Project as a joint undertaking and (b) allocated roles and responsibilities relating to the design, construction, financing, and implementation of the Project, and (ii) GDOT has authorized the inclusion of the payment to Authority, with respect to the capital and other agreed-upon costs of the Project, in GDOT's annual budgetary and appropriations actions (including amounts that are necessary for Authority to carry out its obligations under this Project Agreement).

H. GDOT and Authority are parties to that certain Memorandum of Understanding (I-285 / I-20 West Interchange Project) dated as of October 10, 2024, which must be affirmatively renewed by GDOT and Authority each Fiscal Year to remain in effect (the "Memorandum of Understanding" or "MOU"), pursuant to which GDOT commits and agrees to transfer certain funds to Authority relating to the Project from annually budgeted and appropriated amounts, subject in all cases, to the provisions of PA Section 1.3.4 (*Project Administration*).

I. Pursuant to the provisions of the Code and the Rules, GDOT issued a Request for Qualifications on January 20, 2023, as amended, requesting submittals of statements of qualifications from respondents desiring to develop, design, finance, and construct the I-285 / I-20 West Interchange Project (as further defined hereunder, the "Project") through a design-build-finance agreement.

J. GDOT received two responsive statements of qualification, and subsequently shortlisted two responsive proposers.

K. On June 30, 2023, GDOT issued to the shortlisted proposers a Request for Proposals, identified as RFP Draft #1 to design, construct and finance the I-285 / I-20 West Interchange MMIP Project through a Design-Build-Finance Agreement, Project P.I. No. 0013918 (as subsequently amended pursuant to RFP Draft #2, issued November 8, 2023, and the Final RFP, issued on March 15, 2024, as amended by Amendment #1 to the Final RFP issued April 19, 2024, Amendment #2 to the Final RFP issued April 30, 2024, and Amendment #3 to the Final RFP issues May 24, 2024 (the "Request for Proposals" or "RFP").

L. On June 12, 2024, GDOT received responses to the RFP, including the response of Legacy Infrastructure Contractors, LLC, on behalf of Developer (the "Proposal").

M. As part of the RFP, GDOT required that shortlisted proposers commit to entering into a Project Agreement with Authority for the development, design, financing, and construction of the Project.

N. An RFP selection recommendation committee comprised of GDOT staff determined that the proposer that formed Developer submitted the Proposal that provides the State with the best value, as measured against the selection criteria contained in the RFP (i.e., was the "Best Value Proposer").

O. On August 15, 2024, the State Transportation Board accepted the recommendation of the GDOT steering committee and the RFP selection recommendation committee and authorized GDOT's staff on behalf of Authority to negotiate this Project Agreement.

P. Authority has been authorized to enter into this Project Agreement, the other "DBF Documents" and the "Security Documents" (each defined in PA Exhibit 1 (*Abbreviations and Definitions*)), each of which forms a part hereof, pursuant to, among others, Section 32-10-63(5) of Authority Act, all for the express purpose of facilitating the public-private partnership contemplated under the Code and the Rules, and thereby serving the best interests of the citizens of this State.

NOW, THEREFORE, in consideration of the Work to be performed by Developer, and Developer's financing obligations with respect thereto, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

Article 1 DEFINITIONS; DBF DOCUMENTS; ORDER OF PRECEDENCE; PROJECT ADMINISTRATION

1.1 Definitions

Definitions for certain terms used in this Project Agreement and the other DBF Documents are contained in PA Exhibit 1 (*Abbreviations and Definitions*).

1.2 DBF Documents; Order of Precedence

Each of the "DBF Documents" (listed in PA Section 1.2.1 (*DBF Documents; Order of Precedence*)) is an essential part of the agreement between the Parties. The DBF Documents are intended to be complementary and to be read together with this Project Agreement, as a complete agreement. Each of the DBF Documents (other than this Project Agreement) is hereby expressly incorporated herein by reference.

1.2.1 Subject to PA Section 1.2.2 (*DBF Documents; Order of Precedence*), without limiting PA Section 1.2.3 (*DBF Documents; Order of Precedence*), PA Section 1.2.4 (*DBF Documents; Order of Precedence*), and PA Section 1.2.5 *(DBF Documents; Order of Precedence*), and except in those circumstances expressly stated specific to particular provisions (e.g., PA Section 6.3.1.2 (*Submittal Review; Authority Oversight; Independent Quality Assurance*) and PA Section 21.1 (*Compliance with Federal Requirements*)), in the event of any conflict, ambiguity or inconsistency among the DBF Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.1.1 Supplemental Agreements, and all exhibits, riders, and attachments thereto;

1.2.1.2 the body of this Project Agreement and PA Exhibit 1 (*Abbreviations and Definitions*);

1.2.1.3 all exhibits (other than PA Exhibit 1 (*Abbreviations and Definitions*) and PA Exhibit 2 (*Proposal Commitments*));

1.2.1.4 subject to PA Section 1.2.5 (*DBF Documents; Order of Precedence*) and PA Section 1.2.6 (*DBF Documents; Order of Precedence*), amendments to the Technical Provisions (including Interpretive Engineering Decisions, but excluding the Project Standards, except when expressly referenced in a Technical Provision);

1.2.1.5 subject to PA Section 1.2.5 (*DBF Documents; Order of Precedence*) and PA Section 1.2.6 (*DBF Documents; Order of Precedence*), the Technical Provisions (excluding Interpretive Engineering Decisions and the Project Standards, except when expressly referenced in a Technical Provision);

1.2.1.6 exhibits and attachments to such amendments to amended Technical Provisions;

1.2.1.7 exhibits and attachments to the unamended Technical Provisions;

1.2.1.8 Project Standards;

1.2.1.9 Proposal Commitments;

1.2.1.10 The accepted and then-current Project Management Plan (and component parts thereof), excluding Authority obligations thereunder.

1.2.2 Without limiting PA Section 1.2.3 (*DBF Documents; Order of Precedence*), PA Section 1.2.4 (*DBF Documents; Order of Precedence*), and PA Section 1.2.5 *(DBF Documents; Order of Precedence*), as among the Technical Provisions, in the event of any conflict, ambiguity or inconsistency among the Technical Provisions, the order of precedence, from highest to lowest, shall be as follows:

1.2.2.1 Design Exceptions;

1.2.2.2 Design Variances;

1.2.2.3 design criteria expressly stated in the Technical Provisions;

1.2.2.4 design criteria referred to, but not expressly stated, in the Technical Provisions (and as between Georgia-specific and non-Georgia-specific references, Georgia-specific references take precedence);

1.2.2.5 Developer-Provided Specifications;

1.2.2.6 Special Provisions; and

1.2.2.7 Standard Specifications (defined term). For avoidance of doubt, the (defined term) "Standard Specifications" does not mean the entirety of the GDOT Standard Specifications, but instead those portions included in the Technical Provisions as described.

1.2.3 If the DBF Documents contain any conflict, ambiguity, or inconsistency between or among provisions, then the provisions that establish the higher quality, manner, or method of performing the Work, exceed Good Industry Practice, or use more stringent standards will prevail. Additional details in a lower priority DBF Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority DBF Document. If the DBF Documents contain any conflict, ambiguity, or inconsistency between or among provisions that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence. For the avoidance of doubt, and without limiting Developer's obligations in PA Section 7.2.1 (*Design Work*), this Section 1.2.3 solely establishes which provisions prevail in the event of any conflict, ambiguity, or inconsistency between or among provisions in the DBF Documents, and does not address the Developer's required standard of care.

1.2.4 Where there is an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project set forth in any manual(s) or publication(s) referenced within a DBF Document or set of DBF Documents with the same order of priority (including within documents referenced therein), then the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality, manner, or method of performance will apply, unless Authority in its sole discretion approves otherwise in writing. If there is an irreconcilable conflict between manuals or publications referenced in a DBF Document of differing priorities, the order of precedence set forth in PA Section 1.2.1 (*DBF Documents; Order of Precedence*) will apply. If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict in writing. Authority will issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.2.5 Without limiting the foregoing, with respect to any conflict, ambiguity, or inconsistency between or among provisions of the same order of precedence, text documents prescribing specifications, standards, criteria, requirements, and conditions have precedence over drawings or other non-text Design Documents.

1.2.6 The ATCs set forth in the ATC Supplement attached in PA Exhibit 19 (*ATC Supplement*) (the "ATC Supplement") are hereby incorporated into the Project and the Work. The terms and conditions of the ATC Supplement shall supplement and otherwise amend the identified requirements of the Technical Provisions, except as otherwise stated in the DBF Documents (e.g., PA Section 7.14 (*Impact of ATCs on the Project*)).

1.3 Project Administration

1.3.1 Pursuant to the Intergovernmental Agreement, GDOT serves as the "project manager" with respect to certain aspects of the Project, subject to the terms and conditions of this Section.

1.3.2 In GDOT's capacity as "project manager" under the Intergovernmental Agreement, GDOT will provide Project oversight and administration on behalf of Authority, including serving as the payment review and approval agent for amounts due to Developer pursuant to this Project Agreement, conducting inspections, approving requisitions, and coordinating with and relaying decisions on behalf of Authority with respect to the Project. The general administration of the Project by GDOT is for the sole purpose of representing the public's interests, and the interests of GDOT and Authority, in determining that Work is executed in accordance with the DBF Documents. Notwithstanding the foregoing, Authority has expressly reserved and retained the obligation to issue payments for amounts due to Developer pursuant to this Project Agreement.

1.3.3 Authority's and Developer's rights and obligations under the DBF Documents are independent of, and are not conditioned upon, ancillary to or otherwise affected, diminished or altered in any way, by the terms of, effectiveness, enforceability or continuation of the Intergovernmental Agreement.

1.3.4 Nothing in this Project Agreement is intended to, nor shall be construed as, a limitation on GDOT's sole discretion to renew, or to determine not to renew, the MOU each Fiscal Year.

1.3.5 In addition to the foregoing, Authority shall (a) maintain the Public Contribution Account and (b) at the request of Developer (which prior to the termination or expiration of this Project Agreement may be on no more than a quarterly basis), provide Developer statements of account including balances, records of deposits into, and withdrawals from the Public Contribution Account.

1.3.6 Subject in all cases to PA Section 1.3.4 (*Project Administration*), Authority will not amend the MOU (as and to the extent then in effect) or replace the initial MOU with such other device so as to have a material adverse effect on Authority's ability to perform its obligations under this Project Agreement.

1.3.7 In its funding arrangements and other budgetary measures relating to the Project, Authority will use its best efforts to include the funding and timing principles set forth in the Joint Resolution and memorialized in the MOU (as and to the extent then in effect); provided, that if the MOU is not renewed, Authority and GDOT may replace the MOU with such other device so as to effect the funding and timing principles set forth in the initial MOU.

1.3.8 Authority agrees and acknowledges that it has a good-faith obligation to pursue alternative and additional funding, including seeking appropriations in its own name, to support the Project

and, as may be permitted under applicable Law, to make such other arrangements to make payments due and owing hereunder, in the event that the MOU is not renewed or revoked.

1.3.9 If this Project Agreement is terminated, Authority will identify the source(s) of funding needed to satisfy Authority's obligations to remit Termination Compensation (if any) due to Developer, including seeking appropriations in its own name, and Authority shall arrange for payment to be made to Developer as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

1.3.10 Unless Developer receives written direction from Authority otherwise, or otherwise as expressly set forth in this Project Agreement, (a) all notices, consents, directions, decisions, approvals, acceptances, and instructions to be given by, and all notices, reports, analyses, surveys, invoices, studies, plans, and all Submittals to be delivered to Authority with respect to the Project, shall be taken, given, directed and made through GDOT, subject to copies of such written notices, consents, directions, decisions, approvals, acceptances, and instructions to be delivered to Authority as required pursuant to PA Section 22.11 (*Notices and other Formal Communications*), and (b) Developer shall be entitled to rely on any such act, notice or statement of GDOT as if it were undertaken or given by Authority. During the Term, Authority will provide Developer with copies of (i) any notice of termination of the Intergovernmental Agreement or Estate for Years, (ii) any communication notifying Authority of GDOT's decision not to renew the MOU before the end of the then-current MOU Fiscal Year, and (iii) any communication notifying GDOT of Authority's decision not to renew the MOU before the end of the then-current MOU Fiscal Year.

1.4 Reference Information Documents

1.4.1 Generally.

1.4.1.1 Developer acknowledges that Authority and GDOT have provided and disclosed to Developer the Reference Information Documents.

1.4.1.2 The Reference Information Documents were provided for reference purposes only and are not mandatory or binding on the Parties.

1.4.1.3 Without prejudice to:

(a) Developer's right to draw any amount under PA Section 7.12 (*Discovery of Unexpected Subsurface Conditions*) with respect to Unexpected Subsurface Conditions; and

(b) Developer's separate right to claim any compensation or relief:

(i) under clause (f) of the definition of "Authority-Caused Delay", clause (e), clause (j), or clause (m) of the definition of "Compensation Event", or clause (g), clause (h), clause (q), or clause (t) of the definition of "Relief Event", or

(ii) with respect to the NEPA Basic Configuration only, under clause (k), clause (l), or clause (o) of the definition of "Compensation Event, or clause (k), clause (l), or clause (r) of the definition of "Relief Event",

in either case, in accordance with PA Article 13 (*Relief Events; Compensation Events*) and in each case subject to the terms and conditions within the definitions themselves, Developer may not rely on the Reference Information Documents as accurately describing existing conditions, presenting development, design, engineering, or construction solutions or other directions, means or methods for complying with the requirements of the DBF Documents, Governmental Approvals or Law.

1.4.2 Developer acknowledges that, except to the extent expressly provided otherwise in this Project Agreement, Authority and each Authority-Related Entity make no representation, warranty, or guarantee with respect to the relevance, completeness, accuracy, or fitness for any purpose of any of the information contained in the Reference Information Documents or that such information conforms with the requirements of the DBF Documents, Governmental Approvals or Laws, and none of Authority or any Authority-Related Entity shall have any liability to Developer or any Developer-Related Entity, nor shall Developer have any right to claim any extension of time, relief from obligations, or compensation with respect to:

1.4.2.1 any inaccuracy, omission, lack of fitness for any purpose or inadequacy of any kind whatsoever in the Reference Information Documents;

1.4.2.2 any failure to make available to Developer any materials, documents, drawings, plans, or other information relating to the Project as part of the Reference Information Documents; or

1.4.2.3 any causes of action, claims or Losses whatsoever suffered by Developer or any Developer-Related Entity by reason of any use of information contained in, or any action taken or forbearance made in reliance on, the Reference Information Documents.

1.4.3 Authority represents that, as of the Effective Date, Authority has not intentionally withheld material information in its possession relevant to conditions of the Property, and to the extent not included in the Property as of the Effective Date, the Existing Right of Way.

1.4.4 Developer acknowledges and agrees that it is obligated to conduct any and all studies, analyses, and investigations as it deems advisable to verify and supplement information in the Reference Information Documents or otherwise as may be required to perform the Work. Any use of information in the Reference Information Documents in performance of the Work, without verification or supplement, is entirely at Developer's own risk. If any Developer-Related Entity uses any of the information in the Reference Information Documents in any way, then such use is made on the basis that Developer, not Authority, has approved and is responsible for the information.

1.4.5 The Parties acknowledge and agree that general industry or general government manuals and publications that are part of the Reference Information Documents may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. Authority shall have no obligation to notify Developer regarding any such revisions, changes, additions or replacements. Developer shall independently maintain awareness of such changes as they are published or made public.

1.5 Formal Communications; Time Periods

1.5.1 Whenever the Parties communicate by Formal Communication, and such Formal Communication requires or requests an action or response by the other Party, then except where time periods are expressly stated elsewhere in the DBF Documents (e.g., PA Section 19.2 (*Standards and Procedures for Certain Authority Approvals*)), the receiving Party will take such action or offer such response promptly and in any event within 20 days, after the date of receipt.

1.5.2 The time periods for action and/or response shall apply to and restart with all subsequent Formal Communication reasonably relating to the original Formal Communication, except as may otherwise be agreed by the Parties (or determined pursuant to Dispute Resolution Procedures).

1.5.3 Notwithstanding the foregoing in PA Section 1.5.1 (*Formal Communications; Time Periods*) and PA Section 1.5.2 (*Formal Communications; Time Periods*), the time periods with respect to Authority's action or response (as applicable) shall be subject to equitable adjustment, generally in keeping with time period adjustments for Submittals as provided in TP Section 2.8.4 (Time Periods for the Authority's Review) for multiple concurrent Submittals or Formal Communications (or both), and Authority will undertake commercially reasonable efforts to respond promptly. In the case where Developer has received multiple Formal Communications from or on behalf of Authority or GDOT, by Formal Communication, Authority may (but shall not be required to) make, or upon request of Developer, may (but shall not be required to) accommodate, in each case its reasonable discretion, equitable adjustments to Developer's response time(s) under the DBF Documents (including within the Submittals Requirements Database) with respect to such iteration of multiple concurrent Notices, also generally in keeping with the time periods in TP Section 2.8.4 (Time Periods for the Authority's Review).

1.5.4 Notwithstanding anything to the contrary in the DBF Documents, Authority reserves the right, in its reasonable discretion, to determine whether any submission by, or on behalf of, Developer, and regardless as to title, is a Formal Communication or Submittal, and in each instance, whether (a) the Formal Communication presents a particular type of Notice or (b) a Submittal presents a particular type of Submittal, and, in either case, will act or respond as if such submission is such Formal Communication (or Notice) or Submittal in compliance with the terms, and in particular the time periods, with respect thereto. For avoidance of doubt, Authority's interpretation as to the nature of any submission that purports to be a "draft", is incomplete, or presents any information or communicates any intention of Developer that Authority, regardless as to title, otherwise determines to frustrate or exploit the Formal Communication and Submittal processes and time periods, shall be final and not subject to Dispute Resolution Procedures.

1.5.5 Refer to PA Section 22.11 (*Notices and other Formal Communications*) for additional provisions regarding Formal Communications.

1.6 Standards Relating to Authority Discretion

1.6.1 **Reasonableness Standard**. In all cases, where approvals, consents, determinations, acceptance, decisions or other actions are required to be provided or made by Authority under the DBF Documents, including with respect to Submittals, such approvals, consents, determinations, acceptance, decisions or other action shall not be withheld unreasonably except in cases where a different standard is specified in the DBF Documents.

1.6.2 **Good Faith Standard**. If the approvals, consents, determinations, acceptance, decisions or other actions are subject to the good faith discretion of Authority, then its approvals, consents, determinations, acceptance, decisions or other action shall be binding, unless it is finally determined through the Dispute Resolution Procedures that such Authority action was arbitrary or capricious.

1.6.3 **Sole Discretion Standard**. In cases where sole discretion is specified, the approval, consent, determination, acceptance, decision or other action shall not be subject to the Dispute Resolution Procedures or other legal challenge.

1.6.4 **Failure to Act**. In all cases where Authority approvals, consents, determinations, acceptance, decisions or other actions are required (regardless as to whether subject to the reasonableness, good faith or sole discretion standards) and Authority fails to act, such failure to act shall constitute a disapproval, lack of consent, rejection or equivalent.

1.7 Interpretive Engineering Decisions

1.7.1 Developer may apply in writing to Authority for approvals of an interpretive engineering decision concerning the meaning, scope, interpretation and application of the Technical Provisions (each an "Interpretive Engineering Decision"). Authority may issue a written approval of Developer's proposed Interpretive Engineering Decision, may issue its own Interpretive Engineering Decision, or may disapprove any Interpretive Engineering Decision that Developer proposes.

1.7.2 Developer's request for resolution of an Interpretive Engineering Decision is a Formal Communication. Authority will respond, and in its response, will provide its written determination including explanation of any disapproval of such application or any differing interpretation. No presumption of approval or disapproval shall arise by reason of Authority's delay in issuing its written determination. If Developer Disputes Authority's disposition of the application, such Dispute shall be subject to resolution in accordance with the Dispute Resolution Procedures.

1.7.3 Accepted Interpretive Engineering Decisions shall constitute provisions of the Technical Provisions and shall not constitute an Authority Change or entitle Developer to assert a Relief Event or Compensation Event.

Article 2 GRANT OF AUTHORITY AND RIGHT OF WAY

2.1 Grant of Authority for Undertaking

Authority grants to Developer the exclusive right (revocable only in accordance with this Project Agreement), and Developer accepts such right and acknowledges its obligation, to design, construct, and finance the Project, and to perform the remainder of the Work, all in accordance with the DBF Documents.

2.2 Right of Way; Property Ownership

2.2.1 Developer is required to construct the Project on and within the property identified in the NEPA Approval (the "Property") but without limiting Developer's rights and obligations under PA Section 6.2.11 (*Provided Environmental Approval Re-evaluation*), PA Section 2.6.6 (*Developer Proposed/Developer Acquired Right of Way*), and PA Section 2.7 (*Developer Proposed/State Acquired Right of Way*).

2.2.2 Authority will provide Developer with access rights to the Project Limits in accordance with this PA Article 2 (*Grant of Authority and Right of Way*), PA Exhibit 4 (*Parcel Acquisition Table*), and TP Section 6 (Right of Way).

2.2.3 Developer acknowledges and agrees that:

2.2.3.1 on and from the date GDOT acquires the fee title to each Parcel in the Project Limits, GDOT is and shall remain throughout the Term, the sole owner of the fee title to such Parcels;

2.2.3.2 Authority is and shall remain throughout the Term, the grantee of an estate for years provided under the Estate for Years; and

2.2.3.3 the Project and all Permanent Works located on the Project Limits from time to time shall be and remain the property of:

(a) Authority or GDOT, to the extent of their respective interests of record or as they may otherwise agree from time to time; or

(b) to the extent GDOT has otherwise agreed, a Governmental Entity or Utility Owner.

2.2.3.4 Notwithstanding anything to the contrary in the DBF Documents, Developer's access right to the Project Limits provided under this PA Article 2 (*Grant of Authority and Right of Way*), and subject to the terms and conditions under this PA Article 2 (*Grant of Authority and Right of Way*) and TP Section 6 (Right of Way), may, in each case where applicable, be restricted (or certain activities may be restricted) to those portions of parcels that are not within the "do not disturb" areas identified in TP Attachment 6-2 (SP/SA Required Clearance) and TP Attachment 6-3 (State Proposed ROW Plans). If so restricted, Developer shall, as part of the Work, observe, and cause each Developer-Related Entity to observe, all such restrictions.

2.2.4 Without limiting Developer's right to claim relief or compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*), Authority hereby reserves for itself and for GDOT (pursuant to the requirements of the Estate for Years) the right to enter upon, possess, control and utilize the Project Limits without payment of compensation to Developer in accordance with and subject to the terms of this Project Agreement.

2.2.5 Developer acknowledges that Authority and GDOT (in the Estate for Years) have granted, and hereby reserve the right to grant, to other parties utility and other permits (including Encroachment Permits) and easements and modifications thereto and rights of use to the Project Limits subject to the limitations of this Project Agreement.

2.2.6 Developer shall perform the applicable Acquisition Services and comply with the requirements set forth in TP Section 6 (Right of Way) with respect to all State Proposed/State Acquired Right of Way, State Proposed/Developer Acquired Right of Way, Developer Proposed/Developer Acquired Right of Way, and Developer Proposed/State Acquired Right of Way.

2.2.7 Developer shall prepare and submit the ROW Acquisition Plan(s) in accordance with TP Section 6.3.1 (ROW Acquisition Plan), for any applicable Acquisition Services.

2.3 Existing Right of Way

Authority grants to Developer, as of the date of issuance of NTP1 and until the Termination Date:

2.3.1 a non-exclusive right of access, ingress and egress to all real property comprising the Existing Right of Way; and

2.3.2 the right to grant to Developer-Related Entities a non-exclusive right of access, ingress and egress to all real property comprising the Existing Right of Way, for the sole purpose of performing its obligations and exercising its rights under this Project Agreement.

2.4 State Proposed/State Acquired Right of Way

2.4.1 The Parties acknowledge that as of the date of this Project Agreement:

2.4.1.1 Authority has acquired a right of access to, or interest in, each State Proposed/State Acquired Right of Way for which the Parcel Availability Date is on or prior to the Effective Date; and

2.4.1.2 Authority has not acquired a right of access to, or interest in, the State Proposed/State Acquired Right of Way for which the Parcel Availability Date is after the Effective Date.

2.4.2 Authority will provide Developer with updated information on the State Proposed/State Acquired Right of Way referred to in PA Section 2.4.1.2 (*State Proposed/State Acquired Right of Way*) as such information becomes available and confirm once Authority has acquired each Parcel.

2.4.3 Developer shall perform the Post-Acquisition Services for the State Proposed/State Acquired Right of Way in accordance with TP Section 6.5 (Post-Acquisition Services).

2.4.4 If Authority fails to acquire a right of access to, or interest in, a Parcel that is State Proposed/State Acquired Right of Way by the relevant Parcel Availability Date, Developer shall have a right to assert a claim for relief and compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*).

2.4.5 Authority or GDOT will be responsible for, and shall not have a right to claim from Developer any payment or reimbursement for, all costs and expenses associated with acquiring each Parcel of State Proposed/State Acquired Right of Way, including:

2.4.5.1 the purchase prices, court awards or judgments, for all Parcels required for the Project or the Work;

2.4.5.2 the cost of condemnation proceedings required by the Office of the Attorney General, through jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;

2.4.5.3 closing costs associated with Parcel purchases, including applicable property taxes, in accordance with the Uniform Act and GDOT policies; and

2.4.5.4 relocation assistance payments and costs, in accordance with the Uniform Act.

2.5 State Proposed/Developer Acquired Right of Way

2.5.1 This PA Section 2.5 (*State Proposed/Developer Acquired Right of Way*) applies to all State Proposed/Developer Acquired Right of Way but without limiting Developer's rights and obligations under PA Section 2.6.8 (*Developer Proposed/Developer Acquired Right of Way*), PA Section 2.6.4.1 (*Developer Proposed/Developer Acquired Right of Way*), and PA Section 2.6.4.2 (*Developer Proposed/Developer Acquired Right of Way*).

2.5.2 The Parties acknowledge that as of the date of this Project Agreement, no Developer-Related Entity has acquired a right of access to, or interest in, any State Proposed/Developer Acquired Right of Way, and Authority has not acquired any right of access to or interest in any State Proposed/Developer Acquired Right of Way. Developer acknowledges that the State's Attorney General has exclusive authority to represent and defend GDOT, and often does so through an appointed Special Assistant to the Attorney General ("SAAG"). Developer acknowledges that in the SAAG's role as attorney for GDOT, the SAAG has the responsibilities identified in TP Section 6.1.3 (Responsibilities of the Office of Attorney General), including specifically responsibilities pertaining to both acquisitions and condemnations, and that the costs and expenses incurred by the SAAG are costs and expenses to Developer's account. For avoidance of doubt, the State's Attorney General, and not Developer, select and appoint the SAAG, and the SAAG's duties are to GDOT and the State and not to Developer.

2.5.3 With respect to each Parcel of State Proposed/Developer Acquired Right of Way that Developer requires in accordance with its ROW Acquisition Plan, Developer shall:

2.5.3.1 perform the Acquisition Services; and

2.5.3.2 ensure that all State Proposed/Developer Acquired Right of Way are acquired in the name of the "Georgia Department of Transportation".

2.5.4 Developer shall perform the Pre-Acquisition Services for each Parcel in accordance with TP Section 6.3 (Pre-Acquisition Services).

2.5.5 Following the project field review scheduled by Developer under TP Section 6.3.3 (Project Field Review and Inspection Checklist) for each Parcel, Authority will procure the preparation of a project inspection checklist for such Parcel in accordance with Section 4 of GDOT ROW Manual and shall provide a copy to Developer (the "Project Inspection Checklist").

2.5.6 Following completion of the Pre-Acquisition Services for each Parcel, Developer shall perform the Parcel Acquisition Services for such Parcel in accordance with TP Section 6.4 (Parcel Acquisition Services).

2.5.7 If a FMV Offer has been accepted by the Parcel Owner or a Counter Offer for a Parcel has been accepted by Authority in accordance with TP Section 6.4.3.3 (Offers and Counter Offers) and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*), Authority will sign an option agreement (each, an "Option Agreement") within 10 days after acceptance of the FMV Offer or Counter Offer (as applicable). Following execution of the Option Agreement, Authority will conduct the closing for the Parcel in accordance with TP Section 6.4.6 (Closings) and shall coordinate with the SAAG in accordance with TP Section 6.4.6.1 (Developer Coordination with SAAG).

2.5.8 Where Developer:

2.5.8.1 has used diligent efforts to perform the Pre-Acquisition Services and Parcel Acquisition Services to acquire a Parcel without the use of administrative review or GDOT's condemnation powers; and

2.5.8.2 is unable, after 90 days from acceptance by Authority of the ROW Acquisition Plan, to acquire such Parcel due to:

(a) a failure to reach an agreement with the Parcel Owner during negotiations; or

(b) a failure to obtain GDOT's acceptance of a Counter Offer,

Developer may submit a request to Authority to commence administrative review with respect to such Parcel. Such request shall include such information and other evidence as reasonably necessary to support Developer's request and demonstrate that Developer has met the requirements set forth in this PA Section 2.5.8 (*State Proposed/Developer Acquired Right of Way*).

2.5.9 Within 10 days after receipt of a request under PA Section 2.5.8 (*State Proposed/Developer Acquired Right of Way*), Authority will notify Developer whether Developer has met the requirements set forth in PA Section 2.5.8 (*State Proposed/Developer Acquired Right of Way*).

2.5.10 If Authority determines under PA Section 2.5.9 (*State Proposed/Developer Acquired Right of Way*) that Developer has met the requirements set forth in PA Section 2.5.8 (*State Proposed/Developer Acquired Right of Way*) with respect to a Parcel, Developer shall:

2.5.10.1 perform the Parcel Acquisition Services set forth in TP Section 6.4.4 (Administrative Review Request) with respect to the Parcel;

2.5.10.2 mail the Parcel Owner of the Parcel a 10-day administrative review letter; and

2.5.10.3 submit to Authority the Administrative Review Package in accordance with TP Section 6.4.4.1 (Developer Administrative Review Request).

2.5.11 If following receipt of Developer's 10-day administrative review letter under PA Section 2.5.10 (*State Proposed/Developer Acquired Right of Way*) a Parcel Owner requests administrative review, then Authority will, within 45 days after Authority's acceptance of the Administrative Review Package:

2.5.11.1 mail to the Parcel Owner an acknowledgement letter confirming receipt of the administrative review request;

2.5.11.2 provide a copy to Developer of the administrative review request from the Parcel Owner;

2.5.11.3 cause GDOT to complete the administrative review in accordance with Section 6 (General Office Administrative Review Unit) of the GDOT ROW Manual and applicable Law;

2.5.11.4 determine (in its sole discretion) whether to accept any settlement proposal from the Parcel Owner received during the administrative review; and

2.5.11.5 if Authority accepts a settlement proposal received from a Parcel Owner during the administrative review, then Authority will:

(a) notify Developer within 10 Business Days; and

(b) cause GDOT to execute an Option Agreement within 10 days after such notice.

2.5.12 If:

2.5.12.1 Developer has submitted a 10-day administrative review letter under PA Section 2.5.10 (*State Proposed/Developer Acquired Right of Way*);

2.5.12.2 the Parcel Owner:

(a) does not request administrative review within 20 days after receipt of such letter; or

(b) does request administrative review within 20 days after receipt of such letter and Authority is unable to conclude a settlement to acquire a Parcel pursuant to the administrative review described in PA Section 2.5.11 (*State Proposed/Developer Acquired Right of Way*); and

2.5.12.3 Developer has submitted a Condemnation Package to GDOT in accordance with TP Section 6.4.7.1 (Condemnation Request) and Authority has accepted such

Condemnation Package in accordance with PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*),

Authority will cause GDOT to prepare and procure the filing of a petition for condemnation of the relevant Parcel and exercise GDOT's condemnation powers in accordance with applicable Law and within 60 days after Authority's acceptance of the Condemnation Package. Developer shall perform the Parcel Acquisition Services set forth in TP Section 6.4.7 (Condemnation Requests and Support).

2.5.13 Developer acknowledges and agrees that Developer is not permitted to commence any condemnation action through the statutory declaration of taking on behalf of Authority or GDOT.

2.5.14 Following completion of the Parcel Acquisition Services for each Parcel, Developer shall perform the Post-Acquisition Services for such Parcel in accordance with TP Section 6.5 (Post-Acquisition Services).

2.5.15 Authority will be responsible for, and shall not have a right to claim any payment or reimbursement from Developer for, the following costs and expenses associated with acquiring each Parcel of State Proposed/Developer Acquired Right of Way:

2.5.15.1 the purchase prices, court awards or judgments, for each Parcel;

2.5.15.2 the cost of any condemnation proceedings required by the Office of the Attorney General, through jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;

2.5.15.3 closing costs associated with Parcel purchases, including applicable property taxes, in accordance with the Uniform Act and GDOT policies; and

2.5.15.4 relocation assistance payments and costs, in accordance with the Uniform Act.

2.5.16 Developer will be responsible for, and shall not have a right to claim any payment or reimbursement from Authority for, all costs and expenses not identified in PA Section 2.5.15 (*State Proposed/Developer Acquired Right of Way*) associated with acquiring each Parcel of State Proposed/Developer Acquired Right of Way, including the cost of the Acquisition Services and document preparation in connection with the Acquisition Services.

2.5.17 If Authority or GDOT incurs any reasonable, out-of-pocket, and documented costs and expenses for which Developer is responsible in accordance with PA Section 2.5.16 (*State Proposed/Developer Acquired Right of Way*), Developer shall pay to Authority the amount of such costs and expenses within 10 Business Days following receipt of Authority's invoice or demand and, in the event of any non-payment, Authority may deduct any unpaid amount from the next applicable payment due and owing to Developer in accordance with PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

2.6 Developer Proposed/Developer Acquired Right of Way

2.6.1 This PA Section 2.6 (*Developer Proposed/Developer Acquired Right of Way*) applies to all Developer Proposed/Developer Acquired Right of Way.

2.6.2 The Parties acknowledge that, as of the date of this Project Agreement:

2.6.2.1 Authority has not acquired a right of access to, or interest in, any Developer Proposed/Developer Acquired Right of Way for the purposes of this Project.

2.6.3 If Developer determines in its ROW Acquisition Plan that the acquisition of a Parcel will be beneficial for the purposes of the Project or Developer performing its obligations under this Project Agreement (and it is not a Parcel proposed under PA Section 2.7 (*Developer Proposed/State Acquired Right of Way*), then Developer shall provide a written request to Authority to acquire such Parcel, detailing the legal description of the Parcel.

2.6.4 Authority will evaluate Developer's request, taking into account all relevant issues, including whether:

2.6.4.1 the Parcel is already within the Project Limits;

2.6.4.2 the acquisition of the Parcel would require any amendment to any Governmental Approval;

2.6.4.3 the acquisition of the Parcel will interfere in an adverse manner with the relationship of Authority or GDOT with third parties; and

2.6.4.4 the acquisition of the Parcel will be beneficial for the purposes of the Project or Developer performing its obligations under this Project Agreement.

2.6.5 Within 30 Business Days after receiving a request with respect to the Parcel, Authority will either accept or reject the request, in its sole discretion. With respect to each Parcel that Authority has accepted, such Parcel shall be Developer Proposed/Developer Acquired Right of Way and Authority will state in such acceptance whether Authority will undertake administrative review and cause GDOT to exercise its condemnation powers with respect to such Parcel if requested by Developer in accordance with PA Section 2.6.9 (*Developer Proposed/Developer Acquired Right of Way*).

2.6.6 With respect to any Parcels accepted by Authority in accordance with PA Section 2.6.5 (*Developer Proposed/Developer Acquired Right of Way*), Developer shall be responsible for acquiring such Developer Proposed/Developer Acquired Right of Way and shall:

2.6.6.1 perform the Acquisition Services;

2.6.6.2 ensure that any Developer Proposed/Developer Acquired Right of Way is acquired in the name of the "Georgia Department of Transportation";

2.6.6.3 be responsible for obtaining any application, revision, modification, amendment, supplement, renewal or extension of any Governmental Approvals required in connection with Developer Proposed/Developer Acquired Right of Way, including any re-evaluation, amendments or supplements in connection with Provided Environmental Approvals (refer to PA Section 6.2.11 (*Provided Environmental Approval Re-evaluation*); and

2.6.6.4 bear the risk of any time and cost impacts to the Work related to the acquisition of Developer Proposed/Developer Acquired Right of Way.

2.6.7 Subject to PA Section 2.6.8 (*Developer Proposed/Developer Acquired Right of Way*), with respect to any Parcels accepted by Authority in accordance with PA Section 2.6.5 (*Developer Proposed/Developer Acquired Right of Way*), PA Section 2.5.4 (*State Proposed/Developer Acquired Right of Way*), PA Section 2.5.5 (*State Proposed/Developer Acquired Right of Way*), PA Section 2.5.6 (*State*

Proposed/Developer Acquired Right of Way), and PA Section 2.5.7 (*State Proposed/Developer Acquired Right of Way*) shall apply to such Developer Proposed/Developer Acquired Right of Way.

2.6.8 If Authority identified in its acceptance under PA Section 2.6.5 (*Developer Proposed/Developer Acquired Right of Way*) that Authority will not undertake administrative review or cause GDOT to exercise its condemnation powers, Developer shall not be required to perform the Parcel Acquisition Services for such Developer Proposed/Developer Acquired Right of Way set forth in TP Section 6.4.4 (Administrative Review Request) and TP Section 6.4.7 (Condemnation Requests and Support).

2.6.9 Where Authority has stated in its acceptance under PA Section 2.6.5 (*Developer Proposed/Developer Acquired Right of Way*) that Authority will undertake administrative review and cause GDOT to exercise its condemnation powers with respect to a Parcel, and Developer:

2.6.9.1 has used diligent efforts to perform the Pre-Acquisition Services and Parcel Acquisition Services to acquire Developer Proposed/Developer Acquired Right of Way without the use of administrative review or GDOT's condemnation powers; and

2.6.9.2 is unable, in the case of those Parcels accepted under PA Section 2.6.5 (*Developer Proposed/Developer Acquired Right of Way*), 90 days after such acceptance by Authority, to acquire Developer Proposed/Developer Acquired Right of Way due to:

(a) a failure to reach an agreement with the Parcel Owner of the relevant Parcel; or

(b) a failure to obtain GDOT's acceptance of a Counter Offer,

Developer may submit a request to Authority to commence administrative review of such Parcel. Such request shall include such information and other evidence as reasonably necessary to support Developer's request and to demonstrate that Developer has met the requirements set forth in this PA Section 2.6.9 (*Developer Proposed/Developer Acquired Right of Way*).

2.6.10 Following a request received under PA Section 2.6.9 (*Developer Proposed/Developer Acquired Right of Way*), PA Section 2.5.10 (*State Proposed/Developer Acquired Right of Way*), PA Section 2.5.11 (*State Proposed/Developer Acquired Right of Way*), and PA Section 2.5.12 (*State Proposed/Developer Acquired Right of Way*) shall apply with respect to such Parcel.

2.6.11 Developer acknowledges and agrees that Developer is not permitted to commence any condemnation action through the statutory declaration of taking on behalf of Authority or GDOT.

2.6.12 Following completion of the applicable Parcel Acquisition Services for each Parcel, Developer shall perform Post-Acquisition Services for such Parcel of Developer Proposed/Developer Acquired Right of Way in accordance with TP Section 6.5 (Post-Acquisition Services).

2.6.13 Developer shall be responsible for, and shall not have a right to claim any payment or reimbursement from Authority for, all costs and expenses associated with acquiring each Parcel of Developer Proposed/Developer Acquired Right of Way, including:

2.6.13.1 the cost of the Acquisition Services and document preparation in connection with the Acquisition Services;

2.6.13.2 the purchase prices for all Parcels required for the Project or the Work;

2.6.13.3 all costs and expenses Authority and GDOT incur undertaking administrative review of the Parcel or GDOT exercising its condemnation powers, including the cost of condemnation proceedings required by the Office of the Attorney General, through jury trials and appeals, including attorneys' and expert witness fees, and all court awards, judgments, fees and expenses for exhibits, transcripts, photos and other documents and materials production;

2.6.13.4 the cost of obtaining any application, revision, modification, amendment, supplement, renewal or extension of any Governmental Approvals required in connection with Developer Proposed/Developer Acquired Right of Way, including any revisions, modifications, amendments, renewals or extensions in connection with Provided Environmental Approvals;

2.6.13.5 closing costs associated with Parcel purchases, including applicable property taxes, in accordance with the Uniform Act and GDOT policies; and

2.6.13.6 relocation assistance payments and costs, in accordance with the Uniform Act.

2.6.14 If Authority or GDOT incurs any reasonable, out-of-pocket, and documented costs and expenses for which Developer is responsible in accordance with PA Section 2.6.13 (*Developer Proposed/Developer Acquired Right of Way*), Developer shall pay to Authority the amount of such costs and expenses within 10 Business Days following receipt of Authority's invoice and, in the event of any non-payment, Authority may deduct any unpaid amount from the next applicable Project Certificate(s) in accordance with PA Section 17.3.3 (*Damages; Offset*).

2.7 Developer Proposed/State Acquired Right of Way

2.7.1 If

2.7.1.1 Developer determines in its ROW Acquisition Plan that, based on the assumptions included in the NEPA Basic Configuration, a Parcel not identified in PA Exhibit 4 (*Parcel Acquisition Table*) is required for and constitutes the minimum additional property necessary for:

(a) accommodating the permanent installation of any signs in accordance with TP Section 16.3.2 (Permanent Signing and Delineation), if applicable;

(b) meeting the MS4 requirements in accordance with TP Section 12.3.8.2 (Municipal Separate Storm Sewer System (MS4));

(c) accommodating the permanent detention requirements in accordance with TP Section 12.3.5 (Post-Construction Stormwater Design);

(d) the demolition of building structures on the Parcels identified in PA Exhibit 4 (*Parcel Acquisition Table*) and for which Developer is responsible for demolishing in accordance with TP Section 6 (Right of Way);

(e) meeting requirements of FEMA coordination in accordance with TP Section 12.3.4 (FEMA Requirements); or

(f) accommodating a Utility Adjustment, provided that such Utility Adjustment is not a Betterment and the Utility Owner is not responsible for acquiring a New Interest in accordance with PA Section 7.4.5 (*Utility Existing Interests*) and TP Section 7.2.8 (*Real Property Matters*),

(each a "DPSA Candidate Permanent Work"); or

2.7.1.2 either of the following is the case:

(a) the Parcel (or portion of the Parcel) was erroneously excluded from PA Exhibit 4 (*Parcel Acquisition Table*); or

(b) the Parcel is required due to a Necessary Basic Configuration Change; and

2.7.1.3 acquisition of the Parcel (or portion of the Parcel) is otherwise consistent with applicable Laws and applicable Governmental Approvals (each such Parcel (or portion of the Parcel) "Developer Proposed/State Acquired Right of Way"), then Developer shall request, by Formal Communication, authorization to acquire such Parcel.

2.7.1.4 Authority shall evaluate a Developer request received under PA Section 2.7.1.3 (*Developer Proposed/State Acquired Right of Way*) and shall be entitled to reject such request if:

(a) the acquisition of the Parcel is not required for one of the purposes specified in PA Section 2.7.1 (*Developer Proposed/State Acquired Right of Way*); or

(b) the requested Parcel (or portion of the Parcel) is not the minimum additional property necessary for one of the purposes specified in PA Section 2.7.1 (*Developer Proposed/State Acquired Right of Way*).

2.7.2 In its Formal Communication, Developer shall identify the Parcel (or portion of the Parcel) by legal description, include an analysis identifying alternative approaches, if any, that could be adopted to avoid the need for the acquisition (including design modifications), and request Authority to acquire such Parcel of Developer Proposed/State Acquired Right of Way.

2.7.3 Within 30 Business Days after receipt of Developer's Formal Communication under PA Section 2.7.1 (*Developer Proposed/State Acquired Right of Way*), Authority will notify Developer whether it (a) accepts or rejects that such Parcel is Developer Proposed/State Acquired Right of Way or (b) proceed with a Request for Change Proposal under PA Section 14.1.2 (*Request for Change Proposal*) as relates to any such alternative approach, if presented by Developer under PA Section 2.7.2 (*Developer Proposed/State Acquired Right of Way*) or otherwise, so as to avoid any need to acquire the Parcel.

2.7.4 If rejected, Developer may elect to deliver a Change Request under PA Section 14.2 (*Developer Changes*) or Dispute Authority's rejection that the Parcel is Developer Proposed/State Acquired Right of Way.

2.7.5 If the Parcel is accepted as Developer Proposed/State Acquired Right of Way, in whole or in part, Authority will specify in its notification to Developer given under PA Section 2.7.3 (*Developer Proposed/State Acquired Right of Way*) the availability date for the Parcel (or portion of the Parcel), not to exceed 24 months after the date of Authority's acceptance notification, and PA Exhibit 4 (*Parcel Acquisition Table*) shall be updated, without further action of the Parties, to reflect such date as the "Parcel Availability Date" with respect to such Developer Proposed/State Acquired Right of Way and, if applicable, to reflect the Parcel's Parcel Group.

2.7.6 Except as may be specified otherwise in Authority's notification given under PA Section 2.7.3 (*Developer Proposed/State Acquired Right of Way*), Developer shall perform all obligations with respect to such Parcel (or portion of the Parcel) as if such Parcel (or portion of the Parcel) were State

Proposed/Developer Acquired Right of Way under PA Section 2.5.3 (*State Proposed/Developer Acquired Right of Way*) to PA Section 2.5.17 (*State Proposed/Developer Acquired Right of Way*), inclusive.

2.7.7 Without limiting the obligations under the definition of "Compensation Event," Developer shall have a right to seek relief and compensation for:

2.7.7.1 any occurrence described in clause (o) of the definition of "Compensation Event" and clause (r) of the definition of "Relief Event";

2.7.7.2 any re-evaluation, amendment or supplement of a Provided Environmental Approval conducted pursuant to PA Section 6.2.11 (*Provided Environmental Approval Re-evaluation*) with respect to, or on account of, such Parcel (or portion of the Parcel) of Developer Proposed/State Acquired Right of Way; and

2.7.7.3 without duplication of any relief obtained under PA Section 2.7.7.1 (*Developer Proposed/State Acquired Right of Way*), if Authority fails to acquire a right of access to, or interest in, a Parcel that is Developer Proposed/State Acquired Right of Way by the date agreed under PA Section 2.7.5 (*Developer Proposed/State Acquired Right of Way*),

in either case in accordance with PA Article 13 (*Relief Events; Compensation Events*).

2.7.8 Notwithstanding the foregoing in this PA Section 2.7 (*Developer Proposed/State Acquired Right of Way*), but without limiting PA Section 2.7.10 (*Developer Proposed/State Acquired Right of Way*), Developer shall identify all Developer Proposed/State Acquired Right of Way no later than the date of initial submission of the ROW Acquisition Plan to Authority; provided, however, that Developer may identify Developer Proposed/State Acquired Right of Way in its response to a Request for Change Proposal asserting an Authority Change. Failure to identify timely or to assert in Dispute Resolution Procedures (or to so assert timely) that a Parcel is Developer Proposed/State Acquired Right of Way shall be deemed to be an irrevocable waiver and release by Developer of any claim to relief, costs, performance relief, and additional time to perform the Work arising out of, relating to, or resulting from the Parcel(s) of Developer Proposed/State Acquired Right of Way (including costs or additional time to perform the services associated with acquisition of the Developer Proposed/State Acquired Right of Way under PA Section 2.7.6 (*Developer Proposed/State Acquired Right of Way*).

2.7.9 Notwithstanding the foregoing in this PA Section 2.7 (*Developer Proposed/State Acquired Right of Way*), and except as Authority may determine otherwise in its sole discretion, Developer shall be responsible for performing the Environmental Site Assessment for any Parcel (or portion of the Parcel) of Developer Proposed/State Acquired Right of Way in accordance with TP Section 8.3.3.6 (Environmental Site Assessment) and for performing the Post-Acquisition Services for the Developer Proposed/State Acquired Right of Way in accordance with TP Section 6.5 (Post-Acquisition Services). Developer shall be entitled to its reasonable, out-of-pocket, and documented costs and expenses incurred in performing such Environmental Site Assessments and Post-Acquisition Services.

2.7.10 Authority or GDOT will be responsible for, and shall not have a right to claim from Developer any payment or reimbursement for, all costs and expenses associated with acquiring each Parcel of Developer Proposed/State Acquired Right of Way, including:

2.7.10.1 the purchase prices, court awards or judgments, for all Parcels of Developer Proposed/State Acquired Right of Way required for the Project or the Work;

2.7.10.2 the cost of condemnation proceedings required by the Office of the Attorney General, through jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;

2.7.10.3 closing costs associated with Parcel purchases, including applicable property taxes, of Developer Proposed/State Acquired Right of Way, in accordance with the Uniform Act and GDOT policies; and

2.7.10.4 relocation assistance payments and costs, in accordance with the Uniform Act.

2.8 [Reserved.]

2.9 Access to Certain Parcels within the Project Limits

2.9.1 Pursuant to the process in TP Section 6.5.2 (Parcel Certification and Release), Developer may submit a Request for Parcel Certification Release (Single Group) or Request for Parcel Certification Release (Multi-Group) in accordance with TP Section 6.5.2.1 (Request for Parcel Certification and Release).

2.9.2 If Developer submits:

2.9.2.1 a Request for Parcel Certification Release (Multi-Group), then the Parcel Group Access Date for the Parcels that are the subject of the request shall be the date Authority accepts the Request for Parcel Certification Release (Multi-Group) in accordance with PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*); or

2.9.2.2 a Request for Parcel Certification Release (Single Group), then the Parcel Group Access Date for all Parcels shall be the date Authority accepts the Request for Parcel Certification Release (Single Group) in accordance with PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

2.9.3 Subject to PA Section 2.9.4 (*Access to Certain Parcels within the Project Limits*), no later than the Parcel Group Access Date for a Parcel, Authority will grant to Developer until the Termination Date:

2.9.3.1 a non-exclusive right of access, ingress and egress to such Parcel; and

2.9.3.2 the right to grant to Developer-Related Entities a non-exclusive right of access, ingress and egress to all real property comprising each Parcel,

for the sole purpose of performing its obligations and exercising its rights under this Project Agreement.

2.9.4 If a set aside motion is filed pursuant to O.C.G.A. § 32-3-11 with respect to a Parcel, then Developer's right to access to such Parcel is deferred until the motion is resolved.

2.9.5 Prior to the Parcel Group Access Date, Developer may submit a request to Authority to access a Parcel of:

2.9.5.1 State Proposed/State Acquired Right of Way, provided the Parcel Availability Date has passed with respect to such Parcel; or

2.9.5.2 State Proposed/Developer Acquired Right of Way, provided such Parcel has been acquired in accordance with PA Section 2.5 (*State Proposed/Developer Acquired Right of Way*).

Such request shall specify the activities that Developer seeks to perform on the relevant Parcel if access is granted and shall be limited to activities in any event that Developer is entitled to perform prior to issuance of NTP3.

2.9.6 Within 10 Business Days after receiving a request under PA Section 2.9.5 (*Access to Certain Parcels within the Project Limits*), Authority will notify Developer whether it accepts or rejects the request (not to be unreasonably withheld).

2.9.7 If Authority accepts Developer's request under PA Section 2.9.6 (*Access to Certain Parcels within the Project Limits*), Authority will grant to Developer until the date specified in Authority's notice under PA Section 2.9.6 (*Access to Certain Parcels within the Project Limits*):

2.9.7.1 a non-exclusive right of access, ingress and egress to such Parcel; and

2.9.7.2 the right to grant to Developer-Related Entities a non-exclusive right of access, ingress and egress) to all real property comprising such Parcel, for the sole purpose of Developer performing, subject to any conditions specified in Authority's notice under PA Section 2.9.6 (*Access to Certain Parcels within the Project Limits*), the activities described in Developer's request and permitted under PA Section 2.9.5 (*Access to Certain Parcels within the Project Limits*).

2.10 Temporary Interests

2.10.1 The Parties acknowledge that as of the date of this Project Agreement Authority has not acquired a right of access to, or interest in, any Temporary Interests for the purposes of this Project.

2.10.2 Developer shall notify Authority of any Temporary Interest that it proposes to acquire a right of access to, or other interest in.

2.10.3 Developer shall be responsible for:

2.10.3.1 all acquisitions of a right of access to, or interest in, any Temporary Interests;

2.10.3.2 compliance with all applicable Laws with respect to the Temporary Interests;

2.10.3.3 obtaining and complying with any Governmental Approvals required with respect to the Temporary Interests; and

2.10.3.4 any costs and expenses associated with acquiring any rights or interests in any Temporary Interest and shall not have a right to claim from Authority any payment or reimbursement for such costs and expenses.

2.10.4 Neither Authority nor GDOT will:

2.10.4.1 exercise its condemnation power in connection with Developer's acquisition of any Temporary Interest; or

2.10.4.2 have any obligations or responsibilities with respect to Developer's acquisition, maintenance or disposition of any Temporary Interest.

2.11 Access and Inspection Rights for Authority, GDOT and Other Persons

2.11.1 Developer shall, in the performance of the Work on the Site:

2.11.1.1 coordinate with any third parties that may from time to time have access rights to the Site, including the Utility Owners, and their respective relevant Constituents; and

2.11.1.2 coordinate with all Related Transportation Facilities in accordance with TP Section 1.3 (Related Transportation Facilities).

2.11.2 Developer acknowledges that Authority and each Authority-Related Entity, may (a) at reasonable times, and (b) if Work is ongoing at the location to be entered, enter the Site and any other location where the Work is being carried out for the purpose of:

2.11.2.1 exercising Authority's (or FHWA's, or any other applicable federal agency's) oversight functions as provided for hereunder;

2.11.2.2 monitoring compliance by Developer with its obligations under this Project Agreement, Governmental Approvals and all applicable Laws; or

2.11.2.3 exercising any right or performing any obligation that such party has under this Project Agreement, any Utility MOU, the Estate for Years, the Intergovernmental Agreement, any Governmental Approval or any applicable Law; or

2.11.3 when exercising any rights under PA Section 2.11.2 (*Access and Inspection Rights for Authority, GDOT and Other Persons*), Authority will do so (and shall ensure that each such Authority-Related Entity does so) in a manner that:

2.11.3.1 does not unreasonably interfere with Developer's or its Contractors' performance of the Work or exercise of its rights and obligations under this Project Agreement (including by not unreasonably interfering with the access to the Site of a third party with rights to access the Site in a manner which results in such interference to Developer or its Contractors); and

2.11.3.2 complies with Developer's reasonable site access policies and procedures and Developer's Safety Plan.

2.11.4 Developer shall use reasonable efforts to:

2.11.4.1 coordinate its Work so it does not interfere with the exercise by Authority and any Authority-Related Entity of their respective rights of entry; and

2.11.4.2 provide Authority and any Authority-Related Entity with every reasonable facility and other assistance necessary for exercising such party's rights under PA Section 2.11.2 (*Access and Inspection Rights for Authority, GDOT and Other Persons*).

2.11.5 Developer shall afford Authority and each Authority-Related Entity access during normal business hours to the Project Office and other operations buildings.

2.12 Nature of Rights/Interests

2.12.1 The Parties acknowledge and agree that this Project Agreement will in no way be deemed to constitute:

2.12.1.1 a lease to Developer (whether an operating lease or a financing lease); or

2.12.1.2 a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, or Lien),

in each case, of any right, title, interest or estate in the Project or Project Limits, or of any assets incorporated into or appurtenant to the Project, other than as set forth in PA Section 2.1 (*Grant of Authority for Undertaking*), PA Section 2.2 (*Right of Way; Property Ownership*) and the rights of access granted under PA Section 2.3 (*Existing Right of Way*), PA Section 2.4 (*State Proposed/State Acquired Right of Way*), PA Section 2.5 (*State Proposed/Developer Acquired Right of Way*), PA Section 2.6 (*Developer Proposed/Developer Acquired Right of Way*), and PA Section 2.7 (*Developer Proposed/State Acquired Right of Way*).

2.12.2 The Parties acknowledge and agree that Developer will not be treated as or deemed to be the legal or equitable owner of the Project Limits for any purpose under this Project Agreement.

2.12.3 Developer's rights under this Project Agreement are derived solely from its status as a Developer and independent contractor as described in this Project Agreement, and not as a tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property.

Article 3 CONTRACT TIME

3.1 Term

This Project Agreement shall take effect on the Effective Date and will remain in effect until the earlier of (a) the date upon which the final payment due under the Project Agreement or other DBF Documents is deposited into the Designated Account(s) or payment is otherwise made, and (b) earlier termination in accordance with the terms of the DBF Documents and payment by Authority of all amounts payable in connection therewith, subject to survival of such obligations as expressly provided herein (the "Term").

3.2 Timely Performance; Time is of the Essence

3.2.1 As a material consideration for entering into this Project Agreement, Developer hereby commits, and Authority is relying upon Developer's commitment, to develop, design, finance, and construct the entire Project (and to financing such obligations), meeting each of the milestones in the Baseline Project Schedule (including all Milestones), and performing such portions of the Work required with particular time periods, in each case as set forth in the DBF Documents, as such milestones or time periods may be adjusted pursuant to this Project Agreement.

3.2.2 Without limiting the generality of PA Section 3.2.1 (*Timely Performance; Time is of the Essence*), and in each case subject to time adjustment when and as applicable pursuant to the Project Agreement, Developer shall:

3.2.2.1 prepare and deliver each Baseline Project Schedule (excluding the Proposal Schedule) in form and substance as and when required under TP Section 2 (Project Management),

including specifically the Submittal Requirements Database, which for avoidance of doubt includes Developer's obligations to:

(a) prepare and deliver to Authority the NTP1 Baseline Project Schedule by the time required in the Proposal Schedule;

(b) prepare and deliver to Authority the NTP2 Baseline Project Schedule by the time required in the Proposal Schedule;

(c) prepare and deliver to Authority the NTP3 Baseline Project Schedule by the time required in the NTP2 Baseline Project Schedule; and

(d) prepare and deliver to Authority the Revised Baseline Project Schedule by the time required in any Directive Letter, Supplemental Agreement, or other time as determined pursuant to TP Section 2.3.2.4 (Revised Baseline Project Schedule);

3.2.2.2 without limiting the other specific obligations under this PA Section 3.2.2 (*Timely Performance; Time is of the Essence*), perform the Work in accordance with the Baseline Project Schedule;

3.2.2.3 perform the Work so as to achieve each Milestone by its respective Milestone Deadline, in accordance with the Milestone Schedule;

3.2.2.4 perform the Work in accordance with the Proposal Schedule, attached as PA Exhibit 10 (*Proposal Schedule; Proposal SOV*), until such time as the NTP1 Baseline Project Schedule is accepted by Authority and thereafter, perform the Work in accordance with such NTP1 Baseline Project Schedule, until such time as the NTP2 Baseline Project Schedule is accepted by Authority, and thereafter perform the Work in accordance with such NTP2 Baseline Project Schedule, until such time as the NTP3 Baseline Project Schedule is accepted by Authority, and thereafter perform the Work in accordance with such NTP3 Baseline Project Schedule, in each case as may be revised under a Revised Baseline Project Schedule;

3.2.2.5 prepare and deliver to Authority each Baseline Schedule of Values, consistent with the Proposal SOV and in each case prior to Developer's submission of each proposed Baseline Project Schedule (except for the NTP1 Baseline Schedule, which may be delivered at the same time as the NTP1 Baseline SOV);

3.2.2.6 prepare and deliver to Authority each proposed Baseline Project Schedule corresponding to the associated Baseline Schedule of Values, in each case consistent with the Proposal SOV;

3.2.2.7 satisfy all conditions to issuance of the each of NTP2 (by the NTP2 Conditions Deadline) and NTP3 (by the NTP3 Conditions Deadline);

3.2.2.8 satisfy all conditions to commencement of certain portions of the Work under PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*), and commence such Work, when such respective conditions have been satisfied, with diligence and continuity, by the deadlines therefor set forth in Milestone Schedule attached as PA Exhibit 9 (*Milestone Schedule*), as applicable, and Baseline Project Schedule, all as may be extended pursuant to this Project Agreement; and

3.2.2.9 achieve Substantial Completion on or before the Substantial Completion Deadline, and Final Acceptance on or before the Final Acceptance Deadline.

3.2.3 Time is of the essence with respect to (i) the time periods and limitations with respect to Formal Communications and Submittals and (ii) the time periods, limitations, and milestones (including Milestone Deadlines) in the Baseline Project Schedule or otherwise identified under the DBF Documents, and in each case, except where this Project Agreement expressly provides for extension of time due to a Relief Event or allows delay subject to payment of Liquidated Damages, Nonrefundable Deductions, Lane Closure Deductions, or other compensation to Authority, Developer hereby waives any right at law or in equity to tender or complete delivery, response, or performance, as applicable, beyond the applicable time period, or to require Authority to accept such delivery, response, or performance.

3.2.4 Notwithstanding any provision to the contrary in this PA Article 3 (*Contract Time*), nor any Notice to Proceed, Developer shall not perform, nor be obligated to perform, any portion of the Work prior to issuance of the NEPA Approval, except for Work authorized under 23 C.F.R. § 636.109 and directed by Authority.

3.3 Contract Time, Date of Commencement and Notice to Proceed

3.3.1 Developer's time period for completion of the Work is the period from and including the date of NTP1 through the Final Acceptance Deadline (the "Contract Time"), as the Contract Time may be extended pursuant to this Project Agreement. Notwithstanding the foregoing, Developer may, but is not obligated to, commence to prepare the component parts, plans and documentation of the Project Management Plan in accordance with TP Section 2 (Project Management) and the NTP1 Baseline Project Schedule upon the Effective Date, it being understood and agreed that (a) Developer shall not be entitled to any compensation for any such Work unless and until NTP1 is issued and such Work receives Authority's acceptance thereafter and (b) except as set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), Section 2.2.3 (*DBF Contract Sum and Payment Terms*), Authority shall not be obligated to approve any Project Certificate until the NTP1 Baseline Project Schedule has been accepted by or on behalf of Authority.

3.3.2 Notice to Proceed 1

3.3.2.1 Authority anticipates issuing NTP1 promptly following the Financial Close Date.

3.3.2.2 Without limiting the additional conditions to commencement of certain portions of the Work under PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*), issuance of NTP1 authorizes Developer to:

(a) perform the portion of the Work necessary to obtain Authority's approval of the component parts, plans and documentation of the Project Management Plan in accordance with the TP Section 2 (Project Management);

(b) perform coordination activities with respect to Utility Adjustments that Developer is permitted to perform prior to NTP2, in accordance with PA Section 7.4 (*Utility Adjustments*) and TP Section 7 (Utility Adjustments);

(c) prepare and deliver the NTP1 Baseline Project Schedule and NTP1 Baseline SOV;

(d) perform those portions of the Work identified in the preamble to PA Section 3.4.2 (*Conditions to Commencement of Certain Site-Related Work*) that Developer intends to undertake prior to issuance of NTP2 as Developer may elect to perform; and

(e) engage in the other activities anticipated to be performed after NTP1, including specifically satisfaction of all of the conditions to issuance of the NTP2 under PA Section 3.3.3 (*Notice to Proceed 2*).

3.3.3 Notice to Proceed 2

3.3.3.1 Authority will issue NTP2 within 10 Business Days after Developer's satisfaction of the following conditions:

(a) NTP1 has been issued;

(b) all Insurance Policies required under the DBF Documents for the Design Work have been obtained, are in full force and effect, and Developer has delivered to Authority verification thereof as required under PA Section 16.1.2.4 (*Verification of Coverage*) as well as separate Formal Communication of those Insurance Policies with, and the value of, SIRs;

(c) Developer has caused to be developed and delivered to Authority, and Authority has accepted, each in accordance with TP Section 2 (Project Management), the component Submittals of the Project Management Plan required as a condition to NTP2;

(d) Developer has submitted to Authority, and Authority has accepted, the NTP2 Baseline SOV and the NTP2 Baseline Project Schedule, in accordance with TP Section 2 (Project Management);

(e) Developer has made available the Key Personnel and Required Personnel required, and at the place(s) and for the hours required, to be available as of the date of NTP2 as specified in TP Attachment 2-1 (*Key Personnel and Required Personnel*), and those Key Personnel and Required Personnel that were required, and at the place(s) and for the hours required, to be available as of the date of NTP1 remain available and at such place(s) as specified in TP Attachment 2-1 (*Key Personnel and Required Personnel*), except and only to the extent approved otherwise by Authority ;

(f) (i) Developer has received, paid all associated fees for, and (if applicable) achieved or satisfied all conditions under, all applicable Governmental Approvals and other applicable third party approvals that Developer is obligated to obtain and maintain prior to commencement and performance of any Design Work or other non-Construction Work authorized by NTP2, (ii) all such Governmental Approvals and third party approvals are not subject to appeal; (iii) there exists no uncured material violation of the terms and conditions of any such Governmental Approval or such third party approvals, and (iv) Developer has furnished to Authority fully executed copies of all such Governmental Approvals and such third party approvals;

(g) the P&P Bonds each continue to be in full force and effect;

(h) all required real property rights (e.g., rights of entry) necessary for commencement of any portion of the Work authorized by NTP2 are in place;

(i) Developer has established the Project Office in accordance with TP Section 1.6 (Offices);

(j) Developer has delivered to Authority a duplicate original of each guaranty, as required under PA Section 16.4.2 (*Guaranties*), and each such guaranty continues to be in full force and effect;

(k) Developer has provided to Authority any other documents, materials, or assurances required by the DBF Documents as a condition to issuance of NTP2;

(l) all representations and covenants of Developer set forth in PA Section 15.1 (*Developer Representations and Covenants*) shall be and remain true and correct in all material respects;

(m) there exists no uncured Developer Default for which Developer has received Notice from Authority unless the Project Agreement provides the Developer a cure period for the applicable Developer Default and the Developer is diligently pursuing cure in the applicable cure period in accordance with the cure provisions in PA Section 17.1 (*Default by Developer, Cure Periods*);

(n) [Reserved]; and

(o) Developer has provided to Authority at least 14 days advance Notice of the date Developer determines that it will satisfy all of the conditions set forth in this PA Section 3.3.3 (*Notice to Proceed 2*).

3.3.3.2 Without limiting the additional conditions to commencement of certain portions of the Work under PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*), issuance of NTP2 authorizes Developer to:

(a) engage in the activities necessary to satisfy the conditions to issuance of NTP3 under PA Section 3.3.3 (*Notice to Proceed 2*).

(b) commence the Design Work (including development and submission of Design Documents to Authority);

(c) perform the activities necessary to obtain any Governmental Approvals not previously obtained (or to maintain obtained Governmental Approvals), and to support any NEPA re-evaluation, amendment, or supplement, as may be required;

(d) perform all Acquisition Services that Developer is permitted to perform prior to NTP3, in accordance with PA Article 2 (*Grant of Authority and Right of Way*) and TP Section 6 (Right of Way);

(e) perform design and coordination activities with respect to Utility Adjustments that Developer is permitted to perform prior to NTP3, in accordance with PA Section 7.4 (*Utility Adjustments*) and TP Section 7 (Utility Adjustments), and construction activities with respect to Utility Adjustments, provided that (i) all conditions set forth in PA Section 3.3.4 (*Notice to Proceed 3*) that are applicable to the Utility Adjustment (reading such conditions as if they referred to the Utility Adjustment) have been satisfied, and (ii) all conditions set forth in PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*) that are applicable to the Utility Adjustment (reading such conditions as if they referred to the Utility Adjustment) have been satisfied; and

(f) perform such other non-Construction Work (including specifically project administrative and management Work) as is expressly permitted to be performed prior to NTP3 under the Technical Provisions.

3.3.4 Notice to Proceed 3

3.3.4.1 Authority will issue NTP3 within 10 Business Days from Developer's satisfaction of the following conditions:

(a) NTP2 has been issued;

(b) all Insurance Policies required under the DBF Documents for the Work have been obtained, are in full force and effect, and Developer has delivered to Authority verification thereof as required under PA Section 16.1.2.4 (*Verification of Coverage*) as well as separate Formal Communication of those Insurance Policies with, and the value of, SIRs;

(c) Developer has caused to be developed and delivered to Authority, and Authority has accepted, each in accordance with TP Section 2 (Project Management), the component Submittals of the Project Management Plan required as a condition to NTP3 (including specifically the draft D&C Closeout Plan);

(d) Developer has submitted to Authority, and Authority has accepted, the NTP3 Baseline SOV and the NTP3 Baseline Project Schedule, in accordance with TP Section 2 (Project Management);

(e) Developer has made available the Required Personnel required, at the place(s) and for the hours required to be available as of the date of NTP3 as specified in TP Attachment 2-1 (*Key Personnel and Required Personnel*), and the Key Personnel and Required Personnel that were required, at the place(s) and for the hours required to be available, as of the dates of NTP1 and NTP2, respectively, remain available at such place(s) and for the hours required as specified in TP Attachment 2-1 (*Key Personnel and Required Personnel*), except and only to the extent approved otherwise by Authority;

(f) (i) Developer has received, paid all associated fees for, and (if applicable) achieved or satisfied all conditions under, all applicable Governmental Approvals (including changes to the NEPA Approval) and other applicable third party approvals that Developer is obligated to obtain and maintain prior to commencement and performance of the remaining Work, (ii) all such Governmental Approvals and third party approvals are not subject to appeal, (iii) there exists no uncured material violation of the terms and conditions of any Governmental Approval or third party approval, and (iv) Developer has furnished to Authority fully executed copies of all such Governmental Approvals and third party approvals required to be obtained and/or maintained by Developer under the DBF Documents;

(g) Developer has submitted to Authority, and Authority has accepted, the OJT Plan;

(h) the P&P Bonds each continue to be in full force and effect;

(i) Developer has delivered to Authority a duplicate original of each guaranty, as required under PA Section 16.4.2 (*Guaranties*) given after issuance of NTP2, and each such guaranty continues to be in full force and effect;

(j) all required Existing Rights of Way necessary for commencement of any Construction Work, if applicable, are in place and all required Utility Adjustments have been identified;

(k) Developer has satisfied all applicable pre-construction requirements required to be performed by Developer under the DBF Documents that are contained in the NEPA Approval and other Governmental Approvals;

(l) Developer has provided to Authority any other documents, materials, or assurances required by the DBF Documents as a condition to issuance of NTP3;

(m) all representations and covenants of Developer set forth in PA Section 15.1 (*Developer Representations and Covenants*) shall be and remain true and correct in all material respects;

(n) there exists no uncured Developer Default for which Developer has received Notice from Authority unless the Project Agreement provides the Developer a cure period for the applicable Developer Default and the Developer is diligently pursuing cure in the applicable cure period in accordance with the cure provisions in PA Section 17.1 (*Default by Developer, Cure Periods*);

(o) Developer has otherwise satisfied all other conditions to commencement of Construction Work in the Technical Provisions;

(p) Developer has provided to Authority at least 14 days advance Notice of the date Developer determines that it will satisfy all of the conditions set forth in this PA Section 3.3.4 (*Notice to Proceed 3*); and

(q) Developer has delivered to Authority a fully-executed copy of each Railroad Agreement required as a condition to the Developer's performance of non-preliminary Design Work in respect of the Railroad Work;.

3.3.4.2 Without limiting the additional conditions to commencement of certain portions of the Work under PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*), issuance of NTP3 authorizes Developer to perform all other Work and activities pertaining to the Project, subject to any requirements to obtain acceptance of certain Submittals (e.g., confirming RFC Design Documents) as may be related to commencement of Work on portions of the Project Limits or certain types or portions of the Construction Work. For avoidance of doubt, Developer may not proceed to commence any Construction Work except as authorized pursuant to an RFC Design Document.

3.3.4.3 Notwithstanding the foregoing, Authority may, in its sole discretion, issue one or more limited notice(s) to proceed prior to one or more of the foregoing conditions to NTP3 being met, under such terms and subject to such conditions as Authority requires within such limited notice(s) to proceed (e.g., geographic limitations, time of year restrictions, insurance requirements, etc.). Except to the extent specifically addressed otherwise in the limited notice to proceed itself, issuance of any limited notice to proceed shall not abrogate any requirements under PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*). Any work or services performed, or equipment or materials obtained, under any such limited notice to proceed shall be Work, and Developer shall, and shall be deemed to be required to, comply with all terms and conditions imposed in the written limited notice(s) to proceed as part of the Work.

3.4 Conditions to Commencement of Certain Portions of the Work

3.4.1 [Reserved.]

3.4.2 Conditions to Commencement of Certain Site-Related Work. Without limiting the provisions of PA Section 3.2.4 (*Timely Performance; Time is of the Essence*), the following are conditions to commencement of any of (a) geotechnical borings, (b) creating utility test holes, (c) exploration of existing drainage facilities, (d) pipe cleaning/de-silting/video-collection, (e) other data collection for the Base Element Condition Report, (f) other site surveys, and (g) commencement of portions of utility pre-design Work:

3.4.2.1 Authority has issued NTP1;

3.4.2.2 Authority has received Project-specific safety plans for field investigations;

3.4.2.3 Authority has received and accepted, each in accordance with TP Section 2 (Project Management), the Submittals under the Submittal Requirements Database required as a condition to commencement of any of those portions of the Work identified in the preamble to this PA Section 3.4.2 (*Conditions to Commencement of Certain Site-Related Work*) that Developer intends to undertake prior to issuance of NTP2;

3.4.2.4 Developer has certified to Authority that all Developer Constituents performing any part of the Design Work hold all necessary or required registrations, permits, or approvals, and valid licenses to practice, as are necessary for performance of such part(s) of the Design Work or are otherwise necessary to comply with the Technical Provisions;

3.4.2.5 the P&P Bonds each continue to be in full force and effect;

3.4.2.6 each guaranty, as required under PA Section 16.4.2 (*Guaranties*) continues to be in full force and effect;

3.4.2.7 all Insurance Policies required under the DBF Documents for Work identified in the preamble to this PA Section 3.4.2 (*Conditions to Commencement of Certain Site-Related Work*) continue to be in full force and effect;

3.4.2.8 Developer has made available the Key Personnel and Required Personnel required, and at the place(s) and for the hours required, to be available as of the date of NTP1, as pertains to Work identified in the preamble to this PA Section 3.4.2 (*Conditions to Commencement of Certain Site-Related Work*), except and only to the extent approved otherwise by Authority;

3.4.2.9 (i) Developer has received, paid all associated fees for, and (if applicable) achieved or satisfied all conditions under, all applicable Governmental Approvals and other applicable third party approvals that Developer is obligated to obtain and maintain prior to commencement and performance of any Work identified in the preamble to this PA Section 3.4.2 (*Conditions to Commencement of Certain Site-Related Work*) authorized by NTP1, (ii) all such Governmental Approvals and third party approvals are not subject to appeal; (iii) there exists no uncured material violation of the terms and conditions of any such Governmental Approval or such third party approvals, and (iv) Developer has furnished to Authority fully executed copies of all such Governmental Approvals and such third party approvals;

3.4.2.10 all required real property rights (e.g., rights of entry) necessary for commencement of any portion of the Work authorized by NTP1 are in place;

3.4.2.11 all representations and covenants of Developer set forth in PA Section 15.1 (*Developer Representations and Covenants*) shall be and remain true and correct in all material respects; and

3.4.2.12 there exists no uncured Developer Default for which Developer has received Notice from Authority unless the Project Agreement provides the Developer a cure period for the applicable Developer Default and the Developer is diligently pursuing cure in the applicable cure period in accordance with the cure provisions in PA Section 17.1 (*Default by Developer, Cure Periods*).

3.4.3 Conditions to Commencement of Utility Adjustment Work. Refer to PA Section 7.4.15 (*Conditions to Commencement of Utility Adjustments*).

3.5 Float

All Float contained in the Baseline Project Schedule shall be considered a jointly owned and shared resource by Developer and Authority, available to the Project, and shall not be considered as time for the exclusive use or benefit of either Authority or Developer. All Float shall be shown as such in the Baseline Project Schedule on each affected schedule path. Authority will have the right to examine the identification of (or failure to identify) Float on the Baseline Project Schedule in determining whether to accept any Baseline Project Schedule. Once identified, Developer shall monitor and account for Float in accordance with the Critical Path Method.

3.6 Project Schedule Updates; SOV Updates

Developer shall prepare and deliver each Project Schedule Update and SOV Update as and when required under the Technical Provisions. For avoidance of doubt, (a) Project Schedule Updates do not serve to revise or amend, nor shall be deemed to revise or amend, the Baseline Project Schedule, and (b) SOV Updates do not serve to revise or amend, nor shall be deemed to revise or amend, any corresponding Baseline Schedule of Values.

3.7 Estoppel for Acceptance of Project Schedule Submittals

Without limiting PA Section 6.3.11 (*Limitations on Developer's Right to Rely*), Developer's obligations under PA Section 3.2 (*Timely Performance; Time is of the Essence*), and, with respect to any claim for additional time or costs in performance of the Work, including specifically PA Article 13 (*Relief Events; Compensation Events*) or otherwise under the DBF Documents, any acceptance by Authority of any Project Schedule shall not, and shall not be construed to, bind Authority to any improper logic, improper activity durations, or errors in the expression of the Critical Path or otherwise be used as a defense by or on behalf of Developer in any Dispute hereunder. Without limiting Developer's other obligations under the DBF Documents, Developer shall correct any improper logic, improper activity durations, or errors in its next Project Schedule Submittal.

3.8 Use of Project Schedule in Relief Event Process, Project Payment Process

For avoidance of doubt, the Baseline Project Schedule only (and not any Project Schedule Update) is relevant to measuring the duration of any delay hereunder; provided, however, that Project Schedule Updates (a) may be relevant to determining whether Developer mitigated any such delay, and (b) may, with an Approved Project Certificate, be relevant in determining whether a portion of the Work identified on the Baseline Project Schedule was completed.

Article 4 FINANCING

4.1 Financial Close Security

In the event that Financial Close does not occur on the Effective Date, and unless earlier delivered by or on behalf of Developer to Authority, Developer will deliver the Financial Close Security to Authority on the Effective Date, and Authority will return the same not later than two Business Days following Financial Close.

4.2 Developer Right and Responsibility to Finance; Developer Financing Constraints

4.2.1 Developer is solely responsible for satisfying the Developer Financing Obligation and for all payment obligations with respect thereto, all at its own cost and risk and without recourse to Authority and GDOT. Developer will pursue and maintain the Developer Financing Obligation in

accordance with this PA Article 4 (*Financing*) and the Financial Plan (as may be updated further pursuant to this PA Article 4 (*Financing*)).

4.2.2 Developer may (i) create or grant security interests in, sell, pledge or otherwise assign or transfer all or any portion of Developer's Interest, directly or indirectly and in a single or multiple steps or transactions, to, and between, Lenders or the Lender Agent for purposes of securing Developer Financing or (ii) create or grant security interests in, sell, pledge, or otherwise assign or transfer all or any of its rights, title and interest in and to payments under any Approved Project Certificates and to payments due or to become due under the DBF Documents, as well as any Breakage Costs (A) owed or to become owed to Developer or any Lender or Lender Agent or swap or other hedge counterparty, or (B) payable to any Lender or Lender Agent or any swap or other hedge counterparty, in each case, subject to the terms and conditions contained in the DBF Documents. Developer is strictly prohibited from selling, pledging or encumbering or otherwise assigning or transferring Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to the Developer, the Project and the Work, (c) a special purpose entity subsidiary wholly owned by Developer or an entity described in clause (b) above or an intermediate special purpose entity utilized by or for the benefit of a Lender in connection with the Developer Financing, (d) the Bond Issuer, (e) the Trust, or (f) the Trustee.

4.2.3 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to Authority for the payment of all sums owing to Authority under the DBF Documents and the performance and observance of all of Developer's covenants and obligations thereunder.

4.2.4 Developer Financing shall include, as applicable to the type of financing, principal, capitalized interest, accrued interest, accretion of discount, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, note purchase agreements, bona fide financing obligations in connection with the purchase or financing of Approved Project Certificates, payment obligations under interest rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, and Breakage Costs or Breakage Benefits, and other customary provisions for the type of financing provided (or other assets or rights substantively similar to any of the foregoing).

4.2.5 Developer Financing shall exclude any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of Authority to pay Termination Compensation, including Developer's receipt of a Notice of Termination for Convenience and Developer's declaration of an Authority Default of the type entitling Developer to terminate the Project Agreement.

4.2.6 No indebtedness or other transaction shall constitute Developer Financing unless and until the Lender Agent provides Authority with notice thereof and the related Developer Financing Agreement.

4.2.7 Interest Rate Adjustments

4.2.7.1 Subject to Authority's rights to terminate under PA Section 18.5 (*Termination for Failure to Achieve Financial Close*), Authority will bear the risk and have the benefit of changes in the Benchmark Investment Rate, if utilized, and the Benchmark Interest Rate(s) underlying the financing contained in the Financial Plan and the Preliminary Financial Model for the Benchmark Investment Rate Protection Period and the Interest Rate Protection Period respectively. Such information

shall be prepared in accordance with applicable securities law and any other federal, state, or local statute, and for the purpose of demonstrating a competitive process solicitation.

4.2.7.2 On the Financial Close Date, Developer and Authority will then jointly update the Preliminary Financial Model (the "Updated Preliminary Financial Model") and calculate the updated DBF Contract Sum ("Updated Preliminary DBF Contract Sum") for the change in the Benchmark Investment Rate and the Benchmark Interest Rate(s), as applicable, (as well as any hedging instruments that were included in the Interest Rate Submittal) for the Benchmark Investment Rate Protection Period and Interest Rate Protection Period respectively as follows: On the last date of the Interest Rate Protection Period, Authority and Developer shall agree upon the Benchmark Interest Rate(s) based on a reading taken from the same sources provided in Developer's submitted Proposal Form X in accordance with the provisions set forth in the ITP (incorporated herein by reference). Developer and Authority will then jointly update the Preliminary Financial Model in accordance with this PA Section 4.2.7.2 (*Interest Rate Adjustments*), solely to reflect the agreed upon changes, if any, in the Benchmark Interest Rate(s) and Benchmark Investment Rate(s) as applicable. Developer and Authority will use the Updated Preliminary Financial Model to calculate the updated DBF Contract Sum ("Updated Preliminary DBF Contract Sum") to reflect the financial impact of the actual change, if any, in the Developer Financing Rate with respect to any financing over the duration of the Interest Rate Protection Period (the "Interest Rate Adjustment") as follows:

(a) If the DBF Contract Sum has increased, then the Interest Rate Adjustment resulting from such increase shall be accounted for as an increase in the Project Payment in FY 2025 up to the maximum amount described in PA Section 4.2.7.3 (*Interest Rate Adjustments*). The Maximum Available Public Funds Amount in FY 2025 will be increased by the same amount as the increase in the Project Payment in that Fiscal Year. The DBF Contract Sum shall also be increased by the same amount.

(b) If the Interest Rate Adjustment results in a decrease in the DBF Contract Sum, this shall be accounted for as a decrease in the Project Payment in the last Fiscal Year, and if the decrease exceeds the amount of the expected Project Payment in the last Fiscal Year, then such excess amounts will be accounted for as additional decreases in Project Payments in preceding Fiscal Years, in reverse chronological order, until the entire decrease is accounted by decreases in Project Payments.

4.2.7.3 Subject to either Party's right to terminate this Project Agreement pursuant to PA Section 18.5.2 (*Termination for Failure to Achieve Financial Close*), an Interest Rate Adjustment that results in an increase in the DBF Contract Sum will be limited to a maximum $17,000,000 increase (the "Maximum Interest Rate Adjustment"). Where the Interest Rate Adjustment is higher than the Maximum Interest Rate Adjustment, the difference between the Interest Rate Adjustment and the Maximum Interest Rate Adjustment is the "Excess Interest Rate Adjustment".

4.2.7.4 In the event of an Interest Rate Adjustment that is greater than the Maximum Interest Rate Adjustment, then the Parties will work together in good faith to identify commercially reasonable alternative financing options to reduce the overall financing costs for the Project (an "Alternative Financing Solution"). Any benefit derived from the Alternative Financing Solution will be accounted for as follows:

(a) Any reduction in DBF Contract Sum due to the Alternative Financing Solution that is less than or equal to the Excess Interest Rate Adjustment shall accrue solely to the benefit of Authority and will not be shared with Developer, and

(b) Any reduction in the DBF Contract Sum due to the Alternative Financing Solution that exceeds the Excess Interest Rate Adjustment shall be shared 50:50 between the Developer and the

Authority. The DBF Contract Sum calculated after taking into account Authority's share of savings shall be the Updated Preliminary DBF Contract Sum.

4.2.7.5 If there has been no change in Financial Plan pursuant to PA Section 4.2.8 *(Change in Financial Plan)* below, the Updated Preliminary DBF Contract Sum will become the "Financial Close DBF Contract Sum". Attachment 2 (*Project Payment Schedule*) to PA Exhibit 7 (*DBF Contract Sum and Payment Terms*)) will be updated to reflect the Project Payments from the Updated Preliminary Financial Model, which shall not exceed the Project Payments in the Preliminary Financial Model, other than in FY 2025 (subject to the Maximum Interest Rate Adjustment). Developer shall update the line for "Subtotal E" in the Schedule of Values. Developer's Updated Preliminary Financial Model will be the Financial Close Financial Model used for Financial Model updates in accordance with this Project Agreement.

4.2.7.6 Authority reserves the right to approve any changes in Benchmark Interest Rates or changes in debt structure (e.g. fixed or variable rate, bank financing or bond financing, call provisions) before Financial Close that constitute a deviation from the assumptions in the Preliminary Financial Model.

4.2.7.7 If there has been a change in Financial Plan, the Preliminary Financial Model will be further revised in accordance with PA Section 4.2.8 (*Change in Financial Plan*).

4.2.8 Change in Financial Plan

4.2.8.1 Notwithstanding the provisions of PA Section 4.2.7.3 (*Interest Rate Adjustments*), above, if Developer reaches financial close under a financial plan that is different from the Financial Plan reflected in the Preliminary Financial Model, Authority will be entitled to a share of the net benefit of any reduced Developer Financing Costs and/or increase in interest earnings on any guaranteed investment contract, calculated in accordance with PA Section 4.2.8.3 (*Change in Financial Plan*), which benefit shall be reflected in a reduction to the DBF Contract Sum in accordance with the process set forth in this Section.

In accordance with PA Section 4.2.7 (*Interest Rate Adjustments*), on the last date of the Interest Rate Protection Period, the Preliminary Financial Model will be updated solely for the increase or decrease in Benchmark Interest Rates over the Interest Rate Protection Period to determine the Updated Preliminary Financial Model.

4.2.8.2 The schedule of Developer Financing Costs in the Preliminary Financial Model shall be updated to reflect the financial impact of the actual change in Benchmark Interest Rate(s) using the Updated Preliminary Financial Model (the "FCI Schedule").

4.2.8.3 Developer shall submit a revised Financial Model reflecting the revised financial plan (the "Revised Financial Model"), with a revised schedule of Developer Financing Costs (the "FCR Schedule") and a revised DBF Contract Sum (the "Revised DBF Contract Sum"). The calculation and sharing of the Gain, G, will be as follows:

(a) G will be calculated as the present value, on the Financial Close Date, of the FCI Schedule less the FCR Schedule, discounted at the financing rate(s) of the revised financial plan's Developer Financing Agreements. For Developer Financing Agreements that do not have a Lender associated with them, the discount rate(s) shall equal the Certificate Discount Rate. Developer shall be entitled to 50% of the Gain (the "Adjustment for Change in Financial Plan").

(b) The Project Payment in the final Fiscal Year will be adjusted to reflect the reduced Developer Financing Costs and the Adjustment for Change in Financial Plan. The Revised DBF Contract Sum will be increased by the Adjustment for Change in Financial Plan and will become the "Financial Close DBF Contract Sum". The Revised Financial Model shall be updated to include the Adjustment for Change in Financial Plan and will become the Financial Close Financial Model. Attachment 2 (*Project Payment Schedule*) to PA Exhibit 7 (*DBF Contract Sum and Payment Terms*)) will be updated to reflect the Project Payments in the Financial Close Financial Model, which shall not exceed the Project Payments in the Updated Preliminary Financial Model. Developer shall update the line for "Subtotal E" in the Schedule of Values (i) to reflect the revised Developer Financing Costs by replacing the Developer Financing Amount listed on the "Subtotal E" line, and (ii) to reflect the Adjustment for Change in Financial Plan by adding a new "Subtotal F" line entitled "Adjustment for Change in Financial Plan."

4.2.8.4 Developer's Financial Close Financial Model will be the Financial Model used for Financial Model updates in accordance with this Project Agreement.

4.2.8.5 Developer's revised financial plan, further to this PA Section 4.2.8 (*Change in Financial Plan*), will be attached as Part B to PA Exhibit 6 (*Project Financial Plan*) without further action of the Parties. References to Developer's obligations regarding performance of its "Financial Plan," shall be deemed to be the revised financial plan at such Part B, following performance of the adjustments to the DBF Contract Sum under this PA Section 4.2.8 (*Change in Financial Plan*).

4.2.9 Construing Rights for Financial Plans. Notwithstanding anything to the contrary in the DBF Documents, Authority acknowledges and agrees that:

4.2.9.1 To facilitate Developer Financing involving (a) Bonds and the related Bond Issuer, or (b) a Bond Issuer or the Trust or a trustee that purchases the Approved Project Certificates on behalf of the Trust (the "Trustee"), such Bond Issuer, Trust or Trustee will be treated as, and have the same rights and interests as, a Lender or Lender's Agent under the DBF Documents.

4.2.9.2 Any provision in the Project Agreement related to Developer's right to grant a security interest in, sell, pledge or otherwise assign or transfer the Developer's Interest, including with respect to Approved Project Certificates and Breakage Costs, will also apply to the Bond Issuer, the Trust and the Trustee, as follows:

(a) If the Developer Financing involves Bonds, including transactions where the Bond Issuer enters into interest rate hedging arrangement(s) (or other derivative facilities), then any provisions in the Project Agreement related to Developer's right to grant a security interest in, sell, pledge or otherwise transfer the Developer's Interest, including Approved Project Certificates and Breakage Costs, are, and shall be construed to be, and shall allow, the grant of a security interest in, sale, pledge or other assignment or transfer of such interest to the Bond Issuer, which Bond Issuer may use the amounts so sold, pledged, assigned, or transferred to make payments with respect to Bonds, if applicable, or with respect to such interest rate hedging arrangement(s) (or other derivative facilities) and such Bond Issuer shall have the right to further grant a security interest in, sell, pledge or otherwise assign or transfer such interest to other Lenders or Lender Agents, and other counterparties under such interest rate hedging arrangement(s) (or other derivative facilities, if applicable, to secure its obligations with regard to the Bonds or any such other interest rate hedging arrangement(s) (or other derivative facilities) in one or more transactions. Such other Lender or Lender Agent shall have the right to grant further a security interest in, sell, pledge, or otherwise assign or transfer such interest to other Lenders or Lender Agents, with the same rights to be afforded to subsequent Lenders or Lender Agents in one or more subsequent transactions.

(b) If the Developer financing involves a Trust, including transactions where the Trustee enters into interest rate hedging arrangement(s) (or other derivative facilities), then any provisions in the Project Agreement related to Developer's right to grant a security interest in, sell, pledge or otherwise transfer the Developer's Interest, including Approved Project Certificates and Breakage Costs, are, and shall be construed to be, and shall allow, the grant of a security interest in, sale, pledge or other assignment or transfer of such interest to the Trustee, which Trustee shall have the right to further grant a security interest in, sell, pledge or otherwise assign or transfer such interest to other Lenders or Lender Agents, and other counterparties under such interest rate hedging arrangement(s) (or other derivative facilities), if applicable, in one or more transactions. Such other Lender or Lender Agent shall have the right to grant further a security interest in, sell, pledge, or otherwise assign or transfer such interest to other Lenders or Lender Agents, with the same rights to be afforded to subsequent Lenders or Lender Agents in one or more subsequent transactions.

4.3 Financial Close

4.3.1 Subject to the rights of Developer and Authority to terminate this Project Agreement pursuant to PA Section 18.5 (*Termination for Failure to Achieve Financial Close*), Developer shall be unconditionally obligated to enter into Developer Financing Agreements and complete closing for all of Developer Financing, in the total amount satisfying Developer Financing Obligation by not later than the Financial Close Deadline.

4.3.2 Financial Close Deadline

4.3.2.1 In the event Financial Close does not occur by the Financial Close Deadline, then either Party shall have the right to terminate this Project Agreement in accordance with PA Section 18.5 (*Termination for Failure to Achieve Financial Close*).

4.3.2.2 The Financial Close Deadline may be extended at Developer's request by the period of delay in Developer's ability to achieve Financial Close directly caused by Relief Events or if Developer's failure to achieve Financial Close is directly attributable to:

(a) the issuance of a temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Work;

(b) if each Developer Conditions Precedent has been satisfied (or each Developer Conditions Precedent would have been satisfied if not for Authority's direct failure to satisfy Authority Conditions Precedent) and any Authority Conditions Precedent is not satisfied on or before the Financial Close Deadline; or

(c) Authority failing to sign this Project Agreement within 60 days after the selection of Developer as the Best Value Proposer, except if Authority's failure arises out of, relates to, is caused by, or results from any act or omission of any Developer-Related Entity; or

(d) the occurrence of exceptional circumstances in the financial markets, which occur at a time and which have a duration which is reasonably likely to impact Financial Close, in one or more of Europe, North America, and Japan/Asia Pacific, for a period of time that: (i) results in material and substantial cessation of lending activity in national or relevant international capital or interbank markets; and (ii) adversely affects access by the Developer to such markets preventing Financial Close.

4.3.2.3 Upon notice by Developer to Authority that one of the conditions set forth in PA Section 4.3.2.2 (*Financial Close Deadline*) has occurred, Authority will reasonably agree to a new Financial Close Deadline.

4.3.3 Conditions to Financial Close

4.3.3.1 Except to the extent expressly permitted in writing by Authority, Developer shall not be deemed to have achieved Financial Close until the following conditions have been satisfied (collectively, the "Financial Close Conditions Precedent"):

(a) Developer has delivered to Authority for review and comment, to confirm compliance with the DBF Documents, initial drafts of those proposed Developer Financing Agreements that will contain the material commercial terms relating to Developer Financing not later than 60 days prior to the proposed Financial Close Date (or such shorter period approved by Authority) along with subsequent drafts of such Developer Financing Agreements not later than 45 days prior to the proposed Financial Close Date (or such shorter period approved by Authority);

(b) Developer has delivered to Authority for review and comment with respect to feasibility, an initial draft of the proposed detailed schedule and protocol for Financial Close not later than 60 days prior to the proposed Financial Close Date (or such shorter period approved by Authority) to be completed by Authority in a reasonable timeframe;

(c) all applicable parties have entered into and delivered the DBF Documents and Developer Financing Agreements (except for those documents that are not required to be executed on such date), meeting the requirements of PA Section 4.2 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*), and Developer has delivered to Authority true and complete copies of the executed DBF Documents and Developer Financing Agreements (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms);

(d) Developer has provided Authority with Notice of Developer's satisfaction of all Developer Conditions Precedent;

(e) Developer has certified that as of the Financial Close Date, there exists no breach or default by Developer or any Affiliate under this Project Agreement or events that with notice or the passage of time, or both, would constitute a breach or default by Developer or such Affiliate under this Project Agreement;

(f) Developer has delivered to Authority such documents and certificates as Authority may reasonably request evidencing the good standing of Developer and the authorization of the entry by Developer into each of the Developer Financing Agreements and DBF Documents;

(g) Developer has delivered to Authority a bringdown of the legal opinion delivered on the Effective Date (i.e., offer the opinions given as of the Effective Date as of the Financial Close Date) substantially in the form set forth in Form P to the ITP;

(h) Developer has delivered to Authority a certificate stating that the representations and warranties of Developer set forth in PA Section 15.1 (*Developer Representations and Covenants*) are true and correct in all material respects as at the Financial Close Date;

(i) Authority has delivered to Developer a certificate stating that the representations and warranties of Authority set forth in PA Section 15.2 (*Authority Representations and Covenants*) are true and correct in all material respects as at the Financial Close Date;

(j) Authority has delivered to Developer true and complete fully executed copies of the Intergovernmental Agreement, the Joint Resolution, the Estate for Years, and the MOU;

(k) GDOT and Authority have executed and delivered to Developer any Developer Financing Agreements that (i) require GDOT's or Authority's execution and (ii) have been previously approved by GDOT and Authority as a GDOT Financing Document pursuant to the ITP;

(l) GDOT and Authority have delivered to Developer any GDOT Financial Information required that has previously been approved by GDOT and Authority as GDOT Financial Information pursuant to the ITP;

(m) GDOT and Authority have delivered to Developer any relevant information to accommodate the Developer Financing as mutually agreed to by Authority and Developer and as required to comply with applicable Law with respect to the State, GDOT and Authority, including information for inclusion in any offering materials relating to any publicly offered Developer Financing;

(n) all applicable parties have entered into and delivered the Direct Agreement; and

(o) Each of Authority and GDOT have delivered to Developer, the Lenders, and the Lender Agent (i) a bringdown of their respective legal opinion delivered on the Effective Date (on which the Lenders and the Lender Agent are entitled to rely) and (ii) a legal opinion with respect to the Direct Agreement opining only as to those items set forth in PA Exhibit 24 (*Direct Agreement Opinions*).

4.3.4 Developer shall deliver copies of any ancillary supporting documents that are included among Developer Financing Agreement to Authority within 30 days after the Financial Close Date.

4.3.5 Developer shall deliver to Authority, no later than the Business Day following the Financial Close Date, unrestricted electronic versions of the Financial Model, which version incorporates any amendments (if any) agreed by the Parties between the Effective Date and the Financial Close Date, including any Interest Rate Adjustments and adjustments reflecting any revised financial plan pursuant to PA Section 4.2.8 (*Change in Financial Plan*), together with the workbooks and documents setting forth all assumptions, calculations and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested by Authority to operate the Financial Model.

4.4 No Authority or GDOT Liability

4.4.1 Neither Authority nor GDOT shall have any obligation to pay debt service or financing costs on any debt or financing issued or incurred in connection with Developer Financing, provided that the aforementioned shall not be intended nor interpreted to otherwise limit Authority's obligations with respect to payment on account of the DBF Contract Sum or other amounts owed by Authority pursuant to this Project Agreement or any Approved Project Certificate. Neither Authority nor GDOT shall have any obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred by any Developer-Related Entity in connection with the Project or the DBF Documents, or any Developer Financing Agreements.

4.4.2 None of the State, Authority, GDOT, the State Transportation Board or any other agency, authority, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, has any liability whatsoever for payment of the principal sum of any Developer Financing, any other obligations issued or incurred by any Person described in PA Section 4.5.2 (*Limitations and Requirements for Developer Financing and Developer Financing Agreements*) in connection with this Project Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Developer Financing Agreements. Except for a failure by Authority to make Project Payments due under an Approved Project Certificate and for a breach of Authority's obligations to the Lenders under the Direct Agreement, no Lender is entitled to seek any damages or other amounts from Authority, whether for Developer Financing or any other amount. Neither

Authority's nor GDOT's review of any Developer Financing Agreements or other Project financing documents relating to Developer Financing is a guaranty or endorsement of Developer Financing, any other obligations issued or incurred by any Person described in PA Section 4.5.2 (*Limitations and Requirements for Developer Financing and Developer Financing Agreements*) in connection with this Project Agreement or the Project, nor a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to Developer Financing or any other obligations issued or incurred by such Person in connection with this Project Agreement or the Project to provide for payment of Developer Financing or any other obligations issued or incurred by such Person in connection with this Project Agreement or the Project. For avoidance of doubt, the foregoing does not affect Authority's liability to Developer under PA Article 19 (*Assignment and Transfer*) and PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*) for Termination Compensation that is measured in whole or in part by outstanding Developer Financing or its liability to otherwise pay the Developer Financing Amount or Breakage Costs in accordance with this Project Agreement.

4.4.3 Neither Authority nor GDOT shall have any obligation to any Lender pursuant to the DBF Documents except for the obligation of Authority to make Project Payments due under an Approved Project Certificate and to pay Breakage Costs that have been assigned, pledged, sold or otherwise transferred in accordance with PA Section 4.2.2 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*) and Authority's obligations to the Lenders under the Direct Agreement. The foregoing does not preclude Lender enforcement of this Project Agreement against Authority where the Lender has succeeded to the rights, title and interests of Developer under the DBF Documents, whether by way of assignment or subrogation.

4.5 Limitations and Requirements for Developer Financing and Developer Financing Agreements

Developer Financing and Developer Financing Agreements and any amendments or supplements thereto, shall comply with the following terms and conditions.

4.5.1 The Security Documents may only secure the sale of Approved Project Certificates or secure or otherwise support Developer Financing the proceeds of which are obligated to be used exclusively for the purposes of (a) directly or indirectly purchasing Approved Project Certificates, (b) designing, permitting, building, constructing, and equipping the Project, performing the Utility Adjustment Work or performing other Work, (c) paying principal and interest on the Developer Financing, (d) paying reasonable development fees to Developer-Related Entities or to the D&C Contractor or its affiliates for services related to the Project, (e) paying fees and premiums to any Lender of Developer Financing or such Lender's agents, (f) paying costs of interest rate hedging arrangements (or other derivative facilities) in connection with any permitted Developer Financing, (g) paying costs and fees in connection with any permitted Developer Financing which may include the costs of credit enhancement or protection collateral, (h) making payments due under the DBF Documents to Authority or any other Person, (i) funding reserves required under this Project Agreement or any Developer Financing Agreements, applicable securities laws, or Environmental Laws, and (j) Refinancing any Developer Financing under clause (a) through clause (i) above.

4.5.2 The Security Documents may only secure or otherwise support Developer Financing and Developer Financing Agreements executed by (a) Developer, (b) its successors and permitted assigns, (c) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Developer, the Project and the Work or a special purpose entity that is an affiliate of Developer with purposes and powers limited to the Project and the Work, (d) a special purpose subsidiary wholly owned by Developer or an entity described in clause (c) above or any intermediate special purpose entity utilized

by or for the benefit of a Lender in connection with the Developer Financing, (e) the Bond Issuer, (f) the Trust, or (g) the Trustee.

4.5.3 Interests in Developer Financing must be acquired and held (directly or indirectly) only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that qualified investors other than Institutional Lenders (directly or indirectly) may acquire and hold interests in Developer Financing in connection with the securitization, sale, participation, or other syndication of Developer Financing, but only if an Institutional Lender acts as Lender Agent for such Developer Financing. Notwithstanding the foregoing, Authority and GDOT may approve Persons other than Institutional Lenders to purchase Approved Project Certificates from Developer, such approval not to be unreasonably conditioned, withheld or delayed.

4.5.4 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a Lien on or against Developer's Interest shall extend to or affect the fee simple interest of GDOT in the Project or GDOT's or Authority's rights or interests under the DBF Documents.

4.5.5 Each note, bond or other negotiable or non-negotiable instrument evidencing Developer Financing, or evidencing any other obligations issued or incurred by any Person described in PA Section 4.5.2 (*Limitations and Requirements for Developer Financing and Developer Financing Agreements*) in connection with the DBF Documents or the Project must include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged with respect thereto or the obligor therefor, is not an obligation, moral or otherwise, of the State, Authority, GDOT, the State Transportation Board, any other agency, authority, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power of the State, Authority, GDOT, the State Transportation Board or any other agency, authority, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

4.5.6 All Developer Financing Agreements to which Lender Agent is a party containing provisions regarding default by Developer shall require, or incorporate a requirement by reference to other Developer Financing Agreements that requires, that if Developer is in default thereunder and the Lender Agent gives notice of such default to Developer, then the Lender Agent shall also give concurrent notice of such default to Authority. Each of the Developer Financing Agreements to which Lender Agent is a party that provides Lender remedies for default by Developer, or any borrower, guarantor, or other obligor shall require that the Lender Agent deliver to Authority, concurrently with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by any Security Document in connection with the exercise of remedies under Developer Financing Agreements.

4.5.7 Each of the Developer Financing Agreements to which the Lender or the Lender Agent is a party shall expressly state, or incorporate a statement by reference to another of the Developer Financing Agreements that expressly states, that the Lender shall not name or join the State, Authority, GDOT, the State Transportation Board, any other agency, authority, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, in any legal proceeding seeking collection of Developer Financing or other obligations secured thereby or the foreclosure or other enforcement of Developer Financing Agreements, unless and except where:

(a) joinder of Authority or GDOT as a necessary party is required by applicable Law in order to confer jurisdiction on the court over the Dispute with Developer or to enforce Lender remedies against Developer,

(b) the complaint against Authority or GDOT states no claim or cause of action for a Lien on, or to foreclose against, Authority's or GDOT's right, title and interest in and to the Project, or for any liability of GDOT or Authority on the indebtedness represented by such Developer Financing, or

(c) Authority is in breach of its obligations under the Direct Agreement.

4.5.8 Each of the Developer Financing Agreements to which the Lender or the Lender Agent is a party shall expressly state, or incorporate a statement by reference to another of Developer Financing Agreements that expressly states, that the Lender shall not seek any damages or other amounts from the State, Authority, GDOT, the State Transportation Board, any other agency, authority, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, whether for Developer Financing or any other amount, except for the obligation of Authority to make Project Payments due under an Approved Project Certificate, to pay Breakage Costs assigned to a Lender, and other payments due under the DBF Documents in accordance with PA Section 4.2.2 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*) and Authority's obligations to the Lenders under the Direct Agreement.

4.5.9 Each of the Developer Financing Agreements to which the Lender or the Lender Agent is a party shall expressly state, or incorporate a statement by reference to another of Developer Financing Agreements that expressly states, that the Lender and the Lender Agent shall respond to any request from Authority or Developer for consent to a modification or amendment of this Project Agreement within a reasonable period of time.

4.5.10 Each of the Developer Financing Agreements to which the Lender or the Lender Agent is a party shall expressly state, or incorporate a statement by reference to another of Developer Financing Agreements that expressly states, that the Lender agrees to exclusive jurisdiction and venue in the Superior Court of Fulton County, Georgia in any action by or against Authority, GDOT or their successors and assigns.

4.5.11 The initial list of Developer Financing Agreements and Security Documents will be listed at Financial Close in Schedule A (*Developer Financing Agreements*) to the Direct Agreement and incorporated by reference in PA Exhibit 22 (*Initial List of Developer Financing Agreements, Security Documents*).

4.6 Refinancing

4.6.1 Right of Refinancing; Authority Consent

4.6.1.1 Developer from time to time may consummate Refinancings under Developer Financing Agreements on terms and conditions acceptable to Developer. Unless otherwise approved by Authority, any Refinancing other than an Exempt Refinancing shall be structured such that financing is amortized as rapidly as possible, subject to the Public Funds Amounts available.

4.6.1.2 Developer shall obtain Authority's written consent, which shall not be unreasonably conditioned, denied or withheld, prior to any Refinancing other than for any Exempt Refinancing. Authority's consent, when applicable, shall be given not less than 15 days prior to the proposed date of Refinancing; provided, however, that there are no material changes in the terms of the relevant Developer Financing Agreements provided to Authority and that Authority has been given reasonable time to provide its review and/or approval.

4.6.1.3 Authority will have no obligations or liabilities in connection with any Refinancing.

4.6.1.4 Developer shall promptly provide Authority with full details of any proposed Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. Authority will (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing.

4.6.2 Share of Refinancing Gain

4.6.2.1 For any Refinancing other than an Exempt Refinancing, a "Refinancing Gain" is a decrease in debt service or financing costs net of reasonable and documented transaction costs, such as Breakage Costs, subject to Authority approval.

4.6.2.2 Authority will be entitled to receive a **50**% share of any Refinancing Gain. The DBF Contract Sum will be lowered to reflect Authority's share of Refinancing Gain. Developer will submit a Revised Baseline SOV (reflecting the amount in Row E-2 lowered to account for Authority's share of Refinancing Gain) within 30 days of close of the Refinancing.

4.6.2.3 Following Developer's delivery of documents and data related to a proposed Refinancing, Authority and Developer will agree on the amount of the Refinancing Gain resulting from such Refinancing.

4.6.3 Notice of Refinancing

4.6.3.1 Developer shall provide Authority Notice of a Refinancing, except an Exempt Refinancing, 60 days prior to the proposed date for closing the Refinancing (or, if such advance notice is not reasonably possible under the circumstances, such notice as is possible and in any event with reasonable time for Authority to review and, if applicable, provide its consent for such Refinancing).

4.6.3.2 Developer shall provide Authority Notice of an Exempt Refinancing within 20 days after the closing or effective date of such Exempt Refinancing.

4.6.4 Refinancing Documents and Data

4.6.4.1 In connection with any Refinancing except an Exempt Refinancing, Developer shall deliver to Authority, not later than 45 days prior to the proposed date for closing the Refinancing (or, if such advance notice is not reasonably possible under the circumstances, such notice as is possible and in any event with reasonable time for Authority to review and, if applicable, provide its consent for such Refinancing as contemplated below), for access and review by Authority, the following:

(a) draft proposed Developer Financing Agreements (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms);

(b) a copy of all term sheets or all other relevant documentation and information in relation to the terms of the proposed Refinancing;

(c) a copy of the Financial Model as updated to reflect construction progress up to the date of the Refinancing, but not the effect of the proposed Refinancing, which shall be identical to any presented to the proposed Refinancing Lender(s);

(d) a copy of the proposed Financial Model as updated to reflect construction progress up to the date of the Refinancing and the effect of the proposed Refinancing, which shall be identical to any presented to the proposed Refinancing Lender(s);

(e) any material changes in Developer's obligations to the Lenders; and

(f) all other information Authority may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

4.6.4.2 In connection with any Refinancing, Developer shall deliver copies of all signed Developer Financing Agreements in connection with the Refinancing to Authority, not later than 30 days after close of the Refinancing.

4.6.4.3 Upon the closing of every Refinancing, PA Exhibit 22 (*Initial List of Developer Financing Agreements, Security Documents*) shall be deemed amended to reflect and incorporate therein the list of Developer Financing Agreements and Security Documents in Schedule A (*Developer Financing Agreements*) to the then-current Direct Agreement.

4.6.5 Refinancing Limitations, Requirements and Conditions

4.6.5.1 If Authority or GDOT renders any assistance or performs any requested activity in connection with a Refinancing, then Developer shall reimburse Authority all Authority Recoverable Costs that Authority or GDOT incurs in connection with rendering any such assistance or performing any such activity.

4.6.5.2 If Authority delivers to Developer an estimate of the Authority Recoverable Costs at least ten Business Days prior to the scheduled date of closing and a written invoice therefor at least two Business Days prior to the scheduled date of closing, then Developer shall reimburse such costs at closing. If Authority does not deliver an estimate and written invoice as specified, then it may deliver such invoice within 60 days after receiving notice of closing and Developer shall reimburse Authority for such costs within 15 days after Authority's delivery of the invoice to Developer.

4.6.5.3 If for any reason the Refinancing does not close, Developer shall reimburse to Authority all Authority Recoverable Costs that Authority or GDOT incurred within 10 days after Authority delivers to Developer a written invoice therefor.

4.7 Financial Model Updates

4.7.1 Whenever a Relevant Event occurs (except where the Parties mutually agree otherwise), the Financial Model will be updated by Developer in consultation with Authority to reflect changes in this Project Agreement and/or the impact of the Relevant Event with respect to which such adjustment is being undertaken.

4.7.2 Authority must approve all changes, updates, or other modifications (including changes to the Financial Model Formulas) to the Financial Model, such approval not to be unreasonably conditioned or withheld.

4.7.3 Any Financial Model produced following adjustments in accordance with this PA Section 4.7 (*Financial Model Updates*) shall, when it is approved by Authority, become the Financial Model, and the DBF Contract Sum produced by such Financial Model shall become the DBF Contract Sum for the purposes of this Project Agreement, until it is further amended in accordance with this Project Agreement.

4.8 Financial Model Audits

4.8.1 Within two Business Days after the Financial Close Date, Developer shall deliver to Authority an update of the Model Audit Report obtained from the Model Auditor that provided Authority an opinion on the suitability of the Preliminary Financial Model. The updated Model Audit Report shall be in the same form as that delivered for the Proposal and shall be co-addressed to Authority and GDOT. The updated Model Audit Report shall take into account the final terms and conditions of the Developer Financing Agreements and Security Documents.

4.8.2 Authority may require that Financial Model updates, prepared under PA Section 4.7 (*Financial Model Updates*) be audited by a nationally-recognized, independent audit firm prior to the Financial Model update becoming effective under this Project Agreement. Authority will bear the cost of such audit. The audit of the Financial Model update may be the same one required by the Lender(s) or Lender Agent, in which case Authority shall have no liability for the cost of the audit.

4.9 Financial Lead Commitment

For purposes of PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*), the Financial Lead shall be available from the Effective Date until the Financial Close Date.

Article 5 DBF CONTRACT SUM, PROJECT PAYMENTS, AND PUBLIC FUNDS

5.1 Payment of DBF Contract Sum

5.1.1 Authority will pay Developer the DBF Contract Sum, as may be adjusted further to PA Article 4 (*Financing*), on account of Work properly performed in accordance with, and as may be further adjusted by, the terms and conditions set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) and this PA Article 5 (*DBF Contract Sum, Project Payments, and Public Funds*). Developer's rights to receive payment of the DBF Contract Sum, as may be adjusted, as compensation for Work performed, are set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

5.1.2 Developer, in consideration for all Work performed in accordance with the DBF Documents, shall be entitled to receive the DBF Contract Sum, as adjusted, which amount is inclusive of any and all fees (including financing fees and interest), overhead, profit, insurance and surety bond premiums, labor and material costs, installations, delivery, warehouse and handling charges, Taxes and other assessments.

5.1.3 Payment Offset Generally. Authority will not, for any reason (including for defective Work, assessment or recovery of Liquidated Damages, Developer Default, termination, or Warranty claim), prevent the payment of, setoff, deduct, dilute, reduce, or withhold from or against any amounts due or to become due or owed by Authority (a) under an Approved Project Certificate or (b) with respect to Breakage Costs owed, assigned, pledged, sold or otherwise transferred, directly or indirectly and in a single or multiple steps or transactions, to any Lender or Lender Agent or to the Bond Issuer or to a swap or hedge counterparty. The Parties acknowledge that nothing in this PA Section 5.1.3 (*Payment Offset Generally*) limits Authority's rights expressly set forth in PA Section 4.6.2.2 (*Refinancing*), if applicable, or Authority's rights to prepay under PA Section 5.2.6 (*Project Payments*) and PA Exhibit 5, Section B (*Terms for Termination Compensation and Prepayment*).

5.2 Project Payments

5.2.1 Subject to PA Section 5.1.3 (*Payment Offset Generally*), Project Payments made by Authority will not, in any way, prevent later exercise of remedies by Authority under PA Exhibit 20

(*Nonconforming Work*) when Nonconforming Work or material is discovered, or constitute acceptance by Authority of such Nonconforming Work or improper materials.

5.2.2 Without limiting PA Section 14.6 (*Payment of Supplemental Agreements*), Authority will deposit all amounts payable by it under this Project Agreement into one or more Designated Account(s) and Developer agrees that any payment made in accordance with this PA Section 5.2 (*Project Payments*) shall constitute a complete discharge of Authority's relevant payment obligations under this Project Agreement.

5.2.3 [Reserved.]

5.2.4 In accordance with, and subject to, the terms of the Direct Agreement, Developer may create or grant security interests in, sell, assign, pledge, or otherwise transfer the Project Payments or other amounts owed to Developer, and its rights, under an Approved Project Certificate or the right to be paid Breakage Costs (or both), directly or indirectly and in a single or multiple steps or transactions, to a Lender or Lender Agent or Bond Issuer pursuant to Developer Financing Agreements (including as security for Developer's obligations under any Developer Financing Agreements) or where a Lender or Lender Agent or swap or other hedge counterparty has committed to purchase the Approved Project Certificate or the right to be paid Breakage Costs (or both) pursuant to a Developer Financing Agreement. Developer shall provide Notice to Authority within five Business Days after the first such creation or grant of a security interest in, sale, assignment, pledge, or transfer of an Approved Project Certificate or the right to be paid Breakage Costs (or both), identifying the assignee or transferee, as applicable. This Notice to Authority will constitute notice as to all relevant future creations or grants of security interest in, sales, assignments, pledges, or transfers of an Approved Project Certificate or Breakage Costs (or both) as to that particular assignee or transferee. Developer shall provide this Notice to Authority as provided in this PA Section 5.2.4 (*Project Payments*) each time Developer makes an initial creation or grant of a security interest in, sale, assignment, pledge, or transfer of an Approved Project Certificate or the right to be paid Breakage Costs to a new assignee or transferee.

5.2.5 Subject to the following sentence, Authority acknowledges that (a) each Approved Project Certificate represents an irrevocable and unconditional obligation to pay the Project Payment identified under such Approved Project Certificate in full to the holder thereof as and when such amount becomes due and payable under such Approved Project Certificate and (b) without limiting PA Section 5.1.3 (*Payment Offset Generally*), such holder has an independent ability to enforce the obligation of Authority to make such payment under the Approved Project Certificate in accordance with, and subject to the conditions in, this Project Agreement. The Parties acknowledge that nothing in this PA Section 5.2.5 or in Article 5 of PA Exhibit 3 (*Form of Direct Agreement*) limits the Authority's rights expressly set forth in PA Section 5.2.6 (*Project Payments*) and PA Exhibit 5, Section B (*Terms for Termination Compensation and Prepayment*). Failure to deliver the State Accounting Office Supplier (Vendor) Management Form does not relieve Authority's ultimate obligation to pay Approved Project Certificates, however such payment may be delayed until such time as Authority has received a true, complete, and correct State Accounting Office Supplier (Vendor) Management Form from the payee, at which time Authority shall have 20 Business Days thereafter to pay.

5.2.6 Authority may elect to prepay its obligations with respect to Approved Project Certificates earlier than as scheduled, pursuant to PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*) or the Direct Agreement. In the event that Authority elects to prepay its obligations with respect to Approved Project Certificates during the D&C Period, the Parties shall exercise good faith efforts to negotiate a mutually acceptable Supplemental Agreement, which shall provide for the funding mechanisms associated with any remaining Work. If Authority elects to make a prepayment with respect

to any individual Approved Project Certificate, such Approved Project Certificate shall be prepaid in whole, but not in part.

5.3 Additional Payment Constraints

Developer shall ensure that the Project Certificate and Project Certificate Support Package will, over the course of the Term, reflect collectively the minimum amounts required and other valuation constraints required under the DBF Documents, to include those minimum amounts and valuation constraints reflected in PA Exhibit 10 (*Proposal Schedule; Proposal SOV*), and thereafter each Schedule of Values.

5.4 Authority Monetary Obligations and Overall Authority Limitation of Liability

5.4.1 Notwithstanding any provision to the contrary in this Project Agreement, the payment of any moneys owed by Authority under the DBF Documents, including amounts payable under an Approved Project Certificate, Supplemental Agreement, in connection with a termination or prepayment, upon the occurrence of an Authority Default, or in any suit for monetary damages alleging breach of this Project Agreement by Authority, shall be limited to funds made available to Authority from GDOT and on deposit in the Public Contribution Account established for the Project (further to the Joint Resolution (the "Authority Payment Funds")); provided, however, as and to the extent required, Authority will request that GDOT obtain and make available to Authority, funds sufficient to enable Authority to make all payments due to Developer under the DBF Documents during the Term. Any such action by Authority under this PA Section 5.4.1 (*Authority Monetary Obligations and Overall Authority Limitation of Liability*) shall in no way prejudice Developer's rights and remedies under this Project Agreement with respect to Authority's failure to satisfy its payment obligations under the DBF Documents. Authority acknowledges that the unavailability of Authority Payment Funds to make a Project Payment shall not diminish, reduce or otherwise affect Authority's obligation to make such Project Payment. By way of example, if there are no Authority Payment Funds available to make a Project Payment when due, Authority's obligation to pay does not cease solely as a result thereof.

5.4.2 Without limiting the foregoing and for purposes of clarification, (a) funds, including any interest earned thereon, appropriated for the purposes set forth in O.C.G.A. § 32-10-120 *et seq.*, (b) funds, including any interest earned thereon, derived by Authority from Authority's toll projects or any other projects, both present and future, and (c) other funds, including any interest earned thereon, that may now or hereafter be budgeted, pledged or encumbered to the payment of revenue bonds or other obligations of Authority, including federal highway funds, shall not, to the extent so budgeted, pledged or encumbered, be available to meet Authority's obligations under the DBF Documents.

5.5 Additional Payment Constraints

Developer may be entitled to recover up to $25,000,000 dollars for increases in the cost of certain materials during the Term, as specified and in accordance with the procedures set forth in PA Exhibit 25 (*Material Indexation Adjustments*).

Article 6 PROJECT PLANNING AND APPROVALS; PROJECT ADMINISTRATION, REVIEW AND OVERSIGHT; PUBLIC INFORMATION

6.1 Preliminary Planning and Engineering Activities; Site Conditions

6.1.1 Developer shall perform or cause to be performed all Design Work, in accordance with the DBF Documents and Good Industry Practice, including conducting (a) technical studies and analyses; (b) geotechnical, seismic, flooding and biological investigations; (c) right-of-way mapping, surveying and

appraisals; (d) Utility investigations (including subsurface and SUE investigations) and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys.

6.1.2 Except to the extent that Developer is entitled to a Relief Event and/or a Compensation Event under this Project Agreement, Developer shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site or the Existing Improvements and surrounding locations, and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by or on behalf of Developer.

6.1.3 The Relief Events and Compensation Events addressed as provided in accordance with PA Article 13 (*Relief Events; Compensation Events*), and Authority's limited obligations set forth in (x) PA Section 7.7 (*Hazardous Materials Management*) and PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*) regarding Hazardous Materials, (y) PA Section 7.12 (*Discovery of Unexpected Subsurface Conditions*) regarding Unexpected Subsurface Conditions, and (z) PA Section 7.13 (*Existing Improvements and Latent Defects*) regarding Latent Defects, represent Developer's sole and exclusive right to compensation, time extension, or any other relief for any adverse financial, schedule, or other effects that occur during the Term relating to conditions occurring on, under or at the Site and the Existing Improvements, including (a) physical conditions, above or below the surface, of an unusual nature, differing materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) Utility facilities, (e) the discovery at, near or on the Project Limits of any archaeological, paleontological, cultural or historical resources, (f) the discovery at, near or on the Project Limits of any Threatened or Endangered Species and (g) the presence or discovery of Hazardous Materials.

6.2 Governmental Approvals

6.2.1 Authority has caused GDOT to retain responsibility for obtaining all Provided Environmental Approvals based on the NEPA Basic Configuration. Authority will deliver to Developer true and complete copies of all Provided Environmental Approvals. Developer shall obtain and maintain all other Governmental Approvals and, except for Provided Environmental Approvals (for which Authority is responsible to obtain, but Developer is responsible to maintain), all third party approvals and agreements required in connection with the Project or the Work, including any modifications, renewals and extensions of the Provided Environmental Approvals (including those required in connection with a Compensation Event). Developer shall deliver to Authority true and complete copies of all new or amended Governmental Approvals and third party approvals and agreements. Except as otherwise set forth in PA Section 2.7.7.2 (*Developer Proposed/State Acquired Right of Way*), generally as relates to Developer's right to seek relief and compensation for re-evaluations, amendments or supplements of Provided Environmental Approvals, itself as relates to Parcels of Developer Proposed/State Acquired Right of Way, Authority shall be neither responsible nor liable for any delays in obtaining Provided Environmental Approvals to the extent such delays are caused by differences between the schematic contained in the NEPA Approvals and Developer's Design, unless such differences are due to an Authority Change or are a Necessary Basic Configuration Change.

6.2.2 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Developer shall submit the same, together with any supporting environmental studies, data and analyses, to Authority for Authority's disposition, as specified in the Submittal Requirements Database.

6.2.3 Except as expressly set forth in this Project Agreement to the contrary (including specifically with respect to Developer Proposed/State Acquired Right of Way), in the event Developer's Design differs from the NEPA Basic Configuration (upon which the Provided Environmental Approvals

were based), as between Authority and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Project location and design, including (a) supporting GDOT in its conducting of all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the Provided Environmental Approvals, and other existing Governmental Approvals), and (c) bearing all risk and cost of litigation. Authority, GDOT and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 C.F.R. Part 771.

6.2.4 Subject to clause (g) and clause (k) of the definition of Compensation Event and clause (l) and clause (m) of the definition of Relief Event and except to the extent required under the Technical Provisions, in the event Developer is unable to obtain necessary Governmental Approvals (or re-evaluation, amendment, or supplement to any Governmental Approval, including the Provided Environmental Approvals) for any design that differs from the NEPA Basic Configuration, then Developer shall be obligated to design and construct the Project according to a design in compliance with the requirements of the Provided Environmental Approvals, and no such circumstance shall constitute a Relief Event, Compensation Event or other basis for any claim at law or in equity.

6.2.5 At Developer's request, Authority will, or shall cause GDOT to, reasonably assist and cooperate with Developer in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Developer under the DBF Documents.

6.2.5.1 Authority and Developer shall work jointly to establish a scope of work and budget for Authority Recoverable Costs related to the assistance and cooperation Authority and/or GDOT will provide as contemplated herein, subject to any rights of Developer in the case of a Compensation Event.

6.2.5.2 Such costs and expenses shall be subject to the limitations for Authority Recoverable Costs provided however that, notwithstanding the limitations of subpart (a) in the definition of Authority Recoverable Costs, such reimbursable amounts shall expressly include costs and expenses incurred to conduct further or supplemental environmental studies as a result of (i) any Developer Proposed/Developer Acquired Right of Way, (ii) subject to PA Section 6.2.11 (*Provided Environmental Approval Re-evaluation*), changes by Developer including those requiring NEPA re-evaluations and permitting, or (iii) Developer Release(s) of Hazardous Materials.

6.2.6 Developer shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the DBF Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to Authority or GDOT in the DBF Documents.

6.2.7 In the event that any Governmental Approvals required to be obtained by Developer must formally be issued in Authority's or GDOT's name, Developer shall undertake necessary efforts to obtain such approvals subject to Authority's or GDOT's reasonable cooperation with Developer, as the case may be, at Developer's expense (except in connection with a Compensation Event and provided that neither Authority nor GDOT will seek reimbursement for routine and customary internal administration of Authority or GDOT), including execution and delivery of appropriate applications and other documentation in form approved by Authority. Refer to TP Section 5.3.6 (Developer-Led Environmental Approvals) for

more specific provisions on applications in Authority's and/or GDOT's name for Environmental Approvals.

6.2.8 In the event that Authority, GDOT or FHWA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals that are the responsibility of Developer, Developer shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents and applications.

6.2.9 Developer shall solely be responsible for compliance with all applicable Laws in relation to Temporary Interests and for obtaining any Environmental Approval or other Governmental Approval required in connection with Temporary Interests.

6.2.10 Developer shall not enter into any agreement with any Governmental Entity, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate Authority or GDOT, or the State or an agency or department thereof, or states or implies that Authority or GDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless Authority otherwise approves in writing in its sole discretion. Developer has no power or authority to enter into any such agreement with a third party in the name or on behalf of Authority or GDOT.

6.2.11 Provided Environmental Approval Re-evaluation.

6.2.11.1 Authority will, in consultation with the applicable Governmental Entity, conduct an assessment to determine whether a Provided Environmental Approval requires re-evaluation, assessment or supplement in the event that:

(a) any part of the design or the construction means and methods included in the Design Documents and Plans differ from the assumptions included in the NEPA Basic Configuration in a manner that may result in a different environmental impact compared to the impact assessed in the Provided Environmental Approvals and the evaluation methodology set forth in TP Attachment 5-2 (CEPP Requirements);

(b) Developer is performing any Work in a manner that does not comply with the assumptions, means, and methods in the Provided Environmental Approvals; or

(c) a Change in Law occurs that may require re-evaluation, amendment or supplement of a Provided Environmental Approval.

6.2.11.2 Authority will make the determination described in PA Section 6.2.11.1 (*Provided Environmental Approval Re-evaluation*) within 10 Business Days after the date that is the later of:

(a) the date Developer has complied with the requirements set forth in TP Section 5.3.4.2 (Determining Scope of Re-evaluation); and

(b) with respect to the Design Documents and Plans that are necessary to determine whether a re-evaluation, amendment or supplement of a Provided Environmental Approval is required, the date Authority has accepted all such Design Documents and Plans.

6.2.11.3 Authority's determination under PA Section 6.2.11.2 (*Provided Environmental Approval Re-evaluation*) shall set forth whether the Project will be re-evaluated in a localized area or in total for additional or reduced environmental impacts due to the event described in such PA Section 6.2.11.2 (*Provided Environmental Approval Re-evaluation*).

6.2.11.4 If Authority determines under PA Section 6.2.11.2 (*Provided Environmental Approval Re-evaluation*) that a re-evaluation, amendment or supplement of a Provided Environmental Approval is required due to an event under PA Section 6.2.11.1(a) (*Provided Environmental Approval Re-evaluation*) or PA Section 6.2.11.1(b) (*Provided Environmental Approval Re-evaluation*), Developer will be fully responsible for all necessary actions, and will bear all risk of delay and all risk of increased cost, resulting from or arising out of any such re-evaluation, amendment or supplement, including:

(a) complying with the requirements set forth in TP Section 5.3.4 (Amendments to Provided Environmental Approvals);

(b) supporting Authority (or GDOT) in its conducting of all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws;

(c) obtaining and complying with all necessary new Governmental Approvals;

(d) obtaining and complying with all modifications, renewals and extensions of the Provided Environmental Approvals; and

(e) bearing all risk and cost of litigation.

6.2.11.5 If Authority determines under PA Section 6.2.11.2 (*Provided Environmental Approval Re-evaluation*) that a re-evaluation, amendment or supplement of a Provided Environmental Approval is required due to an event under PA Section 6.2.11.1(c) (*Provided Environmental Approval Re-evaluation*), then the provisions of this Project Agreement pertaining to Relief Events and Compensation Events shall apply.

6.3 Submittal Review; Authority Oversight; Independent Quality Assurance

6.3.1 Submittal Review, Comment and Acceptance Terms and Procedures

6.3.1.1 This PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*), TP Section 2.8 (Submittals) and the Submittal Requirements Database set forth the terms and procedures that shall govern all Submittals pursuant to this Project Agreement.

6.3.1.2 If there is any irreconcilable conflict between the provisions of this PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*) and any other provisions of this Project Agreement concerning submission, review, comment, rejection, and acceptance procedures, this PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*) shall exclusively govern and control.

6.3.1.3 Notwithstanding anything to the contrary in this PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*), Authority may reject any Submittal that is incomplete, or otherwise does not provide the content or information required under the DBF Documents.

6.3.2 Time Periods

6.3.2.1 Whenever Authority has a right to review, comment on, reject, or accept a Submittal, Authority will review, comment on, reject, or accept (as applicable) such Submittal: (a) where a period is specified in the Submittal Requirements Database or any other provision in the DBF Documents, within such period; or (b) where no period is specified in the DBF Documents, promptly and in any event within 15 Business Days, in either case after the date Authority receives a complete Submittal in conformance with this Project Agreement.

6.3.2.2 The time periods set forth in this Project Agreement and in the Submittal Requirements Database, in each case for Authority's review, comment, rejection, or acceptance (as applicable) of Submittals shall apply to and restart with all Submittals that Developer may be required to resubmit under this Project Agreement.

6.3.2.3 Developer shall schedule and coordinate all Submittals to allow an efficient and orderly Submittal review process in accordance with TP Section 2.8.3 (Coordination and Discipline Groups).

6.3.2.4 The time periods set forth in this Project Agreement and in the Submittal Requirements Database, in each case with respect to Authority's review, comment, rejection, or acceptance of a Non-Discretionary Submittal shall be subject to the notification and additional response time as provided in PA Section 6.3.4.4(a) (*Non-Discretionary Submittal*).

6.3.2.5 The time periods set forth in this Project Agreement and in the Submittal Requirements Database, in each case with respect to Authority's review, comment, rejection, or acceptance (as applicable) of Submittals, shall be subject to adjustment as provided in TP Section 2.8.4 (Time Periods for the Authority's Review) for multiple concurrent Submittals within a Discipline Group.

6.3.2.6 During any time that Authority has a right under this Project Agreement to carry out increased monitoring of the Project and Developer's compliance with its obligations under this Project Agreement, the applicable period for Authority to act on any Submittal received during such time, may (in Authority's sole discretion) be extended by up to 10 Business Days.

6.3.3 Discretionary Submittal

6.3.3.1 Developer shall not commence or permit the commencement of any Work that is the subject of, governed by or dependent upon a Discretionary Submittal until it has submitted the Discretionary Submittal to Authority and Authority has provided its acceptance (at its sole discretion) of such Discretionary Submittal.

6.3.3.2 If Authority does not respond to a Discretionary Submittal within the time period specified in PA Section 6.3.2 (*Time Periods*), then the Discretionary Submittal shall be deemed rejected. Authority may, but is under no obligation to, provide its rationale for rejection. If Developer wishes to proceed with the Discretionary Submittal, it may amend and resubmit the Discretionary Submittal to Authority, and PA Section 6.3.2 (*Time Periods*) and this PA Section 6.3.3 (*Discretionary Submittal*) shall re-apply.

6.3.4 Non-Discretionary Submittal

6.3.4.1 Developer shall not commence or permit the commencement of any Work that is the subject of, governed by or dependent upon a Non-Discretionary Submittal until it has submitted the Non-Discretionary Submittal to Authority and:

(a) Authority has provided its acceptance of the Non-Discretionary Submittal; and

(b) if Authority makes a Compliance Comment on the Non-Discretionary Submittal or rejects the Non-Discretionary Submittal on the grounds permitted under PA Section 6.3.4.4 (*Non-Discretionary Submittal*): (i) any re-submission of the Non-Discretionary Submittal is accepted in accordance with this PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*); or (ii) such Non-Discretionary Submittal is otherwise resolved in accordance with PA Section 6.3.6 (*Submittals Disputes*), including through agreement or determination that a comment is a Preference Comment rather than a Compliance Comment.

6.3.4.2 [Reserved.]

6.3.4.3 [Reserved.]

6.3.4.4 Authority may:

(a) make Compliance Comments on or reject a Non-Discretionary Submittal only if:

(i) the Work that is the subject of the Non-Discretionary Submittal fails to comply with any applicable covenant, condition, requirement, term, or provision of the DBF Documents, after taking into account the resolution of any point of interpretation in accordance with PA Section 1.2 (*DBF Documents; Order of Precedence*) or PA Section 1.7 (*Interpretive Engineering Decisions*) (or both);

(ii) the Work that is the subject of the Non-Discretionary Submittal is not to the standard at least equal to or better than the requirements of Good Industry Practice;

(iii) Developer has not provided all content or information required by the DBF Documents with respect to the Non-Discretionary Submittal; or

(iv) Authority does not accept (in its sole discretion) the terms of any Relocation Benefits Claim Form, FMV Offer, or Counter Offer; and

(b) make Preference Comments on a Non-Discretionary Submittal that reflect concerns regarding preferences that are not based on the grounds set forth in clause (a) just above.

6.3.4.5 Authority will label conspicuously each comment to Non-Discretionary Submittals as a Preference Comment or a Compliance Comment. Any comment not labeled shall be deemed to be, and addressed by Developer as, a Compliance Comment.

6.3.4.6 Upon receipt of any Compliance Comments from Authority on a Non-Discretionary Submittal under PA Section 6.3.4.2 (*Non-Discretionary Submittal*):

(a) Developer may within five Business Days notify Authority of any comment it reasonably considers is made on the grounds set forth in PA Section 6.3.4.4(a) (*Non-Discretionary Submittal*) and that such comment should be a Preference Comment rather than a Compliance Comment (including an explanation as to why the comment is on such grounds) and following such notification the matter shall be resolved in accordance with PA Section 6.3.6 (*Submittals Disputes*); and

(b) if Developer fails to notify Authority that it reasonably considers a comment should be a Preference comment rather than a Compliance Comment within the time set forth in clause (a) just above, such comment shall be deemed to be a Compliance Comment. Following a notification under PA

Section 6.3.4.6 (*Non-Discretionary Submittal*), Developer shall treat the relevant comment as a Compliance Comment (including for purposes of PA Section 6.3.4.1 (*Non-Discretionary Submittal*)) until an agreement or determination is made in accordance with PA Section 6.3.6.1 (*Submittals Disputes*).

6.3.4.7 If Authority rejects a Non-Discretionary Submittal on any ground permitted under PA Section 6.3.4.2 (*Non-Discretionary Submittal*) or makes a Compliance Comment on a Non-Discretionary Submittal on any ground permitted under PA Section 6.3.4.2 (*Non-Discretionary Submittal*) and Developer has not given Authority notification under PA Section 6.3.4.6(a) (*Non-Discretionary Submittal*) or where Developer has given Authority the notification with respect to a comment under PA Section 6.3.4.6 (*Non-Discretionary Submittal*), it has been agreed or determined that the comment is a Compliance Comment in accordance with PA Section 6.3.6 (*Submittals Disputes*), Developer shall:

(a) amend the Non-Discretionary Submittal in accordance with Authority's comments; and

(b) resubmit the revised Non-Discretionary Submittal to Authority and PA Section 6.3.2 (*Time Periods*) and this PA Section 6.3.4 (*Non-Discretionary Submittal*) shall re-apply.

6.3.4.8 If Authority makes a Preference Comment on a Non-Discretionary Submittal or a comment determined to be a Preference Comment in accordance with PA Section 6.3.6 (*Submittals Disputes*), then Developer shall use reasonable efforts to accommodate or otherwise resolve such Preference Comment, but shall otherwise not be required to resolve such comments prior to commencing or permitting the commencement of the relevant Work.

6.3.5 R&C Submittal

6.3.5.1 Following submission of a R&C Submittal, Developer may commence or permit the commencement of any Work that is the subject of, governed by or dependent upon such R&C Submittal; provided that Developer shall bear all risk and cost resulting from any requirement to resubmit the R&C Submittal and to remedy any Nonconforming Work following receipt of any Compliance Comment on the R&C Submittal, in accordance with this PA Section 6.3.5 (*R&C Submittal*) and PA Section 6.3.6 (*Submittals Disputes*).

6.3.5.2 Authority may:

(a) make Compliance Comments on a R&C Submittal only if:

(i) the Work that is the subject of the R&C Submittal fails to comply with any applicable covenant, condition, requirement, term, or provision of the DBF Documents, after taking into account the resolution of any point of interpretation in accordance with PA Section 1.2 (*DBF Documents; Order of Precedence*) or PA Section 1.7 (*Interpretive Engineering Decisions*) (or both);

(ii) the Work that is the subject of the R&C Submittal is not to the standard at least equal to or better than the requirements of Good Industry Practice;

(iii) Developer has not provided all content or information required by the DBF Documents with respect to the R&C Submittal; and

(b) make Preference Comments on a R&C Submittal that reflect concerns regarding preferences that are not based on the grounds set forth in PA Section 6.3.5.2(a) (*R&C Submittal*).

6.3.5.3 Authority will label conspicuously each comment to a R&C Submittal as a Preference Comment or a Compliance Comment. Any comment not labeled shall be deemed to be, and addressed by Developer as, a Compliance Comment.

6.3.5.4 Upon receipt of any Compliance Comments from Authority on a R&C Submittal under PA Section 6.3.5.2 (*R&C Submittal*), Developer may within five Business Days notify Authority of any comment Developer reasonably considers is made on the grounds set forth in PA Section 6.3.5.2(b) (*R&C Submittal*) and that such comment should be a Preference Comment rather than a Compliance Comment, including an explanation as to why the comment is on such grounds and following such notification, the matter shall be resolved in accordance with PA Section 6.3.6 (*Submittals Disputes*).

6.3.5.5 If Developer fails to notify Authority that it reasonably considers a comment should be a Preference Comment rather than a Compliance Comment within the time set forth in PA Section 6.3.5.4 (*R&C Submittal*), then such comment shall be deemed a Compliance Comment.

6.3.5.6 If Authority makes a Compliance Comment on a R&C Submittal on any ground permitted under PA Section 6.3.5.2 (*R&C Submittal*) and Developer does not give notification under PA Section 6.3.5.4 (*R&C Submittal*), and where Developer has given notification with respect to a comment under PA Section 6.3.5.3 (*R&C Submittal*), it has been agreed or determined that the comment is a Compliance Comment in accordance with PA Section 6.3.6 (*Submittals Disputes*), then Developer shall:

(a) amend the R&C Submittal in accordance with Authority's comments;

(b) resubmit the revised R&C Submittal to Authority and PA Section 6.3.2 (*Time Periods*) and this PA Section 6.3.5 (*R&C Submittal*) shall re-apply; and

(c) if Developer has commenced (or permitted the commencement of) any Work that is the subject of, governed by, or dependent upon such R&C Submittal delivered under PA Section 6.3.5.1 (*R&C Submittal*), then within 10 Business Days after receipt of the Compliance Comment, initiate a NCR in accordance with TP Section 3.5.2 (Initiation of NCR and Potential NCR), and such NCR shall be classified and resolved in accordance with TP Section 3.5 (Nonconforming Work); provided, that if the comment is subsequently determined to be a Preference Comment pursuant to PA Section 6.3.6 (*Submittals Disputes*), then Developer may withdraw the NCR that relates to any Work that is the subject of, governed by, or dependent upon such R&C Submittal.

6.3.5.7 If Authority makes a Preference Comment on a R&C Submittal or a comment is determined to be a Preference Comment in accordance with PA Section 6.3.6 (*Submittals Disputes*), then Developer shall use reasonable efforts to accommodate or otherwise resolve such Preference Comment.

6.3.6 Submittals Disputes

6.3.6.1 If Developer has notified Authority that it reasonably considers a comment should be a Preference Comment rather than a Compliance Comment pursuant to PA Section 6.3.4.6(a) (*Non-Discretionary Submittals*) or PA Section 6.3.5.4 (*R&C Submittal*), then Authority will notify Developer within five Business Days whether Authority agrees that the comment is a Preference Comment or continues to believe the comment is a Compliance Comment.

6.3.6.2 Following such notification by Authority under PA Section 6.3.6.1 (*Submittals Disputes*), the Parties shall conduct discussions in accordance with TP Section 3 (Developer Quality Program) to agree as to whether such comment is a Compliance Comment or Preference Comment. If the Parties fail to reach agreement on conclusion of the process specified in TP Section 3.1.8.2 (Meetings

Regarding Compliance Comment Disposition), then either Party may refer the matter for determination in accordance with the Dispute Resolution Procedures.

6.3.6.3 If Developer does not accommodate or otherwise resolve any Preference Comment, then Developer shall deliver to Authority within 10 Business Days after receipt of the applicable comment, a written explanation as to why Developer is unable, after using reasonable efforts, to accommodate or resolve the Preference Comment in accordance with PA Section 6.3.4.8 (*Non-Discretionary Submittal*) or PA Section 6.3.5.7 (*R&C Submittal*) (as applicable), which must include the facts, analyses and reasons that support the conclusion.

6.3.6.4 In respect of any Non-Discretionary Submittal, to the extent it is determined that a comment labeled, or deemed labeled, as a Compliance Comment should have been labeled as a Preference Comment following referral to the Dispute Resolution Procedures in accordance with PA Section 6.3.6.2 (*Submittal Disputes*), the Developer shall have the right to claim relief and compensation for an Authority-Caused Delay pursuant to clause (d)(ii) of the definition of Authority-Caused Delay in PA Exhibit 1 in accordance with PA Article 13 (*Relief Events; Compensation Events*).

6.3.7 Authority Oversight

At all times during the Term, Authority will have the right to conduct monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions, including:

6.3.7.1 monitoring and auditing Developer, Key Contractors and Independent Quality Firms and their respective books, records, systems, manuals and plans to determine compliance with the DBF Documents;

6.3.7.2 monitoring and auditing Developer Quality Program and Developer's compliance with its obligations under TP Section 3 (Developer Quality Program);

6.3.7.3 administering a design review program, including review of all Submittals of Design Documents (it being understood that Authority will determine the level of review to be conducted, and that Authority may conduct risk-based design review, which does not include 100% review of Submittals of Design Documents);

6.3.7.4 administering an Authority verification program, including:

(a) field monitoring, inspections on an audit basis and sampling, measurement, investigations, and testing to validate the quality of the Work; and

(b) attending and witnessing Developer's tests and inspections including in connection with Authority's certification of Substantial Completion and Final Acceptance;

6.3.7.5 oversight of the correction of any Nonconforming Work and Developer's compliance with its obligations under PA Section 7.9 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*), PA Exhibit 20 (*Nonconforming Work*) and TP Section 3.5 (Nonconforming Work);

6.3.7.6 oversight of Developer's implementation of its Safety Plan;

6.3.7.7 oversight of Developer's compliance with the DBE Performance Plan and DBE Recovery Plan in accordance with PA Section 10.9 (*Disadvantaged Business Enterprise*) and PA Exhibit 14 (*DBE Requirements*), generally; and

6.3.7.8 oversight of Developer's compliance with the OJT Plan in accordance with PA Section 10.9.4 (*Job Training Program*) and PA Exhibit 15 (*OJT Requirements*).

6.3.8 Oversight by GDOT for FHWA and Federal Compliance

6.3.8.1 Developer acknowledges that the CQAP includes construction quality assurance requirements for the Project as agreed between GDOT and FHWA. The CQAP allows project quality records to be verified by Authority and GDOT and used as the basis of acceptance of the Project under Title 23 U.S.C. In establishing and implementing Developer Quality Program, Developer shall perform each of the responsibilities identified in the CQAP to be performed by or on behalf of Developer, including requirements for quality management and independent quality assurance. Obligations owed under the CQAP to GDOT and FHWA shall be construed as obligations also owing Authority.

6.3.8.2 In addition to Authority's rights under PA Section 6.3.7 (*Authority Oversight*), Authority, for itself or through its "project manager" GDOT, shall also have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements.

6.3.8.3 Authority, for itself or through its "project manager" GDOT, will not conduct additional reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements, provided that the aforementioned shall not limit Authority's rights pursuant to PA Section 6.3.1 (*Submittal Review, Comment and Acceptance Terms and Procedures*) to PA Section 6.3.7 (*Authority Oversight*).

6.3.8.4 Authority, for itself or through its "project manager" GDOT, reserves the right to conduct "over the shoulder" reviews of Design Documents or other Submittals as it may deem necessary or appropriate while Design Work is in process; provided that Authority, for itself or through its "project manager" GDOT, shall not have any obligation to conduct such reviews nor assume any responsibility for Developer's Work, regardless of whether or not electing to perform or performing any such reviews.

6.3.8.5 Nothing in this Project Agreement shall preclude, and Developer shall not interfere with, any review, audit or oversight of Submittals, Work, Books and Records, or other documents, materials, or information that the FHWA may desire to conduct.

6.3.9 Cooperation in Relation to Authority Oversight; Effect of Oversight; No Estoppel

6.3.9.1 Developer shall, and shall cause each Developer-Related Entity to, coordinate and cooperate with Authority and each Authority-Related Entity to facilitate the full, efficient, effective and timely performance of all monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions. Developer shall cause Developer-Related Entities to be available at all reasonable times for consultation with Authority and each Authority-Related Entity.

6.3.9.2 Developer shall provide to Authority all applicable test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) promptly and in any event within five Business Days after Developer receives such results or prepares such reports (as applicable) or such other period as specified in the Technical Provisions.

6.3.10 Independent Quality Assurance

6.3.10.1 Developer shall perform Independent Quality Assurance of the D&C Work through one or more Independent Quality Firms in accordance with the requirements of this PA Section 6.3.10 (*Independent Quality Assurance*) and TP Section 3.1.5 (Independent Quality Assurance). The performance of Independent Quality Assurance by the Independent Quality Firms will not relieve Developer from its obligations to implement the Developer Quality Program and perform Quality Management.

6.3.10.2 Each Independent Quality Firm, and each of its subcontractors at any tier:

(a) shall not be an Affiliate of Developer or any other Developer-Related Entity;

(b) shall not be a Key Contractor or a subsidiary of a Key Contractor; and

(c) shall not have any responsibility for, and shall remain independent from, all production activities for Design Work and Construction Work (other than Acquisition Services performed in accordance with PA Article 2 (*Grant of Authority and Right of Way*) and TP Section 6 (Right of Way).

6.3.10.3 Developer shall ensure that the terms of each IQF Contract require the Independent Quality Firm to comply with the following requirements:

(a) all written or documented communications (including all notices, notifications, correspondence, meeting minutes, data, reports, transmittals and emails) between the Independent Quality Firm and Developer relating to the performance of Independent Quality Assurance shall be copied to Authority;

(b) Authority or the Independent Quality Firm may initiate and return communication with each other independent of Developer;

(c) all personnel performing Independent Quality Assurance shall be employed by the Independent Quality Firm and shall not perform any other role on the Project;

(d) the qualifications, experience, certification, training and licensing of the Independent Quality Firm personnel shall be consistent and commensurate with the scope, complexity and nature of the D&C Work to be reviewed;

(e) Independent Quality Firm personnel shall have the authority to stop the D&C Work as described in the accepted Quality Management Plan;

(f) Independent Quality Firms performing Independent Quality Assurance include specifically the obligation to audit DBE Contractor CUFs;

(g) the Independent Quality Firm shall be required to participate, at Developer's or Authority's request, in meetings between Developer and Authority concerning matters pertaining to the Independent Quality Firm, its work or the coordination of its work with other Contractors; and

(h) the IQF contract shall include the requirement specified in PA Sections 10.3.2.4 through 10.3.2.10 (*Key Contract Provisions*), provided that the references in those Sections to "Key Contractors" shall be replaced with references to the Independent Quality Firm(s).

6.3.10.4 Developer shall ensure that:

(a) In performing the D&C Work:

(i) the number of Independent Quality Firm personnel available (on a FTE basis) during the performance of the D&C Work is (A) adequate to meet Independent Quality Assurance requirements considering the amount of D&C Work in progress, the Baseline Project Schedule and the Project Management Plan, and (B) no less than the number (on a FTE basis) included for the relevant part of the D&C Work as set forth in the Proposal Commitments; and

(ii) the aggregate of the price for Independent Administrative Quality services, Independent Design Quality Assurance services, and Independent Construction Quality Assurance services under the IQF Contracts is at least $82,500,000 (the "IAQA/IDQA/ICQA Minimum Price (D&C)").

(b) with respect to the IAQA/IDQA/ICQA Minimum Price (D&C):

(i) such minimum price includes costs for the services specified in TP Attachment 3-1 (CQAP), TP Attachment 3-3 (Scope of Work for IDQA Services) and TP Attachment 3-4 (Scope of Work for ICQA Services);

(ii) such minimum price does not include any amount for Developer contingencies, oversight or management costs; and

(iii) at least the full amount of the IAQA/IDQA/ICQA Minimum Price (D&C) shall be spent on Independent Administrative Quality Assurance, Independent Design Quality Assurance, and Independent Construction Quality Assurance.

(c) Developer shall provide

evidence to Authority of the amount actually spent on Independent Quality Assurance, as further detailed in TP Section 3, including with reference to the monthly summary quality reports corresponding to the current Project Certificate Period.

6.3.10.5 If Authority issues a Warning Notice or asserts a Persistent Breach by Developer under PA Section 17.1.1.18 (*Developer Default*), Authority may also notify Developer in writing that Developer is required to:

(a) increase the level of Independent Quality Assurance; or

(b) replace an Independent Quality Firm,

and, in either case, submit an updated Quality Management Plan to reflect such increase or replacement for review and acceptance by Authority.

6.3.10.6 If Authority determines that the quality of the Project would be enhanced by increasing the Independent Quality Assurance to a level greater than as required by this PA Section 6.3.10 (*Independent Quality Assurance*), then it may propose an Authority Change in accordance with PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*).

6.3.10.7 Developer shall include as an express term of each IQF Contract that (a) its Independent Quality Firm counterparty may communicate with Authority as to matters that either Authority or such Independent Quality Firm determines, each in their respective reasonable judgement, merits Authority's attention or knowledge as relates to the quality of the Work, and (b) any correspondence, notification, or other communication, or otherwise need not also be provided to Developer or Developer be present for, or offered an opportunity to participate in, any such communications, it being understood that

(i) any such communication, correspondence, or notification shall pertain only to those concerns that may materially and adversely affect the Project, and (ii) no such communication, correspondence, or notification is to be construed to be direction from Authority with respect to the services under the IQF Contract.

6.3.11 Limitations on Developer's Right to Rely

6.3.11.1 Nothing in PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*) or any act or omission of Authority or any Authority-Related Entity pursuant to such provisions shall:

(a) relieve Developer from the performance of its obligations under this Project Agreement;

(b) constitute acceptance by Authority that the Work satisfies the requirements of this Project Agreement;

(c) prevent Authority from raising an objection or comment on a subsequent Submittal in accordance with PA Section 6.3.1 (*Submittal Review, Comment and Acceptance Terms and Procedures*) if the same objection or comment was not made by Authority on a previous Submittal;

(d) prevent Authority from identifying any Nonconforming Work in accordance with PA Section 7.9 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) and PA Exhibit 20 (*Nonconforming Work*); or

(e) transfer, or be deemed to transfer, any or all responsibility or liability for the Design Work, or be construed as a directive by Authority to Developer with respect to any aspect of the Design Work, apart from a general directive to comply with requirements of the DBF Documents.

6.3.11.2 Any review, recommendation, acceptance, inspection, response, act or omission of Authority or an Authority-Related Entity with respect to the Project or the Work shall be pursuant to, and solely in furtherance of the inspection powers as set forth in O.C.G.A. § 50-21-24(8).

6.4 Community Outreach and Public Information

6.4.1 Developer shall ensure that the aggregate of the values of (a) personnel provided by Developer to fulfill the requirements of TP Attachment 2-3 (Public Information and Communications) and (b) the public information materials provided by Developer in accordance with Section 3.2 (Public Information Materials) of TP Attachment 2-3 (Public Information and Communications) are collectively no less than $1,000,000.

6.4.2 Developer shall provide on-going information to the public concerning the development of the Project, in accordance with the Public Information and Communications Plan prepared by Developer pursuant to TP Section 2.7 (Public Information and Communication).

6.4.3 Refer to TP Section 2.7 (Public Information and Communication), wherein, generally, Authority reserves the right to lead public information efforts with respect to the Project.

6.5 Cooperation with Governmental Entities

Developer shall cooperate and coordinate the Work with Authority, GDOT and any Governmental Entity, regardless as to whether such Governmental Entity issues or has rights pursuant to any Governmental Approval, where such Governmental Entity is or may be affected by the Work.

6.6 Encroachment Permits

6.6.1 Developer acknowledges that there are no existing Encroachment Permits identified in the Technical Provisions. If Authority identifies, or becomes aware of, any additional information relating to existing Encroachment Permits, then Authority will promptly provide such information to Developer.

6.6.2 It is anticipated that from time to time during the Term certain Persons will apply for special encroachment permits to grade, landscape or otherwise conduct roadside encroachment activity within the Project Limits (each, an "Encroachment Applicant").

6.6.3 For all encroachment permit applications referred to in PA Section 6.6.2 (*Encroachment Permits*), Developer shall:

6.6.3.1 provide each Encroachment Applicant reasonable assistance by providing information regarding the proposed grading, landscaping or other roadside encroachment activity; and

6.6.3.2 assist Authority, GDOT and their Constituents (including any GDOT district representative) in deciding whether to approve the encroachment permit application.

6.6.4 Within 10 Business Days after being notified by Authority that GDOT has received an encroachment permit application from an Encroachment Applicant, Developer shall analyze each application and, subject to PA Section 6.6.5 (*Encroachment Permits*), provide to Authority a recommendation (together with supporting analysis) as to whether the encroachment permit application should be approved, denied, or approved subject to conditions.

6.6.5 Developer may only recommend the denial of an encroachment permit application or that a condition be included on the encroachment permit if such denial or condition (as applicable) is required due to the impact the proposed encroachment permit has on Developer's performance of the Work.

6.6.6 If Developer recommends against issuance of an encroachment permit and Authority determines, in its good faith discretion, that issuance is appropriate, required, or requires the imposition of different conditions, then Authority's determination shall control.

6.6.7 Developer shall use reasonable efforts to:

6.6.7.1 monitor the activities of Encroachment Permit Holders on the Project Limits for compliance with applicable Encroachment Permits and applicable Law;

6.6.7.2 coordinate with the activities of any Encroachment Permit Holders on the Project Limits; and

6.6.7.3 obtain the cooperation of each Encroachment Permit Holder with an encroachment permit on the Project Limits.

6.6.8 If Developer reasonably believes that any Encroachment Permit Holder is not complying with the terms of an Encroachment Permit within the Project Limits; or the Encroachment Permit Holder is not reasonably cooperating with Developer, then Developer shall notify Authority, and Authority will cause GDOT to either:

6.6.8.1 cause the Encroachment Permit Holder to comply with the Encroachment Permit or cooperate with Developer (as applicable); or

6.6.8.2 revoke the Encroachment Permit.

6.7 Third Party Agreements

6.7.1 [Reserved.]

6.7.2 Third Party Disputes

6.7.2.1 Developer shall use reasonable efforts to cooperate and coordinate with Authority, including through assisting as may be reasonably requested by Authority, if a Dispute arises between Authority or GDOT and any third party in relation to the Work.

6.7.2.2 Developer shall use reasonable efforts to cooperate and coordinate with Authority, GDOT, and each such third party, including reasonably assisting when requested by such Persons, if a claim or other action is filed against any such Person by another Person (i.e., a Person other than Authority, an Authority-Related Entity, or Developer) in relation to the Work.

6.7.3 Assignment of Certain Causes of Action

Developer agrees to assign to Authority all rights, title, and interest in and to all causes of action Developer may have under Section 4 of the Clayton Act (15 USC § 15) or under comparable State Law, arising from purchases of goods, services or materials pursuant to this Project Agreement. This assignment shall be made and become effective automatically upon tender of the first Project Payment (with adjustments and deductions as permitted under this Project Agreement), without further acknowledgment by the Parties.

Article 7 DEVELOPMENT OF THE PROJECT

7.1 General Obligations of Developer

7.1.1 Developer, in addition to performing all other requirements of the DBF Documents, shall:

7.1.1.1 expeditiously and diligently progress performance of the Work, to include furnishing all design, engineering and other services, providing construction management and all other Work, furnishing all materials, equipment, labor, and installations, and undertaking all efforts necessary or appropriate (excluding only those materials, services and efforts that the DBF Documents expressly specify will be undertaken by Authority or other Persons, if any) to deliver the Project and maintain it during construction, so as to achieve Substantial Completion and Final Acceptance by the applicable Milestone Deadlines;

7.1.1.2 at all times required under the DBF Documents provide all Key Personnel and all Required Personnel, each of which are to be present (or his/her designee approved by Authority will be present) at the Project Limits when so required;

7.1.1.3 comply with, and require that all Contractors comply with, all applicable Laws and Governmental Approvals;

7.1.1.4 ensure labor harmony on the Site during the Term, including taking appropriate steps to prevent strikes, walkouts, work stoppages, work slowdowns, work curtailments, cessations or interruptions of production due to labor disputes or other labor-related matters;

7.1.1.5 observe, and require that all Contractors observe, Good Industry Practice;

7.1.1.6 cooperate with Authority, GDOT, and Governmental Entities with jurisdiction in all matters relating to the applicable portions of the Work, including their review, inspection and oversight of the design and construction;

7.1.1.7 ensure the Site is kept in a neat, clean, and orderly condition at all times;

7.1.1.8 timely submit all Submittals, and ensure that all such Submittals are accurate, compliant, and complete when submitted;

7.1.1.9 use commercially reasonable efforts to mitigate delay to design and construction of the Project and mitigate damages due to delay and any other consequences of any Relief Event or other basis for claim hereunder, acting in accordance with Good Industry Practice, in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying Developer's and its Contractors' forces to other portions of the Work, as appropriate; and

7.1.1.10 otherwise perform the Work so as to ensure that the Project satisfied each of the purposes, objectives, functions, uses, and requirements set forth in or reasonably inferred from the DBF Documents.

7.1.2 Except as otherwise expressly provided in the DBF Documents (including specifically any Relief Event, Compensation Event, or other basis for relief), Developer:

7.1.2.1 acknowledges and accepts all risks, responsibilities, obligations, and liabilities in connection with performance of the Work and delivery of the Project; and

7.1.2.2 is not entitled to make any claim under the DBF Documents, at law, or in equity against Authority, GDOT, or the State for any Losses in connection with the Project, the Work, or the DBF Documents.

7.1.3 When any act, omission, or other action of Developer occurs that violates the requirements, conditions, or terms of the DBF Documents, and affects the health, safety, or welfare of the public or natural resources, Authority will have the right, but not the obligation, to require and direct Developer to start promptly and to undertake diligently action to replace, repair, or restore such damage, injury or condition within a time frame reasonably established by Authority, at Developer's sole cost and expense and without entitlement to a Relief Event or Compensation Event. Without limiting the foregoing in this PA Section 7.1.3 (*General Obligations of Developer*), Developer shall take prompt action to replace, repair, or restore any damage to the property at or on and adjacent to the Site, whether owned by Developer or any other Person, that is not part of the Work, as planned or required, within a time frame established by Authority, at Developer's sole cost and expense and without entitlement to a Relief Event or Compensation Event, except as Authority may otherwise direct, in its sole discretion.

7.2 Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions

7.2.1 Design Work. Without limiting PA Section 7.9.6 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) and the Warranty itself, Developer shall furnish all aspects of the Design Work and all Design Documents in accordance with Good Industry Practice in such a manner that the Project is constructible as designed.

7.2.2 Construction Work. Without limiting PA Section 7.9.6 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) and the Warranty itself,

Developer shall construct the Project and perform the Construction Work as designed (in accordance with the DBF Documents and as reflected in the Design Documents), free from Defects, and in accordance with Good Industry Practice.

7.2.3 All Work. Developer shall perform the Work (including the Design Work and the Construction Work) in accordance with (a) the requirements, terms and conditions set forth in the DBF Documents, (b) the Baseline Project Schedule, (c) all Laws, (d) the requirements, terms and conditions set forth in all Governmental Approvals, (e) the requirements of the approved Quality Management Plan, (f) the Proposal Commitments, and (g) the remainder of the Project Management Plan and all of its component plans prepared or to be prepared thereunder, in each case taking into account the Project Limits and constraints affecting it and the Project.

7.2.4 Developer may apply, in writing, for Authority approval of any deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction. All applications shall be in writing. Developer may not proceed to perform any Work in reliance upon the approval of any such deviation, etc., before the approval is received. Where Developer requests a deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction as part of the submittal of a component plan of the Project Management Plan, or the Baseline Project Schedule, Developer shall specifically and conspicuously identify and label such proposed deviation, etc. Authority will consider in its sole discretion, but have no obligation to approve, any such application. Without limiting such discretion, Developer shall bear the burden of persuading Authority that the sought deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction constitutes sound and safe engineering consistent with Good Industry Practice and achieves or substantially achieves Authority's technical criteria. No deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction shall be deemed approved or be effective unless and until stated in writing signed by Authority's Authorized Representative. Authority's lack of issuance of a written response to any such application within 14 days after Authority's receipt thereof in writing shall be deemed a disapproval of such application. Authority's denial or disapproval of a requested deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction shall be final and not subject to the Dispute Resolution Procedures. Authority may elect to process the application as a Change Request under PA Section 14.2 (*Developer Changes*) rather than as an application for a deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction. Developer acknowledges that all review and actions by Authority with respect to any such requests pursuant hereto shall be subject to PA Section 6.3.11 (*Limitations on Developer's Right to Rely*).

7.2.5 References in the Technical Provisions to manuals or other publications governing the Design Work or Construction Work prior to the Substantial Completion Date shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise. Any changes to the Technical Provisions respecting Design Work or Construction Work prior to the Substantial Completion Date shall be subject to the Supplemental Agreement process for an Authority Change in accordance with PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*).

7.2.6 The Parties anticipate that from time to time after the Effective Date, Authority or GDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions relating to Design Work and Construction Work. Authority will have the right, but not the obligation, to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions to the Technical Provisions by notice to Developer, whereupon they shall constitute amendments to and become part of, the Technical Provisions. If such changed, added or replacement Technical Provisions encompass matters that are addressed in the Technical

Provisions as of the Effective Date, they may, upon inclusion into to the Technical Provisions, replace and supersede inconsistent Technical Provisions to the extent designated by Authority in its sole discretion. Authority will identify the superseded provisions in its notice to Developer. Notwithstanding the foregoing, in the absence of an Authority Change, if Authority or GDOT adopts the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Project Standards, prior to the Final Acceptance Date, Developer shall not be obligated to (but may) incorporate the same into its design and construction of the Project prior to the Final Acceptance Date. Refer to PA Section 14.7.1 (*Project Standards Changes*) for provisions relating to changes to the Project Standards not raised by Authority to Developer.

7.2.7 Notwithstanding the foregoing in this PA Section 7.2 (*Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions*), Developer acknowledges that FHWA also has or may have approval rights with respect to Design Exceptions. Furthermore, Developer acknowledges and agrees that Authority does not seek additional Design Exceptions or Design Variances for the Project, and notwithstanding any FHWA approval rights, Authority may reject any request for additional Design Exceptions or Design Variances in its sole discretion. In addition, Developer shall not be responsible for seeking any Design Exception or Design Variance for any portion of the Project Limits outside of the Pavement Limits.

7.3 Design Implementation and Submittals

7.3.1 Developer, through the appropriately qualified and licensed design professionals, shall prepare all designs, plans and specifications in accordance with the DBF Documents. Developer shall cause the Engineer of Record with respect to each relevant discipline to sign and seal all respective Released for Construction Design Documents and the Project Chief Engineer to certify the Released for Construction Design Documents in accordance with TP Section 3 (Developer Quality Program).

7.3.2 Developer shall deliver to Authority accurate and complete Design Documents (including the Record Design Documents), Plans, and Construction Documents within the time and in the form required by the Technical Provisions.

7.4 Utility Adjustments

7.4.1 **Developer's General Responsibilities**. Developer shall:

7.4.1.1 coordinate, facilitate and cause all Utility Adjustments necessary:

(a) to accommodate the Project in accordance with the Project Schedule; and

(b) in order to comply with its obligations under this Project Agreement, including TP Section 7 (Utility Adjustments);

7.4.1.2 [Reserved.]

7.4.1.3 coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work in a timely manner, in coordination with the Work and in compliance with the standards of design and construction, Good Industry Practice, and other applicable requirements specified in this Project Agreement, under any applicable Law, any Governmental Approval, any applicable Utility MOU;

7.4.1.4 ensure that all Utility Adjustment Work that Developer performs complies with this Project Agreement, applicable Law, all Governmental Approvals, any applicable Utility MOU;

7.4.1.5 perform Utility Adjustment Work (and Betterments, as applicable) only with and through Contractors or Subcontractors that, where required (e.g., water and sewer work), are prequalified (and remain prequalified for the duration they are performing the Work) under the Manual of Instructions for Prequalification of Prospective Bidders, as and when required under the Technical Provisions. where a Utility Owner may require performance by a Utility-approved Contractor or Subcontractor, perform such Utility Adjustment Work (and Betterments, as applicable) only with and through such Utility-approved Contractor or Subcontractor, it being understood that as between Authority and Developer, Developer bears all of the risk of noncompliant, nonconforming, or non-performance of Utility Adjustment Work (and Betterments, as applicable);

7.4.1.6 use reasonable efforts to provide any assistance that GDOT or Authority reasonably requires to perform GDOT's obligations under any Utility MOU;

7.4.1.7 perform its obligations under this Project Agreement in a manner that does not cause Authority or GDOT to breach (directly or indirectly) the provisions of any Utility MOU; and

7.4.1.8 comply with all requirements of Georgia 811 during performance of the Work.

7.4.2 Utility Adjustments.

7.4.2.1 If a Utility Adjustment is required for the Project, then Developer shall perform the Utility Adjustment Work or cause the Utility Owner to perform the Utility Adjustment Work in accordance with this PA Section 7.4 (*Utility Adjustments*).

7.4.2.2 Authority will accept all Utility Adjustments in accordance with this PA Section 7.4 (*Utility Adjustments*) and TP Section 7 (Utility Adjustments), including through Authority's acceptance of the Utility Adjustment Plan and Utility Work Plan. Developer shall coordinate with all applicable Governmental Entities and other Persons and shall procure and maintain all Governmental Approvals required for any Utility Adjustments in accordance with PA Section 6.2 (*Governmental Approvals*). Authority shall cause GDOT to assist reasonably the Developer in performing the foregoing coordination obligation.

7.4.3 Utility MOUs. Developer acknowledges that GDOT has entered into the Utility MOUs. If a Utility requires Adjustment, then Developer will refer to the relevant Utility MOU to discern, among other things, which party to the Utility MOU bears the costs for the Adjustment. Developer shall ensure that Utility Adjustments occur, either by ensuring self-performance of the Utility Adjustment Work by the Utility Owner or by Developer performing, or causing performance of, the Utility Adjustment Work, through Utility Owner pre-approved design and construction Contractors, if and as may be specified in the relevant Utility MOU.

7.4.4 Utility Adjustment Costs

7.4.4.1 Subject to this PA Section 7.4.4 (*Utility Adjustment Costs*) and PA Section 7.4.5 (*Utility Existing Interests*), Developer shall be responsible for all costs of the Utility Adjustment Work, whether incurred by Developer or by the Utility Owner, except to the extent such costs are:

(a) attributable to Betterments and agreed as the Utility Owner's responsibility in accordance with PA Section 7.4.7 (*Betterments*); or

(b) the Utility Owner's responsibility under the applicable Utility MOU or applicable Law (including any delay costs the Utility Owner may be liable for under O.C.G.A. § 32-6-171).

7.4.4.2 Developer shall collect directly from the Utility Owner any amounts due to Developer in respect of the costs referred to in PA Section 7.4.4.1(a) (*Utility Adjustment Costs*).

7.4.4.3 Developer acknowledges and agrees that if for any reason Developer is unable to collect any amounts due to Developer under PA Section 7.4.4.2 (*Utility Adjustment Costs*), then:

(a) neither Authority nor GDOT shall have any liability for such amounts;

(b) Developer shall have no right to collect such amounts from Authority or GDOT or to offset such amounts against amounts otherwise owing from Developer to Authority; and

(c) Developer shall have no right to stop Work or to exercise any other remedies against Authority or GDOT on account of such failure by a Utility Owner to pay.

7.4.4.4 Developer shall maintain a complete set of records for the costs of each Utility Adjustment performed by Developer. Such records shall, at a minimum:

(a) show the totals for each cost category in such manner as to permit comparison with the categories stated on the estimate; and

(b) comply with the record keeping and audit requirements of this Project Agreement.

7.4.4.5 Under no circumstances will Developer have a right to claim any additional compensation or relief from its obligations under this Project Agreement as the result of any Utility Adjustment, whether performed by Developer or by the Utility Owner, except as provided in PA Section 7.4.9 (*Failure of Utility Owners to Cooperate*), PA Section 7.4.10 (*Utility Escalation and Mediation Process*) and PA Article 13 (*Relief Events; Compensation Events*).

7.4.5 Utility Existing Interests

7.4.5.1 The Parties acknowledge and agree that in respect of any Utility Owner claiming an Existing Interest with respect to a Utility Adjustment, such Utility Owner shall, in accordance with the relevant Utility MOU, the GDOT UAM or Applicable Law:

(a) establish such Existing Interest; and

(b) provide Developer with all supporting documentation to substantiate such Existing Interest.

7.4.5.2 Developer shall include the documentation of any Utility Owner Existing Interest in the Utility Work Plan for the relevant Utility Adjustment.

7.4.5.3 If it is determined in accordance with TP Section 7.2.8 (Real Property Matters) that the Utility Owner is entitled to a New Interest which is within the State Proposed Right of Way, Authority shall ensure that GDOT grants the New Interest to the Utility Owner in accordance with the applicable Utility Work Plan that has been accepted by Authority.

7.4.5.4 If it is determined in accordance with TP Section 7.2.8 (Real Property Matters) that the Utility Owner requires a New Interest which is outside the State Proposed Right of Way:

(a) where the Utility Owner is responsible for acquiring the New Interest, Developer shall comply with the requirements set out in TP Section 7.2.8 (Real Property Matters); or

(b) where Developer is responsible for acquiring the New Interest, Developer shall comply with the requirements set out in TP Section 7.2.8 (Real Property Matters).

7.4.6 FHWA Utility Requirements

7.4.6.1 The Project is subject to, and Developer shall comply with, 23 C.F.R. §§ 645.101 *et seq.* (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies.

7.4.6.2 Developer shall comply (and shall require the Utility Owners to comply) with 23 C.F.R. §§ 645.101 *et seq.* and 23 C.F.R. §§ 645.201 *et seq.* as necessary for any Utility Adjustment costs to be eligible for FHWA reimbursement (or for any other federal financing or funding).

7.4.6.3 Developer acknowledges and agrees that, regardless of whether compliance with PA Section 7.4.6.2 (*FHWA Utility Requirements*) is required and without limiting Developer's right to reimbursement for Utility Adjustments under PA Section 5.1 (*Payment of DBF Contract Sum*):

(a) it is not anticipated that Developer will be eligible for FHWA reimbursement of any Utility Adjustment outlays; and

(b) Developer will not have any share in any reimbursement from FHWA or other federal financing or funding that Authority or GDOT may receive on account of Utility Adjustments.

7.4.7 Betterments

7.4.7.1 If a Utility Owner has requested in the relevant Utility MOU that Developer design and/or construct a Betterment, Developer shall be responsible for negotiating and agreeing to the terms of the Betterment Agreement directly with the Utility Owner pursuant to PA Section 7.4.7.1 (*Betterments*). Developer shall not be obligated to perform a Betterment if Developer is not able to reach a Betterment Agreement with the Utility Owner.

7.4.7.2 If Developer and the Utility Owner agree that a Betterment will be performed as part of a Utility Adjustment, then:

(a) the terms agreed between Developer and the Utility Owner for performance of such Betterment shall be addressed in a Betterment Agreement;

(b) such Betterment will be subject to the same standards and requirements as if it were a necessary Utility Adjustment;

(c) Developer shall undertake such Betterment in accordance with PA Section 7.4.1 (*Developer's General Responsibilities*); and

(d) Developer shall invoice the Utility Owner for all costs relating to such Betterment pursuant to the applicable Betterment Agreement. Any failure by a Utility Owner to pay any or all such costs is not the basis for any relief (whether as a Relief Event or a Compensation Event) hereunder from Authority or from Authority or GDOT at law or in equity.

7.4.7.3 Developer acknowledges and agrees that:

(a) neither Authority nor GDOT will have any obligation to:

(i) pay for any Betterment;

(ii) facilitate the collection of any amounts due to Developer from the Utility Owner under any Betterment Agreement; or

(iii) otherwise facilitate any Betterment;

(b) neither Authority nor GDOT will be a party to any Betterment Agreement; and

(c) Developer does not have any authority to:

(i) execute any Betterment Agreement on either GDOT's or Authority's behalf;

(ii) bind either GDOT or Authority with respect to any Betterment Agreement; or

(iii) encumber, limit, or otherwise grant any rights to any property interests of either GDOT or Authority, including the Project Limits, with respect to any Betterment Agreement.

7.4.8 Utility Owner Obligations

7.4.8.1 The Parties acknowledge and agree that:

(a) GDOT has entered into a Utility MOU with each Utility Owner;

(b) each Utility MOU requires the Utility Owner's compliance with the GDOT UAM; and

(c) the Utility MOU and GDOT UAM include certain obligations of the Utility Owner in respect of the relevant Utility Adjustment ("Utility Owner Obligations").

7.4.8.2 Certain of the Utility Owner Obligations are referenced in TP Section 7 (Utility Adjustments). These references identify certain Utility Owner Obligations which relate to the relevant technical requirements applicable to Developer in the relevant sections of TP Section 7 (Utility Adjustments), and do not themselves constitute technical requirements. Developer acknowledges and agrees that:

(a) the references do not identify all Utility Owner Obligations as contained in the Utility MOUs and GDOT UAM; and

(b) Developer may not rely on the references as accurately describing the relevant Utility Owner Obligations.

7.4.8.3 If the Utility Owner fails to perform any Utility Owner Obligation, then Developer may request assistance from Authority in accordance with PA Section 7.4.9 (*Failure of Utility Owners to Cooperate*) and, if applicable, pursue resolution in accordance with PA Section 7.4.10 (*Utility Escalation and Mediation Process*).

7.4.9 Failure of Utility Owners to Cooperate

7.4.9.1 Developer shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Adjustments.

7.4.9.2 Developer shall notify Authority promptly if:

(a) Developer reasonably believes for any reason that any Utility Owner will not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project;

(b) Developer becomes aware that any Utility Owner is not cooperating in a timely manner to comply with the Utility Owner Obligations, including providing agreed-upon work, approvals or permits;

(c) Developer reasonably believes that any Utility Owner is in breach of the relevant Utility MOU, including through:

(i) the non-performance of any Utility Owner Obligation; or

(ii) an unreasonable withholding by a Utility Owner with relevant jurisdiction of the issuance or renewal of any Governmental Approval necessary for the performance of the Work under the terms of a Utility MOU or otherwise; or

(d) any other dispute arises between Developer and a Utility Owner with respect to the Project (including an unreasonable request by a Utility Owner that, in connection with any Utility Adjustment Work, a Betterment be completed that would materially delay the Project Schedule), despite Developer's diligent efforts to obtain such Utility Owner's cooperation or to otherwise resolve such dispute,

(each, a "Notice of Utility Failure to Cooperate").

7.4.9.3 Developer may, in the Notice of Utility Failure to Cooperate, include a request that Authority assist in resolving a dispute with the Utility Owner or in otherwise obtaining the Utility Owner's timely cooperation.

7.4.9.4 Following issuance of the Notice of Utility Failure to Cooperate, Developer shall:

(a) provide Authority with such information as Authority reasonably requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule; and

(b) continue to use diligent efforts to pursue the Utility Owner's cooperation or resolve any disputes with Utility Owners.

7.4.9.5 If Developer requests Authority's assistance pursuant to a Notice of Utility Failure to Cooperate, Developer shall provide evidence to Authority that:

(a) the subject Utility Adjustment (where applicable) is necessary;

(b) the time for completion of the Utility Adjustment (where applicable) in the Baseline Project Schedule was, as of the Effective Date, a reasonable amount of time for completion of such Work;

(c) Developer has made diligent efforts to obtain the Utility Owner's cooperation, as evidenced by documentation of written correspondence between Developer or a Developer Related Party and the Utility Owner; and

(d) the Utility Owner is not cooperating,

(clause (a) through clause (d), collectively, the "Conditions to Assistance").

7.4.9.6 Promptly, but no later than five Business Days after receipt of all requested information under PA Section 7.4.9.5 (*Failure of Utility Owners to Cooperate*), Authority will either accept or reject any such request for assistance from Developer. If Authority rejects, in writing, a request for assistance received under PA Section 7.4.9.3 (*Failure of Utility Owners to Cooperate*), based on Developer's failure to satisfy one or more of the Conditions to Assistance described in:

(a) PA Sections 7.4.9.5(a) (*Failure of Utility Owners to Cooperate*) through 7.4.9.5(b) (*Failure of Utility Owners to Cooperate*), then Developer shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter; or

(b) PA Sections 7.4.9.5(c) (*Failure of Utility Owners to Cooperate*) and 7.4.9.5(d) (*Failure of Utility Owners to Cooperate*), then Developer shall take such action as Developer deems advisable during the next ten (10) Business Days in order to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter.

7.4.9.7 Once Developer has satisfied the Conditions to Assistance, Authority shall within twenty (20) Business Days take such reasonable steps as Authority reasonably determines necessary to obtain the cooperation of the Utility Owner or resolve the dispute, to include, in accordance with PA Section 7.4.9.10 (*Failure of Utility Owners to Cooperate*), exercising remedies available to Authority or GDOT under existing contracts; provided however, that neither Authority nor GDOT shall have any obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to them under Applicable Law (except to the extent Authority is otherwise required to do so under this Project Agreement).

7.4.9.8 In no event shall Authority's obligations under this PA Section 7.4.9 (*Failure of Utility Owners to Cooperate*) require Authority to:

(a) take a position that it believes to be inconsistent with: (i) this Project Agreement; (ii) the Project Management Plan (and component plans thereunder); (iii) applicable Law; (iv) applicable Governmental Approval(s); (v) a Utility MOU; or (vi) GDOT or Authority's existing policy (including the GDOT UAM, however, excluding any policies to the extent inconsistent with the express obligations of Authority under this Project Agreement); or

(b) refrain from taking a position concurring with that of a Utility Owner, if Authority believes that position to be correct.

7.4.9.9 To the extent that:

(a) a Utility Owner fails to cooperate with Developer in relation to a Utility Adjustment on State Proposed Right of Way;

(b) such failure (or such delay) continues for a period of not less than twenty (20) Business Days following Developer's request for Authority's assistance pursuant to this PA Section 7.4.9 (*Failure of Utility Owners to Cooperate*) and satisfaction of the Conditions to Assistance;

(c) Developer has continued to satisfy the Conditions to Assistance for the duration of such failure to cooperate (or such delay) by the Utility Owner; and

(d) Developer does not have the right to pursue resolution through the Utility Escalation and Mediation Process in accordance with PA Section 7.4.10.1 (*Utility Escalation and Mediation Process*),

then Developer shall have a right to claim relief and compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*).

7.4.9.10 If Authority or GDOT holds contractual rights that might be used to enforce a Utility Owner's obligation to cooperate, then Authority will cause GDOT to exercise such statutory rights to enforce Utility Owner's obligations when GDOT determines, in its good faith discretion, that the exercise of such statutory rights will be in the Project's best interest.

7.4.10 Utility Escalation and Mediation Process

7.4.10.1 If Developer has the right to pursue resolution, including, where applicable, damages and delay costs, under the Utility Escalation and Mediation Process in relation to a Utility Owner's failure to cooperate, including any non-performance of any Utility Owner Obligation, then Developer shall pursue such rights under the Utility Escalation and Mediation Process expeditiously and as a condition to any claim for relief and compensation under PA Section 7.4.10.3 (*Utility Escalation and Mediation Process*).

7.4.10.2 If Developer has a right to pursue resolution of a Utility Owner's failure to cooperate under the Utility Escalation and Mediation Process, as described in and in accordance with PA Section 7.4.10.1 (*Utility Escalation and Mediation Process*), then:

(a) Developer shall:

(i) submit Developer's claim for damages and delay costs for review and acceptance by Authority prior to submitting such claim under the Utility Escalation and Mediation Process;

(ii) pursue directly against the Utility Owner compensation for damages and delay costs in accordance with the Utility Escalation and Mediation Process; and

(iii) keep Authority copied on all correspondence in respect of such process;

(b) Authority shall (and shall cause GDOT to) participate in the Utility Escalation and Mediation Process to the extent required under the GDOT UAM; and

(c) within five (5) Business Days of a final determination under the Utility Escalation and Mediation Process or any other settlement between the Utility Owner and Developer in respect of such matter, Developer shall notify Authority of the outcome of such determination or settlement, including details of any amounts to be paid by either the Utility Owner or Developer.

The Parties acknowledge that any steps required to be taken by Developer and any participation by Authority and GDOT under the Utility Escalation and Mediation Process shall be separate from and may

be taken concurrently with, any steps to be taken by Developer and participation by Authority and GDOT under PA Section 7.4.9 (*Failure of Utility Owners to Cooperate*).

7.4.10.3 While pursuing resolution under the Utility Escalation and Mediation Process in accordance with this PA Section 7.4.9.10 (*Utility Escalation and Mediation Process*), Developer shall have a right to claim:

(a) relief in accordance with PA Article 13 (*Relief Events; Compensation Events*); and

(b) compensation in respect of Developer Financing Costs and Breakage Costs only in accordance with PA Article 13 (*Relief Events; Compensation Events*), but without limiting Developer's right to claim any additional compensation in accordance with PA Section 7.4.10 (*Utility Escalation and Mediation Process*),

in each case, in respect of a Utility Owner's failure to cooperate with the Developer in relation to a Utility Adjustment on State Proposed Right of Way, including any non-performance of any Utility Owner Obligation.

7.4.10.4 Where Developer has pursued damages and delay costs under the Utility Escalation and Mediation Process in accordance with PA Section 7.4.10.1 (*Utility Escalation and Mediation Process*) and a final determination or early settlement has occurred and Developer has not received full compensation under such determination or settlement, then Developer shall have the right to claim compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*) taking into account any compensation granted to Developer in accordance with PA Section 7.4.10.3 (*Utility Escalation and Mediation Process*).

7.4.10.5 Developer's right to claim compensation under PA Section 7.4.10.4 (*Utility Escalation and Mediation Process*), shall not be duplicative of:

(a) any Developer Financing Costs claimed under PA Section 7.4.10.3 (*Utility Escalation and Mediation Process*); or

(b) any damages and delay costs recovered through the final determination or early settlement.

7.4.11 Applications for Utility Permits

7.4.11.1 The Parties anticipate that, from time to time during the Term, Utility Owners will apply to GDOT for utility permits to:

(a) install new Utilities that would cross or longitudinally occupy the Project Limits, during the D&C Period; or

(b) modify, upgrade, repair, relocate or expand existing Utilities within the Project Limits during the D&C Period for reasons other than accommodation of the Project.

7.4.11.2 For all such utility permit applications referred to in PA Section 7.4.11.1 (*Applications for Utility Permits*), Developer shall:

(a) furnish the most recent Record Design Documents, as applicable, to the applicants; and

(b) assist each applicant with information regarding the location of other proposed and existing Utilities.

7.4.11.3 Developer shall assist Authority and GDOT in deciding whether to approve a utility permit application described in PA Section 7.4.11.1 (*Applications for Utility Permits*).

7.4.11.4 Within ten (10) Business Days (or such longer period as Developer reasonably requires, as agreed by Authority) of receiving a utility permit application from a Utility Owner, Developer shall:

(a) analyze each application having regard to the impact the work contemplated by the utility permit will have on Developer's performance of the Work and whether Authority or GDOT is legally entitled to approve or deny the application or to impose conditions on its approval (in accordance with the grounds communicated by Authority to Developer from time to time); and

(b) provide to Authority a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions.

7.4.11.5 Within five Business Days after Authority receives Developer's recommendation under PA Section 7.4.11.4(b) (*Applications for Utility Permits*), the Parties shall meet and discuss such recommendation.

7.4.11.6 Without limiting Developer's right to claim relief and compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*), Authority may elect (in its sole discretion) to issue, or cause the issuance of the utility permit.

7.4.11.7 Developer shall notify Authority if Developer reasonably believes that any Utility Owner is not complying with the terms of its utility permit.

7.4.12 Utility Accommodation

7.4.12.1 During the Term, Developer shall use reasonable efforts to:

(a) monitor Utilities and Utility Owners within the Site, during the D&C Period for compliance with applicable utility permits, easements and Applicable Law; and

(b) obtain the cooperation of each such Utility Owner for compliance with applicable utility permits, easements and Applicable Law.

7.4.12.2 If:

(a) Developer reasonably believes that any Utility Owner is not complying with the terms of a utility permit, easement or Applicable Law affecting a Utility within the Site, during the D&C Period, to the extent Developer is aware or reasonably should have been aware of the terms and conditions thereof; or

(b) any other dispute arises between Developer and a Utility Owner with respect to a Utility that is within the Site during the D&C Period, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation,

then the requirements and process set out in PA Section 7.4.9 (*Failure of Utility Owners to Cooperate*) and PA Section 7.4.10 (*Utility Escalation and Mediation Process*) shall apply to the resolution of such dispute.

7.4.13 Unidentified Utility Adjustments

7.4.13.1 Within 210 days after issuance of NTP2, Developer shall verify the Utility Plans and conduct an investigation for any Unidentified Utility Facility in accordance with TP Section 7.3.2 (Verification of Utility Plans and SUE Investigation), including through consultation and requests for information from the Utility Owners.

7.4.13.2 Subject to PA Section 7.4.13.3 (*Unidentified Utility Adjustments*), if Developer:

(a) identifies an Unidentified Utility Facility within the time period set forth in PA Section 7.4.13.1 (*Unidentified Utility Adjustments*); or

(b) subject to PA Section 13.4 (*Compensation Events Constraints*) identifies an Unidentified Utility Facility following the time period set forth in PA Section 7.4.13.1 (*Unidentified Utility Adjustments*) but prior to the Substantial Completion Date due to constraints imposed on Developer by Authority (including that the Parcel Availability Date occurs after the date that is 210 days after issuance of NTP2), in each case, so long as such Unidentified Utility Facility could not have been reasonably discovered within the time period set forth in PA Section 7.4.13.1 (*Unidentified Utility Adjustments*) by a Reasonable Investigation),

then Developer shall have a right to assert a claim for compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*) after incurring the Unidentified Utility Adjustment Deductible, and shall have a right to assert a claim for relief in accordance with PA Article 13 (*Relief Events; Compensation Events*) regardless of whether the Unidentified Utility Adjustment Deductible has been incurred, provided that any claim for compensation associated with the schedule shall be subject to the Unidentified Utility Adjustment Deductible. The Unidentified Utility Adjustment Deductible shall apply to each discovery of an Unidentified Utility Adjustment pursuant to this clause (b), provided that Developer shall not be responsible for aggregate increased Costs with respect to Unidentified Utility Adjustments pursuant to this clause (b) in excess of $1,000,000.

7.4.13.3 Developer may not assert a Compensation Event or a Relief Event:

(a) if a Utility is shown in TP Attachment 7-5 (Utility Plans) and is not impacted by Developer's Design, but is later identified by Developer as needing to be Adjusted, unless the need to Adjust is due to a Relief Event, Compensation Event or Authority Change;

(b) for any Utility whose location, size and dimensions were reasonably accurate and shown on TP Attachment 7-5 (Utility Plans); or

(c) a Utility Adjustment is not required with respect to the Unidentified Utility Facility.

7.4.14 Utility Services Costs

7.4.14.1 Developer shall be responsible for all metered consumption costs charged by utilities in connection with the Work, including specifically all electric service recurring costs required for the ITS Sites and lighting until Substantial Completion. With respect to natural gas, Developer shall

also be responsible for providing a connection to a natural gas utility, as and where required to perform the Work, to include all associated piping, controls, incidental items, and connection fees.

7.4.14.2 Developer shall ensure that those portions of the Project for which for metered consumption is Developer's responsibility are separately metered from those other portions of the Project for which Authority, GDOT, or any Governmental Entities is responsible.

7.4.15 Conditions to Commencement of Utility Adjustments. Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until all of the following requirements have been satisfied:

7.4.15.1 except as otherwise approved by Authority, in its sole discretion, Authority issues NTP2;

7.4.15.2 Developer has received the "Post-Let Utility Certification" (and an approved Utility Work Plan) with respect to a Utility;

7.4.15.3 all of the conditions set forth in PA Section 3.3.4 (*Notice to Proceed 3*) that are applicable to the Utility Adjustment (reading such conditions as if they referred to the Utility Adjustment) have been satisfied; and

7.4.15.4 all conditions set forth in PA Section 3.4 (*Conditions to Commencement of Certain Portions of the Work*) that are applicable to the Utility Adjustment (reading such conditions as if they referred to the Utility Adjustment) have been satisfied.

7.4.16 Highway Service Systems. Notwithstanding anything to the contrary in the DBF Documents, and in particular this PA Section 7.4 (*Utility Adjustments*), as Highway Service Systems are not Utilities, the Work includes, and Developer shall locate all Highway Service Systems that affect the Work or the Project, and shall perform or cause to be performed, all relocations (temporary or permanent), abandonments and/or dormancies, Protection in Place (as such concept applies to Highway Service Systems, were such Highway Service Systems "Utilities"), removals (of previously abandoned or dormant Highway Service Systems as well as of newly-abandoned or dormant Highway Service Systems), replacements, reinstallations, Adjustments (as such concept applies to Highway Service Systems, were such Highway Service Systems "Utilities") and/or modifications of existing Highway Service Systems, as and to the extent, necessary to accommodate the Work or the Project.

7.5 [Reserved.]

7.6 Substantial Completion, Punch List, Final Acceptance

7.6.1 Substantial Completion

7.6.1.1 Authority will issue a written certificate of Substantial Completion at such time as Substantial Completion occurs that shall be subject to the terms and conditions of this PA Section 7.6.1 (*Substantial Completion*).

7.6.1.2 Substantial Completion shall occur upon satisfaction of the following criteria:

(a) the D&C Work is completed in accordance with the DBF Documents, including specifically all SC List items, such that the Project is in a condition that can be opened for normal and safe

vehicular travel in all lanes and at all points of entry and exit, as required by this Project Agreement, subject only to FA Punch List items (including any outstanding Landscaping Work);

(b) all systems and Project equipment (including specifically all drainage systems/facilities, fire safety systems, cable safety systems, illumination, signs, signals, other safety features, ITS (and associated safety features and components)) are (i) installed, functional, operational, and functioning and compliant with the requirements of the DBF Documents, and (ii) have passed all inspections and tests required under the DBF Documents;

(c) all systems and Project equipment complies, in all respects, with all applicable Laws (including specifically all systems, signs, signals, other safety features, Project equipment, and any sidewalks or other permanent features of the Project completed or installed satisfy all requirements of the ADA);

(d) all lanes of traffic (including ramps, interchanges, collector/distributor lanes, auxiliary lanes, overpasses, underpasses, other crossings) set forth in the RFC Design Documents are in their final configuration and available for normal and safe use and operation;

(e) all commitments related to the Work as required pursuant to NEPA Approvals have been completed in accordance therewith and the DBF Documents;

(f) the FA Punch List has been prepared and agreed between the Parties;

(g) the Project is sufficiently complete, can be used for its intended purpose, and in a condition that can be opened for normal and safe vehicular travel in all lanes and at all points of entry and exit, as determined by Authority in its reasonable discretion, subject only to FA Punch List items;

(h) Developer, Utility Owner and GDOT have each executed a Utility Facility Relocation Acceptance Form with respect to each Utility Adjustment in accordance with TP Section 7 (Utility Adjustments);

(i) Developer has conducted all required training sessions with Authority and GDOT personnel as required pursuant to the Technical Provisions and has delivered to Authority all records and course completion certificates issued to each of the subject personnel;

(j) all Submittals required by the DBF Documents to be submitted to Authority prior to Substantial Completion (including all reports, data (including Project Data, as applicable) and documentation relating to any tests) have been submitted to and accepted by Authority, in each case in accordance with the Submittal Requirements Database;

(k) all comments from the Georgia Environmental Protection Division of the Georgia Department of Natural Resources on the "Post-Construction Stormwater Report" have been addressed by Developer in accordance with TP Section 12 (Drainage), and the Georgia Environmental Protection Division's 60-day "Post-Construction Stormwater Report" disapproval period has expired;

(l) ITS Batch Acceptance has been achieved for all ITS Sites; and

(m) Developer has satisfied any other requirements or conditions for Substantial Completion set forth in the Project Agreement.

7.6.1.3 Developer shall update the D&C Closeout Plan, in accordance with the requirements of TP Section 2 (Project Management), and Developer shall submit the updated D&C

Closeout Plan to Authority at least 90 days prior to the date on which Developer anticipates achieving Substantial Completion. Developer shall implement the accepted updated D&C Closeout Plan.

7.6.1.4 Developer shall provide Authority with not less than 30 days' prior Notice of the date Developer determines it will achieve Substantial Completion. During such period, Developer (by and through, at a minimum, the Project Chief Engineer, Construction Manager, DQAM, CQAM, and QAM) and Authority shall meet and confer and exchange information on a regular cooperative basis (no less frequently than twice per week) with the goal being Authority's orderly, timely inspection and review of the Project and the applicable RFC Design Documents and Construction Documents, and Authority's issuance of a written certificate of Substantial Completion.

7.6.1.5 During the period identified in PA Section 7.6.1.4 (*Substantial Completion*), GDOT, in accordance with PA Section 1.3.2 (*Project Administration*), shall conduct an inspection of the Project and its components, a review of the applicable RFC Design Documents, Construction Documents, and conduct such other investigation and review of reports, data, and documentation as may be necessary or desirable, in Authority's sole discretion, to evaluate whether all conditions to achievement of Substantial Completion have been satisfied.

7.6.1.6 Authority shall cause GDOT to deliver a written report of findings and recommendations to Authority and Developer following such inspection, review and investigation and within five days after the end of the 30-day period. Authority may, but is not obligated to, jointly with GDOT or independently, conduct such inspections, review and investigations with respect to evaluating Substantial Completion. Authority will, within five days after receipt of the GDOT report and findings, and subject to any review and inspection that Authority may conduct pursuant hereto, before the expiration of such five day period, then either (a) issue the written certificate of Substantial Completion or (b) notify Developer in writing setting forth, as applicable, why the Project has not reached Substantial Completion. If Authority and Developer cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.6.2 SC List; FA Punch List

7.6.2.1 The D&C Closeout Plan shall establish procedures and schedules for preparing the SC List and the FA Punch List and completing Work as set forth therein. Such procedures and schedules shall conform to the following provisions:

(a) The schedule for preparation of the SC List and FA Punch List shall be consistent and coordinated with the inspections regarding Substantial Completion and Final Acceptance.

(b) Developer shall prepare and maintain the SC List and the FA Punch List.

(c) Developer shall deliver to Authority a true and complete copy of the SC List and the FA Punch List, and each modification thereto (made pursuant to, and in keeping with the D&C Closeout Plan and this PA Section 7.6.2 (*SC List; FA Punch List*), as soon as it is prepared.

(d) Each Party shall have the right to add items to either the SC List or the FA Punch List, and neither Party shall have a right to remove any item added by the other Party without the other Party's express permission.

(e) If Developer objects to the addition of an item by Authority, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures.

(f) Developer shall deliver to Authority not less than five days' prior Notice stating the date when Developer will commence any SC List or FA Punch List field inspections.

(g) Developer shall promptly commence work on the SC List (prior to, and in anticipation of Substantial Completion) and FA Punch List items (prior to Substantial Completion but also thereafter, but prior to Final Acceptance), and diligently prosecute such work to completion, consistent with the DBF Documents, within the time period to be set forth in the D&C Closeout Plan and consistent with the Project Management Plan.

(h) In any case, Developer shall (i) complete the SC List as a condition to Substantial Completion and in no case later than the Substantial Completion Deadline; and (ii) complete the FA Punch List as a condition to Final Acceptance and in no case later than the Final Acceptance Deadline.

7.6.3 Final Acceptance

7.6.3.1 Promptly after achieving Substantial Completion, Developer shall perform all remaining Work (including specifically Construction Work) for the Project in accordance with the terms of the D&C Closeout Plan and the DBF Documents.

7.6.3.2 Authority will issue the written certificate of Final Acceptance at such time as all of the following have occurred for the Project:

(a) all requirements for Substantial Completion have been and remain satisfied;

(b) all FA Punch List items have been completed in accordance with the requirements of the DBF Documents, and delivered to the satisfaction of Authority;

(c) all special tools, equipment, furnishings, and supplies purchased and/or used by Developer as provided in the DBF Documents have been delivered to Authority, and all replacement spare parts, if any, have been purchased and delivered to Authority free and clear of any Liens;

(d) all non-structural aesthetic and landscaping features (other than vegetative ground cover landscaping) have been completed in accordance with TP Section 15 (Landscape and Hardscape Enhancements) and the Submittals and other Plans prepared in accordance therewith;

(e) Developer is in compliance with the timetable for planting and establishing vegetative ground cover landscaping agreed in the accepted D&C Closeout Plan;

(f) Authority has received a complete set of the Record Design Documents;

(g) Authority has received a complete set of bound field notes, topographic mapping, and as-built surveys for the Project in form and substance required by TP Section 9 (Surveying and Mapping);

(h) if any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the Project or any portion thereof, including any certifications from the Engineer of Record with respect to a certain engineering discipline for the Project, Developer has caused such certificates to be executed and delivered and has concurrently issued identical certificates to Authority;

(i) all Submittals required under TP Section 2 (Project Management) or otherwise under the DBF Documents to be submitted to Authority as a condition, or prior, to Final Acceptance have been

submitted, in the form and content required by the Project Management Plan or DBF Documents, and for those requiring Authority acceptance, all such Submittals have been accepted by Authority in accordance with PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*);

(j) Developer has delivered to Authority all warranties, manuals and other deliverables as required pursuant to the Technical Provisions;

(k) Authority has received the final Project Schedule Update in form and substance required by TP Section 2 (Project Management);

(l) all Utility Adjustment Work and other work that Developer is obligated to perform for or on behalf of third parties has been accepted by such third parties, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts;

(m) Developer has made all deposits to Authority required at or prior to Final Acceptance;

(n) Developer has paid in full all amounts due and owing to Authority pursuant to the DBF Documents (including, if applicable, Liquidated Damages, Nonrefundable Deductions, and Lane Closure Deductions) that, in each case, are not in Dispute, and has provided to Authority security reasonably acceptable to Authority for the full amount of Deductions that may then be the subject of an unresolved Dispute;

(o) there exist no uncured Developer Defaults that are the subject of a Warning Notice, or with the giving of notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Acceptance will affect its cure);

(p) Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other applicable third party approvals required pursuant to the DBF Documents, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

(q) Developer has submitted to Authority (i) documentation of DBE participation, including all DBE Participation Reports and the final certificate of payment, in accordance with PA Section 10.9 (*Disadvantaged Business Enterprise*) and all the OJT Quarterly Progress Reports in accordance with PA Section 10.9.4 (*Job Training Program*), and (ii) if the DBE Goal is not met, documentation supporting good faith efforts, provided that, in such case Authority must approve such good faith efforts;

(r) Developer has delivered to Authority the Warranty Bond (or evidence of a reduced performance bond) and, if applicable, new payment surety bond replacing the payment surety bond initially placed with the P&P Bonds;

(s) Developer has delivered to Authority, in accordance with PA Section 16.1.2.4 (*Verification of Coverage*), verification of all required post-Construction Period Insurance Policies required under the DBF Documents; and

(t) Developer has satisfied any other requirements or conditions for Final Acceptance set forth in the Project Agreement.

7.6.3.3 Developer shall provide Authority with not less than 30 days' prior Notice of the date Developer anticipates achieving Final Acceptance. During such period following receipt of such Notice, Developer (by and through, at a minimum, the Project Chief Engineer, Construction Manager,

DQAM, CQAM, and QAM) and Authority shall meet and confer and exchange information on a regular cooperative basis (no less frequently than twice per week) with the goal being Authority's orderly, timely inspection and review of the Project and the Record Design Documents and Authority's issuance of the certificate of Final Acceptance.

7.6.3.4 During such 30-day period, Authority shall cause GDOT to, in accordance with PA Section 1.3.2 (*Project Administration*), conduct an inspection of the FA Punch List items, a review of the Record Design Documents and such other investigation as may be necessary or desirable, in Authority's sole discretion, to evaluate whether the conditions to Final Acceptance have been satisfied. Authority will ensure that GDOT will deliver a written report of findings and recommendations to Authority and Developer following such inspection, review and investigation and in any case by the end of such 30-day period. Authority may, but is not obligated to, jointly with GDOT or independently conduct such inspection, review and investigation within such 30-day period.

7.6.3.5 Authority will ensure that GDOT delivers a written report of findings and recommendations to Authority and Developer following such inspection, review and investigation and within five days after the end of the 30-day period. Authority may, but is not obligated to, jointly with GDOT or independently, conduct such inspections, review and investigations with respect to evaluating Final Acceptance. Authority will, within five days after receipt of the GDOT report and findings, and subject to any review and inspection that Authority may conduct pursuant hereto, before the expiration of such five day period, then either (a) issue the certificate of Final Acceptance or (b) notify Developer in writing setting forth, as applicable, why the Project has not reached Final Acceptance. If Authority and Developer cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.6.3.6 Final Acceptance will not prevent Authority from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall it prevent Authority from recovering from Developer, any Guarantor, the surety(ies) issuing the P&P Bonds, or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Developer to fulfill the obligations under the DBF Documents. Final Acceptance shall not relieve Developer from any of its continuing or surviving obligations hereunder, including Warranty obligations.

7.6.4 Early Open to Traffic

7.6.4.1 Certain sections of the Project may be opened to traffic when specified in the DBF Documents or when directed by Authority. Such opening shall not constitute acceptance of the Work or any part thereof or a waiver of any provision of the DBF Documents.

7.6.4.2 The Baseline Project Schedule shall set forth Developer's plan for completing sections of the Project specified in the DBF Documents and for opening them to traffic.

7.6.4.3 Authority may request that Developer expedite certain sections of the Project, and Developer shall accommodate such requests to the extent that it can do so in consideration of safety to the public and construction personnel and without significant disruption to the Baseline Project Schedule or a significant increase in Developer's costs. If, after consultation with Authority, Developer determines that it cannot accommodate Authority's request without significant disruption to the Baseline Project Schedule or a significant increase in Developer's costs (or both), Developer shall within five Business Days after receiving such Authority's initial request, prepare and deliver for Authority's review, a proposed Supplemental Agreement, with sufficiently detailed breakdown of the necessary changes to the Baseline Project Schedule and any change to the DBF Contract Sum that would be required to accommodate Authority's request, including data and documents supporting Developer's evaluation. If after reviewing

Developer's written evaluation Authority still wishes to pursue the expediting of such certain sections of the Project, then Authority may initiate the change through the procedure in PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*).

7.6.4.4 When opened, Developer shall thereafter perform the remainder of any Work so as to cause the least obstruction to traffic.

7.7 Hazardous Materials Management

7.7.1 Without limiting Developer's obligations as set forth pursuant to PA Section 7.8 (*Environmental Compliance*), the parties shall undertake Hazardous Materials Management for Hazardous Materials pursuant to PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*) or otherwise pursuant to a Supplemental Agreement or Directive Letter in accordance with PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*).

7.7.1.1 If Developer encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project or Work, Developer shall:

(a) promptly notify Authority in writing and advise Authority of any obligation to notify State or federal agencies under applicable Law;

(b) notify any such State or federal agencies required to be notified under applicable Law; and

(c) take reasonable steps to the extent practicable, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions.

7.7.1.2 If during the Term, Authority or GDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project or Work, Authority will promptly notify Developer in writing of such fact.

7.7.1.3 Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable or is required by applicable Law, Developer shall, subject to this PA Section 7.7.1 (*Hazardous Materials Management*), PA Section 7.8 (*Environmental Compliance*), and PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*), utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities. Wherever feasible and consistent with applicable Law and Good Industry Practice, Developer shall not dispose of contaminated soil and groundwater off-site.

7.7.2 The right of one Party to step in to carry out remedial action obligations of the other Party are as follows:

7.7.2.1 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon the Baseline Project Schedule, Developer has not undertaken remedial action required of it under PA Section 7.7.1 (*Hazardous Materials Management*), Authority may provide Developer with Notice that it will undertake the remedial action itself. Authority thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. Developer shall reimburse to Authority on a current basis the reasonable costs, including Authority Recoverable Costs, Authority incurs in carrying out such remediation plan.

7.7.2.2 Notwithstanding the foregoing, if either Party notifies the other that it desires to preserve claims against other potentially responsible parties, then the Party undertaking the remedial act shall take all commercially reasonable efforts to preserve such claims consistently with State regulations and standards; and a reasonable period of time for Developer or Authority, as the case may be, to perform the remedial work shall include a sufficient period for Developer or Authority, as the case may be, to comply with the National Contingency Plan or such comparable State regulations and standards.

7.7.3 Except for Pre-existing Hazardous Materials, any Authority Release(s) of Hazardous Materials, Compensation Events under clause (e) of its definition (subject, as applicable, to PA Section 14.7.6 (*Pre-Existing Hazardous Materials; Developer Proposed/Developer Acquired Right of Way; Third-Party Hazardous Materials Releases*), or otherwise as expressly provided in this PA Section 7.7 (*Hazardous Materials Management*), or PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*), Developer shall not be entitled to any compensation due to increased costs or delays associated with the discovery, handling, storage, removal, remediation, transport, treatment or disposal of Hazardous Materials discovered or encountered in construction of the Project or Utility Adjustments.

7.7.4 Generator, Arranger

7.7.4.1 Except as set forth in PA Section 7.7.4.2 (*Generator, Arranger*) and this PA Section 7.7.4.1 (*Generator, Arranger*), as between Authority and Developer, Authority will not be designated by the Parties as the sole generator and arranger under 40 C.F.R. Part 262 with respect to any Hazardous Materials on the Site, including specifically (a) Developer Releases of Hazardous Materials and (b) any Hazardous Materials with respect to any Developer Proposed/Developer Acquired Right of Way or Temporary Interests (other than Authority Release(s) of Hazardous Materials). Developer agrees that it shall be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity. Except to the extent of any Compensation Events under clause (e) of its definition (subject, as applicable, to PA Section 14.7.6 (*Pre-Existing Hazardous Materials; Developer Proposed/Developer Acquired Right of Way; Third Party Hazardous Materials Releases*), Developer will retain and be responsible for, as among Authority, GDOT and Developer, all liability and responsibility (including all claims related thereto) relating to any Developer Release(s) of Hazardous Materials and any Hazardous Materials with respect to any Developer Proposed/Developer Acquired Right of Way or Temporary Interests (other than Authority Release(s) of Hazardous Materials).

7.7.4.2 As between Authority and Developer, Developer will not be designated by the Parties as a generator and arranger under 40 C.F.R. Part 262 with respect to any Pre-existing Hazardous Materials, those Third-Party Hazardous Materials Releases identified under clause (i) of the definition of "Relief Event," and any Authority Release(s) of Hazardous Materials. Authority agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity. To the extent permitted by Law, and except as provided in PA Section 7.7.4.3 (*Generator, Arranger*), Authority will retain and be responsible for, as among Authority, GDOT and Developer, all liability and responsibility (including all claims related thereto, but excluding the responsibility for Hazardous Materials Management with respect to any such Hazardous Materials) directly resulting from Pre-existing Hazardous Materials, such Third-Party Hazardous Materials Releases, and any Authority Release(s) of Hazardous Materials, provided that the aforementioned shall not imply nor be construed as an obligation of Authority, GDOT or the State to provide any indemnification to Developer or any other party.

7.7.4.3 If Developer has contributed to any liability or responsibility with respect to such Pre-existing Hazardous Materials, those Third-Party Hazardous Materials Releases identified under clause (i) of the definition of "Relief Event," or any other Hazardous Materials Release, including any

Authority Release(s) of Hazardous Materials, Authority will not be responsible for the portion of any liability or responsibility determined to be caused by Developer, whether judicially or under Dispute Resolution Procedures.

7.7.4.4 Nothing herein shall be construed as limiting Authority's or Developer's rights to seek contribution or payment from (or otherwise take action against) any Person (other than the other Party) that may be responsible (in whole or in part) with respect to any liability or responsibility retained or suffered by Authority or Developer, respectively, with respect to Hazardous Materials or Hazardous Materials Management. For the avoidance of doubt, Developer shall have the right to pursue claims against a third party with respect to Losses incurred by Developer with respect to a Third Party Hazardous Materials Release affecting the Project Site in accordance with the Third Party Damage Claim Plan prepared by Developer pursuant to TP Section 2.2.1.22, and shall report Developer's activities with respect to such claims in accordance with the Third Party Damage Claim Plan. Developer may retain any amounts recovered from a third party in respect of such Losses incurred by Developer, after deducting the amount of any costs incurred by the Authority, GDOT or the Attorney General in relation to Developer's pursuit of such claims, which amounts shall be transferred to the Authority, GDOT or the Attorney General, as applicable.

7.7.5 Costs Associated with Hazardous Materials

7.7.5.1 Except for any Authority Release(s) of Hazardous Materials, Compensation Events under clause (e) of its definition (subject, as applicable, to PA Section 14.7.6 (*Pre-Existing Hazardous Materials; Developer Proposed/Developer Acquired Right of Way; Third-Party Hazardous Materials Releases*), or otherwise as expressly provided in this PA Section 7.7 (*Hazardous Materials Management*), or PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*), as between Developer and Authority, all costs associated with any Hazardous Materials, including Hazardous Materials Management, shall be borne by Developer.

7.7.5.2 Subject to PA Section 7.7.4.3 (*Generator, Arranger*), as between Developer and Authority, all costs associated with any Authority Release(s) of Hazardous Materials shall be borne by Authority.

7.8 Environmental Compliance

Developer's Work shall comply with all Environmental Laws, Environmental Approvals, and in performing the Work, otherwise take into account, be coordinated to allow for, and perform the Work in accordance with all such Environmental Laws, Environmental Approvals, and all environmental mitigation measures required under the Environmental Laws and the Environmental Approvals, including the NEPA Approval and any other Governmental Approvals for the Project, or under the DBF Documents. Developer shall comply with all conditions and requirements of the Environmental Approvals in accordance with TP Section 5.3.3 (Provided Environmental Approvals).

7.9 Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work

7.9.1 In addition to any other express warranties provided elsewhere in the DBF Documents, Developer warrants that:

7.9.1.1 all Design Work furnished pursuant to the DBF Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, in no case less than Good Industry Practice;

7.9.1.2 all goods, consumables, and materials used or supplied as part of the Work, or otherwise in connection with the Project are (a) of good quality and unless otherwise expressly stated, new when installed; are available to ensure compliance with the requirements of the DBF Documents, under normal conditions and reasonably anticipated abnormal conditions, and (b) fit for the purposes, objectives, functions, uses, and requirements set forth in or reasonably inferred from the DBF Documents;

7.9.1.3 all equipment furnished by or on behalf of any Developer-Related Entity is of modern design and in good working condition;

7.9.1.4 (a) the Construction Work is free of Defects, (b) the Project is free of deviations, changes, modifications, alterations or exceptions from applicable Technical Provisions that have not been approved, in writing, by Authority; and (c) the Work otherwise conforms to those requirements set forth with respect to the Design Work, Construction Work, and all Work, as set forth in PA Section 7.2.1 (*Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions*), PA Section 7.2.2 (*Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions*), and PA Section 7.2.3 (*Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions*); and

7.9.1.5 the Work otherwise meets all of the requirements of the DBF Documents (collectively, the "Warranty").

The Warranty, and all other warranties expressly provided elsewhere in the DBF Documents, run to the benefit of Authority and GDOT.

7.9.2 Developer covenants to respond to any Warranty claim by or on behalf of Authority and otherwise to correct any Defects or Work that does not conform to the requirements of the DBF Documents or the accepted Construction Documents during the Term and until a period of two years from the date of Final Acceptance of the entirety of the Work, or within such longer periods as required pursuant to the DBF Documents (e.g., vegetation establishment) (collectively, the "Warranty Period"). Developer shall commence corrective Work as may be required within 30 days after any notice from Authority or otherwise within such time as Authority may approve or provide in writing, and shall diligently and continuously prosecute all such corrective Work so as to complete same within 30 days of commencement thereof, except where such Work cannot reasonably be completed within such time. The aforementioned obligation to correct Defects is not intended to constitute a period of limitations for any other rights or remedies that Authority or GDOT may have with respect to Developer's obligations under the DBF Documents.

7.9.3 Developer shall obtain customary and reasonable warranties from all Contractors with respect to design, materials, workmanship, installations, equipment, tools, supplies, software or services, all of which Developer shall cause to be expressly extended and assigned to Authority, or its designee; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to Authority using commercially reasonable efforts. To the extent that any Contractor warranty would be voided by reason of Developer's negligence in incorporating material or equipment into the Work, Developer shall be responsible for correcting such defect.

7.9.4 Developer's Warranty and the Contractor warranties (if any) are in addition to all rights and remedies available under the DBF Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the DBF Documents or applicable Law or in equity with respect to the Work.

7.9.5 When, during the Warranty Period, any act, omission, or other action of Developer occurs that violates the requirements, conditions, or terms of the DBF Documents, or affects the health, safety, or welfare of the public or natural resources, Authority will have the right, but not the obligation, to require and direct Developer to take prompt action to replace, repair, or restore such damage, injury or condition within a time frame established by Authority, at Developer's sole cost and expense and without entitlement to a Relief Event or Compensation Event.

7.9.6 For avoidance of doubt, and without limiting Developer's obligations to correct Nonconforming Work as set forth under PA Exhibit 20 (*Nonconforming Work*), Developer's obligations under this PA Section 7.9 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) include replacement, re-work, repair, or otherwise correction of all Defects as and when discovered (by any Person) during the Term, and to take all necessary action promptly to prevent similar Defects from occurring.

7.9.7 If Developer fails to comply with its obligations under PA Section 7.9.2 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*), Authority shall be entitled to take action to investigate, repair, replace or otherwise correct and fully remedy any Defect in the Project and any other breach of the Warranty. If Authority incurs any costs and expenses in connection with taking such action, Developer shall pay to Authority the amount of such costs and expenses within 10 Business Days following receipt of Authority's invoice or demand.

7.9.8 Developer acknowledges and agrees that Authority, GDOT, and any other Authority-Related Entity may perform work on any part of the Project during the Warranty Period without voiding the Warranty and without voiding Developer's obligation to correct any Defect, provided that Developer shall not be liable for any defect or any other breach of the Warranty obligations to the extent caused or exacerbated by such work.

7.9.9 To the extent that any warranty provided by a Contractor or Subcontractor is voided by reason of Developer's negligence in incorporating material or equipment into the Project or any breach of the Warranty-related obligations, Developer shall be responsible for procuring a replacement warranty for Authority.

7.9.10 Nothing in this PA Section 7.9 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) limits Authority's right to assert claims for damages arising out of, relating to, caused by, or resulting from Defects, nor shall this PA Section 7.9 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) be construed to waive any other rights or remedies that Authority may have under this Project Agreement, at Law, or in equity.

7.10 UAS Requirements

7.10.1 Authorization to Use UASs for the Project. Developer may use a drone, classified as a Small Unmanned Aircraft System ("UAS") as defined in 14 C.F.R., Part 107 in performing the Work, subject to the terms and conditions set forth in this PA Section 7.10 (*UAS Requirements*). TP Attachment 1-6 (UAS Requirements) also sets out certain of Developer's obligations with respect to UASs. For avoidance of doubt, nothing in this PA Section 7.10 (*UAS Requirements*) authorizes, nor shall be deemed or construed to authorize, any Developer-Related Entity to use a UAS under any existing GDOT Part 107 "Operational Waiver" or other FAA authorization relating to use of UASs.

7.10.2 UAS Use and Flight Planning.

7.10.2.1 Developer shall submit UAS use plans for the Project to Authority as a condition to the first instance of UAS operations within the airspace of the Project Limits. Developer shall obtain Authority's prior, written authorization to deviate from the UAS use plan submitted. Acceptance of the UAS use plan, as may be thereafter amended, authorizes UAS operations within the airspace of the Existing Right of Way, subject to the restrictions (if any) as may apply to a Parcel (as annotated in, or by reference within, PA Exhibit 4 (*Parcel Acquisition Table*)).

7.10.2.2 Developer shall file all flight and related plans with the FAA prior to any UAS operations.

7.10.2.3 Except as and when authorized by GDOT under PA Section 7.10.2.1 (*UAS Use and Flight Planning*), prior to each and every use of any UAS, and to the extent authorized under a submitted UAS use plan and FAA flight plan:

(a) Developer shall provide written notice to each Person with real property interests over which the UAS is to operate in connection with the Work.

(b) If and to the extent required under applicable Law, Developer shall also obtain written authorization by the aforementioned Persons prior to each and every use of any UAS that transits over the Parcel subject to such Person's real property interests.

(c) Developer shall coordinate directly with any Separate Contractor or other Encroachment Permit-holder on the Project Limits.

7.10.3 Compliance with Law; Governmental Approvals; Other Third Party Approvals. Developer shall comply with all applicable Laws relating to ownership, use, and operation of UASs. Developer shall obtain, maintain, and comply with all such additional Governmental Approvals (including Encroachment Permits) that are required for UAS operations by or on behalf of Developer.

7.10.4 UAS Risks, Liabilities, Culpability. As between Developer and Authority, Developer bears all risks relating to UAS operations, including specifically any civil liabilities or culpabilities in tort and criminal liabilities that may result (e.g., battery, trespass).

7.10.5 UAS Safety. Developer shall conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the UAS is in a condition for safe operation pursuant to 14 C.F.R. Part 107. Developer shall comply with all clearances given and as may be conditioned or restricted in the airspace. Notwithstanding the foregoing, and only to the extent not expressly directed otherwise by the FAA air traffic controllers during any UAS operations, Developer shall not, nor shall Developer permit, UAS operations (a) higher than 400 feet, (b) within 25 feet of pedestrians, moving vehicles, or public infrastructure, (c) at or within specific No Drone Zone locations, and (d) as otherwise restricted under the Technical Provisions.

7.10.6 Damage or Loss of a UAS. Developer shall report any potential or actual loss of any UAS promptly to Authority and to such other Governmental Entities as may be required under applicable Law. To the extent possible, Developer shall comply with any requirements resulting from report, including recovery of the damaged UAS.

7.10.7 UAS-involved Damages. In addition to other requirements under applicable Law and pursuant to insurance requirements, Developer shall report to the FAA (with a copy of such report delivered concurrently to Authority) within 10 days of any operation of a UAS that results in at least serious injury, loss of consciousness, or property damage of at least $500.

7.10.8 Intellectual Property and Books and Records Matters. All information, materials (including electronic materials), and other work product (including maps, computations, computer discs, printouts, flight logs, and other data (including Project Data)) prepared by, or for or any Developer-Related Entity under the terms of this Project Agreement arising out of, relating to, or resulting from the use of the UAS are Books and Records and any Intellectual Property disclosed or embodied within is Owner Intellectual Property and not Proprietary Intellectual Property. In addition to Authority's rights under PA Article 20 (*Records and Audits; Intellectual Property*), Developer shall also make available to the FAA, upon request, the UAS itself for inspection or testing, as well as maintain and provide to the FAA any related Books and Records.

7.11 Maintenance During Construction Work

7.11.1 Authority will be responsible for the operation and maintenance of the Existing Right of Way and any acquired right or interest in any State Proposed/State Acquired Right of Way until NTP3. Upon NTP3, Developer shall assume full responsibility for maintenance of the Project, as and when constructed, and all of the Work, within the Site in accordance with the requirements of the DBF Documents.

7.11.2 Upon Final Acceptance, Authority will assume, or cause GDOT to assume, responsibility for the operation and maintenance of the entire Project, provided that nothing contained herein shall otherwise limit any warranty obligations of Developer with respect to any Nonconforming Work or Defect, and provided further that Authority's assumption of responsibility excludes any responsibilities on or pertaining to any Temporary Interests.

7.12 Discovery of Unexpected Subsurface Conditions and Errors in Authority Boring Data

7.12.1 The Parties acknowledge and agree that:

7.12.1.1 The Authority has allocated an allowance amount of $26,000,000 ("Unexpected Subsurface Condition Allowance") with respect to the discovery of Unexpected Subsurface Conditions, which sum will be funded by GDOT (not financed by Developer) and made available to the Authority to pay amounts that Developer has a right to draw from the Unexpected Subsurface Condition Allowance in accordance with the terms of this Section 7.12.1;

7.12.1.2 except to the extent set forth in PA Section 7.12.1.3 (*Discovery of Unexpected Subsurface Conditions*), the aggregate of any amounts that Developer shall have a right to draw under this PA Section 7.12 (*Discovery of Unexpected Subsurface Conditions*) shall not exceed the Unexpected Subsurface Condition Allowance; and

7.12.1.3 Developer's right to draw under the Unexpected Subsurface Condition Allowance under this PA Section 7.12 (*Discovery of Unexpected Subsurface Conditions*) is separate from Developer's right to claim any compensation or relief under clause (f) of the definition of "Authority-Caused Delay", clause (e), clause (j), clause (m), or clause (t) of the definition of "Compensation Event", or clause (g), clause (h), clause (q), clause (t), or clause (z) of the definition of "Relief Event" in accordance with PA Article 13 (*Relief Events; Compensation Events*).

7.12.2 If during the performance of the Work Developer becomes aware of an Unexpected Subsurface Condition, Developer shall promptly (and in any event within 15 Business Days) provide Notice of the Unexpected Subsurface Condition to Authority.

7.12.3 Within 40 Business Days after Developer's Notice under PA Section 7.12.2 (*Discovery of Unexpected Subsurface Conditions*), Developer shall deliver to Authority a detailed proposal ("Detailed Unexpected Subsurface Condition Proposal"):

7.12.3.1 setting out the applicable information in PA Section 14.1.3 (*Authority Changes*) with respect to the Unexpected Subsurface Condition provided that with respect to any estimate of costs to be incurred with respect to those portions of the Work described in PA Section 7.12.3.2 (*Discovery of Unexpected Subsurface Conditions*), such amounts shall not exceed the amount remaining in the Unexpected Subsurface Condition Allowance;

7.12.3.2 demonstrating that

(a) the condition is materially different from a condition described in clause (a), clause (b), or clause (c) of the definition of "Unexpected Subsurface Condition"; and

(b) demonstrating that the Unexpected Subsurface Condition is the direct cause of Developer incurring additional costs with respect to D&C Work for bridge and structure foundations, sound barrier foundations, retaining walls, or earthwork, as applicable; and

(c) demonstrating that the Developer has used all reasonable efforts to mitigate any adverse consequences of the Unexpected Subsurface Condition, acting in accordance with Good Industry Practice (including by re-sequencing, reallocating or redeploying its forces to other portions of the Work).

7.12.4 Promptly, and in any event within 15 Business Days, after Authority receives a Detailed Unexpected Subsurface Condition Proposal, Developer shall meet with Authority to review, discuss and seek to agree upon the Detailed Unexpected Subsurface Condition Proposal.

7.12.5 During such discussions, Authority may request further information from Developer as Authority determines, in its reasonable discretion, is necessary for Authority to evaluate the Detailed Unexpected Subsurface Condition Proposal.

7.12.6 Within 15 Business Days after the later of the conclusion of the meetings referred to in PA Section 7.12.4 (*Discovery of Unexpected Subsurface Conditions*) or the date additional information is received pursuant to PA Section 7.12.5 (*Discovery of Unexpected Subsurface Conditions*), as applicable, Authority will either:

7.12.6.1 subject to PA Section 7.12.1 (*Discovery of Unexpected Subsurface Conditions*), accept the Detailed Unexpected Subsurface Condition Proposal by issuing a notice to Developer (an "Unexpected Subsurface Condition Order"); or

7.12.6.2 dispute the Detailed Unexpected Subsurface Condition Proposal or whether an Unexpected Subsurface Condition exists, in which case either Party may refer the matter for determination in accordance with the Dispute Resolution Procedures.

7.12.7 If an Unexpected Subsurface Condition Order is issued, Developer may submit invoices to the Authority for payment of additional costs actually incurred under PA Section 7.12.3.2 (*Discovery of Unexpected Subsurface Conditions*), not to exceed the total approved amount specified in the Unexpected Subsurface Condition Order. Draft invoices for payments from the Unexpected Subsurface Conditions Allowance for costs incurred with respect to an Unexpected Subsurface Condition Order in any given month shall be included with the next monthly draft Project Certificate package submitted by Developer pursuant to Section 2.2 of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), and shall be accompanied by evidence that Developer actually has incurred the relevant costs. .

Authority and Developer shall review the draft invoice at the next Project Certificate Review Meeting conducted pursuant to Section 3 of PA Exhibit 7 (*Project Certificate Review Meeting*). Following such meeting Developer shall submit the final invoice to Authority for approval pursuant to the process specified for Project Certificates in Section 4 of PA Exhibit 7 (*Approval of Project Certificates*), and the Authority shall remit payment of the approved final invoice to the appropriate account within the 10 Business Days provided for payment of Approved Project Certificates pursuant to Section 5.4 of PA Exhibit 7 (*Payment of Amounts Under Approved Project Certificates*); provided that the aggregate of such payments shall not exceed the amount remaining in the Unexpected Subsurface Condition Allowance, after taking into account any previous payment in accordance with this PA Section 7.12.7 (*Discovery of Unexpected Subsurface Conditions*).

7.12.8 Developer shall not suspend performance of the Work during the negotiation of any Detailed Unexpected Subsurface Condition Proposal, except to the extent that such suspensions are otherwise expressly permitted under the terms of this Project Agreement.

7.12.9 Developer bears the burden of proving both the existence of an Unexpected Subsurface Condition and the resulting direct and adverse impacts on Developer.

7.12.10 Time is of the essence with respect to Developer's delivery of the notices required under this PA Section 7.12 (*Discovery of Unexpected Subsurface Conditions*). If for any reason Developer fails to deliver the initial Notice in strict accordance with the requirements of PA Section 7.12.2 (*Discovery of Unexpected Subsurface Conditions*) or a Detailed Unexpected Subsurface Condition Proposal in strict accordance with the requirements of PA Section 7.12.3 (*Discovery of Unexpected Subsurface Conditions*), then Developer will be deemed to have irrevocably and forever waived and released any right to draw payment under this PA Section 7.12 (*Discovery of Unexpected Subsurface Conditions*) with respect to such Unexpected Subsurface Condition.

7.12.11 Developer shall locate all existing GDOT ITS within the Project Limits in accordance with TP Section 17.4.6 (ITS Locates) and ensure existing GDOT ITS are protected from damage in accordance with TP Section 17.4.4 (Protection of Existing ITS-Infrastructure). The existence or discovery of GDOT ITS within the Project Limits shall not constitute an Unexpected Subsurface Condition. Damage caused by Developer to GDOT ITS due to failure to locate any existing or installed GDOT ITS within the Project Limits shall be the responsibility of Developer, and Developer shall not be entitled to relief or compensation with respect to the existence or discovery of GDOT ITS within the Project Limits.

7.12.12 If, at the Final Acceptance Date, the total value of authorization letters from Authority with respect to all agreed Unexpected Subsurface Condition Orders does not exceed the Unexpected Subsurface Condition Allowance, then Developer shall not be entitled to the balance of the Unexpected Subsurface Condition Allowance.

7.12.13 The Parties acknowledge and agree that on or prior to the Setting Date the Authority provided to the Developer the Authority Boring Data. If during the performance of the Work the Developer discovers any material error in the Authority Boring Data, then the Developer shall have a right to claim relief and compensation in accordance with PA Article 13 (*Relief Events; Compensation Events*). Developer acknowledges and agrees that, without limiting its rights under PA Sections 7.12.1 through PA Section 7.12.12 (*Discovery of Unexpected Subsurface Conditions and Errors in Authority Boring Data*), the discovery of Subsurface Conditions near to or within a particular radius from the location of a boring or core sample for which the Authority has provided Authority Boring Data will not constitute a material error in the relevant Authority Boring Data under this PA Section 7.12.1 (*Discovery of Unexpected Subsurface Conditions and Errors in Authority Boring Data*) unless the Developer demonstrates that the conditions encountered are such that there is no reasonable explanation for the difference between the

conditions encountered and the Authority Boring Data other than that the boring or core sample was incorrectly logged as part of the Data included in TP Attachment 8-5 (Preliminary Borings).

7.13 Existing Improvements and Latent Defects

7.13.1 Except as set forth in this Project Agreement and in this PA Section 7.13 (*Existing Improvements and Latent Defects*), Developer accepts the Existing Improvements on the Right of Way as is, with all faults, known and unknown, suspected and unsuspected, and without any Authority (or GDOT) obligation to reconstruct, rehabilitate, renew, replace, renovate, or repair any Existing Improvement. Furthermore, and except as set forth in this Project Agreement and in this PA Section 7.13 (*Existing Improvements and Latent Defects*), Developer assumes all responsibility and liability associated with Existing Improvements to the extent affected or impacted by the Work, including any improvements constructed by Authority, GDOT or any third parties, any impacts upon design and construction, and defects affecting GDOT's future operations, maintenance, renewal and replacement requirements. Developer shall be responsible for all Work and, except as set forth in this Project Agreement and in this PA Section 7.13 (*Existing Improvements and Latent Defects*), all costs associated with defects in Existing Improvements other than Latent Defects. Neither Authority nor GDOT provides, and hereby expressly disclaim, any and all warranties of any kind, whether express or implied, with respect to the Existing Improvements.

7.13.2 Notwithstanding the foregoing in PA Section 7.13.1 (*Existing Improvements and Latent Defects*), inasmuch as Authority is delivering (or is causing GDOT to deliver) to Developer, in support of Developer's Work, (a) the Existing Right of Way, and (b) State Proposed/State Acquired Right of Way and inasmuch as Authority is responsible, to the extent set forth herein, for certain conditions pertaining to (i) State Proposed/Developer Acquired Right of Way and (ii) Developer Proposed/State Acquired Right of Way, as to each Parcel of any of the foregoing, as of the effective date of NTP2, Developer shall be entitled to seek relief under clause (x) of the definition of "Relief Event" and clause (r) of the definition of "Compensation Event" for the impacts of any Latent Defects discovered in the Existing Improvements on any Parcels in the foregoing clauses (a) and (b) of this PA Section 7.13.2 (*Existing Improvements and Latent Defects*) as and to the extent materially and adversely affecting the completion of Work, within the relevant value(s) assigned in the Baseline SOV. In the event that Developer encounters a condition impacting the Work that it suspects may be attributable to a Latent Defect, upon Developer's written request, appropriate representatives of GDOT shall meet and confer with Developer to discuss what historical information and records may be available to inform Developer's investigation and conclusions.

7.13.3 Nothing in this PA Section 7.13 (*Existing Improvements and Latent Defects*) shall be construed to abrogate Developer's general obligation to mitigate damages under PA Section 7.1.1.9 (*General Obligations of Developer*).

7.14 Impact of ATCs on the Project

7.14.1 If implementation of an ATC forming part of the Project requires the approval or consent of any Governmental Entity (other than Authority or GDOT), property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work (e.g., MARTA), to include pursuit and granting of any Design Exceptions, then in addition to all other conditions on implementation within the ATC approval (a) Developer will have full responsibility for, and bear the full risk of, obtaining any such approval or consent, and (b) if such approval or consent is not granted, or there is an unreasonable and unjustified delay in obtaining such approval or consent (subject to PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*)) Developer (i) shall perform the Work as if such ATC had never formed part of the Project, and (ii) shall not be entitled to any additional time or compensation as a result thereof.

7.14.2 If implementation of an ATC forming part of the Project requires additional real property rights for the Project, then the Parties shall proceed in accordance with PA Section 2.6.6, *et seq.* (*Developer Proposed/Developer Acquired Right of Way*), with Authority being deemed to have approved Developer to so proceed by virtue of the approval of the ATC; provided, however, that nothing in this PA Section 7.14.2 (*Impact of ATCs on the Project*) shall limit or abrogate PA Section 7.14.3 (*Impact of ATCs on the Project*); provided, further, that if Authority, through GDOT, does not elect to pursue condemnation, if there is an unreasonable and unjustified delay in obtaining such additional real property rights, or Developer is otherwise unable to obtain any such additional real property rights, then Developer (i) shall perform the Work as if such ATC had never formed part of the Project, and (ii) shall not be entitled to any additional time or compensation as a result thereof.

7.14.3 If implementation of an ATC forming part of the Project results in a Necessary Basic Configuration Change, then, regardless as to whether previously approved for inclusion in the Project, Developer (i) shall perform the Work as if such ATC had never formed part of the Project, and (ii) shall not be entitled to any additional time or compensation as a result thereof.

7.15 Title; Risk of Loss

Developer warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools, and supplies furnished, or to be furnished, by it and its Contractors, Subcontractors, and Suppliers that become part of the Project or are purchased for Authority, on behalf of the State, for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools, and supplies that shall have been delivered to the Site shall pass to GDOT free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by Authority to Developer of invoiced amounts pertaining (and specifically identified as such) thereto. Notwithstanding any such passage of title, Developer shall retain risk of loss and sole care, custody, and control of such materials, equipment, tools, and supplies and shall exercise due care with respect thereto until Final Acceptance or until Developer is removed from the Project.

7.16 Developer's Limitation of Liability

7.16.1 To the extent permitted by applicable Law, Developer's aggregate maximum liability under the DBF Documents to Authority shall not exceed **60**% of the Revised DBF Contract Sum (the "Developer Liability Cap"), provided that the following shall be disregarded for the purposes of calculating, and shall not count towards, Developer Liability Cap:

7.16.1.1 any Losses, claims, and amounts (including defense costs) paid under the performance bond of the P&P Bonds and, if placed, the Warranty Bond;

7.16.1.2 any amounts paid or payable pursuant to Developer's indemnification obligations hereunder;

7.16.1.3 any amounts paid or payable by Developer that are covered by Insurance Policies that Developer is required to place or has placed in addition to those required hereunder, including any SIRs or for which Developer was required to provide insurance if coverage was not then in place, or other insurance procured, even though not required to be placed hereunder, for purposes of the Project;

7.16.1.4 Losses arising out of Developer Release(s) of Hazardous Materials; and

7.16.1.5 any Losses, claims (including claims of any Indemnified Parties), and amounts arising out of, relating to, or resulting from any Developer-Related Entity's (a) reckless or willful misconduct, (b) violation of Law and other illegal activities (or inaction), (c) violation or breach of

Governmental Approval, (d) criminal conduct, (e) bad faith, (f) intentional misconduct (which excludes intentional Developer Default), (g) arbitrary or capricious acts, or (h) fraud, in each case, under or relating to this Project Agreement.

7.17 Railroad-Highway Matters

7.17.1 Developer shall comply with all requirements set forth in Standard Specification Section 107.08 (as "Contractor" thereunder) and TP Section 14 (Railroad) as relates to railroad-highway matters.

7.17.2 Without limiting the foregoing, Developer acknowledges and agrees that:

7.17.2.1 All Railroad Work is included in the DBF Contract Sum, including: (a) the cost to negotiate, execute and perform the Railroad Agreements with the Railroad; (b) reimbursement to Railroads for any personnel costs related to a Railroad's execution of the Railroad Work; (c) protective services as pertains to Railroad Work; (d) the cost to the Developer for locating Utilities owned by third parties as required by the Railroad Agreements; (e) the costs of satisfying any Railroad-related insurance requirements referenced in PA Article 16 *(Insurance; Performance Security; Indemnity)* and PA Exhibit 17 (*Insurance Coverage Requirements*), or insurance requirements under any Railroad Agreement; (f) performance of all other obligations in the Railroad Agreements, including any amendments, change orders, or force account work under such Railroad Agreements; (g) all costs for ascertaining and obtaining all required approvals, permits, agreements and amendment to agreements for performance of any Railroad Work; and (h) costs of acquiring temporary Railroad property interests or rights.

7.17.2.2 Developer shall not invoice Authority or GDOT for, and neither Authority nor GDOT will have any obligation to pay for or facilitate, any Railroad Work.

7.17.2.3 Developer shall not have any right to obtain any increase in the DBF Contract Sum to compensate Developer for any delay damages or other damages arising from a failure of the Railroad to perform under any Railroad Agreement or otherwise cooperate as may be necessary to complete the Work, nor shall any such failure of the Railroad be compensable as a Compensation Event or Relief Event.

7.17.2.4 Developer shall comply in all respects with the Railroad insurance requirements set forth in Section 10 (Railroad Protective Liability) of PA Exhibit 17 (*Insurance Coverage Requirements*), TP Section 14 (Railroad), and each Railroad Agreement.

7.17.2.5 Developer shall comply in all respects with all requirements set forth in each Railroad Agreement, and all requirements in the Railroad Construction Agreement with respect to Developer's conduct of the Work.

7.17.2.6 Developer shall be responsible for all costs associated with its performance of the obligations in any Railroad Agreements, including any amendments, change orders, or force account work under such Railroad Agreements, and including all costs associated with obtaining any necessary rights of entry.

Article 8 SECURITY AND INCIDENT RESPONSE

Developer is responsible for the security of the Site and the workers and public thereon during the performance of the Work. Developer shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft, or loss to the Work and materials and equipment to be incorporated thereon, as well as all other property at or on and adjacent to the Site, whether owned by Developer or any

other Person. Developer shall perform and comply with the Technical Provisions concerning Incident response, safety and security.

Article 9 MANAGEMENT SYSTEMS AND OVERSIGHT

9.1 Project Management Plan

9.1.1 Developer shall develop, utilize, and maintain a Project Management Plan that includes, at a minimum, the component plans identified in, and meets the requirements of, TP Section 2 (Project Management) and meets Good Industry Practice at such times set forth in the DBF Documents.

9.1.2 Developer shall submit the component plans of the Project Management Plan to at or before the times set forth in the Submittal Requirements Database and in accordance with the procedures described in PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*), as well as any proposed changes or additions to or revisions of any such component part, plan or other documentation.

9.1.3 Each component part, plan and other documentation of the Project Management Plan and each proposed change or addition to or revision of any such component part, plan or other documentation shall constitute a separate Submittal for purposes of PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

9.1.4 If any part, plan, or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document that is not already part of the DBF Documents, then all such referenced or incorporated materials shall be submitted to Authority for approval for inclusion within the Project Management Plan (or such part, plan, or other documentation therein) in its good faith discretion at or prior to the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to Authority, conspicuously noting within the submitted Project Management Plan (or relevant part, plan, or other document) that such manual, plan, procedure or like document is submitted for Authority approval.

9.2 Quality Management

9.2.1 Developer shall develop, utilize, and maintain the Developer Quality Program identified in, and that meets the requirements of, TP Section 3 (Developer Quality Program) and that otherwise meets Good Industry Practice with respect to Quality Assurance and Quality Control of the Work.

9.2.2 Developer's obligations with respect to quality matters are not limited to its obligations under PA Section 9.2.1 (*Quality Management*), and without limiting the provisions of PA Section 6.3.10 (*Independent Quality Assurance*), Developer is responsible for all quality assurance and Quality Control activities necessary to manage the Work. Developer shall undertake all aspects of Quality Assurance and Quality Control for the Project.

9.3 Traffic Management

9.3.1 During the Construction Period, or commencing at such earlier date as may be agreed by the Parties or directed by Authority, Developer shall be responsible for the general management of traffic on the applicable portion of the Project under the control of any Developer-Related Entity. Developer shall manage traffic so as to preserve and protect safety of traffic on such portions and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the Related Transportation Facilities. Developer shall conduct and carry out traffic management in accordance with the Transportation Management Plan and all

other applicable Technical Provisions, Laws and Governmental Approvals, as well as any further actions as may be required pursuant to PA Article 8 (*Security and Incident Response*).

9.3.2 Authority will have at all times, without obligation or liability to Developer, the right to:

9.3.2.1 issue a Directive Letter to Developer regarding traffic management and control (with which Developer shall comply), or cause GDOT to directly assume traffic management and control, of the Project during any period that (a) Authority designates the Project or portion of the Project for immediate use as an emergency evacuation route or a route to respond to a disaster proclaimed by the Governor of Georgia, the President of the United States, or by any other federal or State agency, or any of the respective designees of the aforementioned, including reversing the direction of traffic flow during such period, (b) Authority designates the Project or a portion of the Project for use as an alternate route for diversion of traffic from any interstate or Highway temporarily closed to all lanes in one or both directions due to any Incident or Emergency or (c) the Commissioner determines such action will be in the public interest as a result of an Emergency or natural disaster; and

9.3.2.2 provide on the Site, via message signs or other means consistent with Good Industry Practice, traveler and driver information, and other public information (e.g., amber alerts), provided that the means to disseminate such information does not materially interfere with the Work.

Article 10 CONTRACTING AND LABOR PRACTICES

10.1 Disclosure of Contracts and Contractors

10.1.1 Developer shall provide Authority a monthly report listing (a) all Key Contracts in effect, (b) all Contracts in effect, identifying specifically those Contracts to which Developer is a party and (c) where Developer is a party to a Contract in effect with an Affiliate, all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Developer are delegated to the Contractor. Developer also shall list in the monthly report the Contractors under all Contracts, guaranties of Key Contracts in effect and the guarantors thereunder. Developer shall allow Authority and GDOT ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guaranties thereof.

10.1.2 No later than five days after Contract execution, Developer shall notify Authority in writing of the name, address, phone number and authorized representative of such Contractor.

10.2 Responsibility for Work, Contractors and Employees

10.2.1 Except with respect to Utility Adjustment Work as set forth under PA Section 7.4.1.5 (*Utility Adjustments*), which is subject to its own labor-related requirements, Developer shall retain or require Contractors to retain only Contractors that are prequalified (and remain prequalified for the duration they are performing the Work) under the Manual of Instructions for Prequalification of Prospective Bidders, as and when required under the Technical Provisions, and are otherwise qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall require that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws. Developer shall require all Contractors to adhere to the requirements herein with respect to Subcontractors.

10.2.2 The retention of Contractors by Developer will not relieve Developer of its responsibilities under the DBF Documents or for the quality of the Work or materials or services provided by it.

10.2.3 Each Contract shall include terms and conditions sufficient to ensure compliance by all Contractors and Subcontractors, all parties performing any Work on behalf thereof, with the requirements of the DBF Documents, and shall include those terms that are specifically required by the DBF Documents to be included therein, including, to the extent applicable, those set forth in PA Exhibit 8 (*Federal Requirements*) and any other applicable federal requirements.

10.2.4 Nothing in the DBF Documents will create any contractual relationship between Authority, GDOT and any Contractor or Subcontractor. No Contract entered into by or under Developer shall impose any obligation or liability upon Authority or GDOT to any Contractor, Subcontractor, or any of their respective employees. All Contracts entered into by or under Developer shall include the following provision verbatim (filling in blanks, removing brackets, and only such other changes as required to reflect properly the identity of the parties):

> Nothing contained herein shall be deemed to create any privity of contract between the State Road & Tollway Authority of the State of Georgia (the "Authority"), the Georgia Department of Transportation ("GDOT"), and [_____]***[insert legal name of Contractor, Subcontractor, or Supplier]*** ("Contractor"), nor does it create any duties, obligations, or liabilities on the part of either or both of Authority and GDOT to Contractor, except those that may be specified under applicable Georgia state law, if any. In the event of any claim or dispute arising under this [_____]***[insert formal name of Contract or Subcontract, or defined term thereunder]*** (the "Contract") or Legacy Infrastructure Contractors, LLC (the "Developer" under its agreement with Authority), Contractor shall look only to Developer for any payment, redress, relief, or other satisfaction. Contractor hereby waives any claim or cause of action against Authority or GDOT, or both, arising out of, relating to, or resulting from the Contract or otherwise arising out of, relating to, or resulting from Contractor's scope of work or services under the Contract.

10.2.5 Developer shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Contractor or Developer-Related Entity, or their respective individual person Constituents, as though Developer directly employed all such individuals.

10.2.6 Developer may subcontract a portion of the Work, but shall perform either (a) with its own organization or (b) through the Lead Construction Contractor and the Lead Engineer, each work amounting to not less than **30**% of the DBF Contract Sum or Revised DBF Contract Sum, whichever is less, allocated by percentage to the Construction Work and the Design Work, respectively.

10.3 Key Contracts; Contractor Qualifications

10.3.1 Use of and Change in Key Contractors

Developer shall retain, employ and utilize the firms and organizations in the Proposal and otherwise as specifically listed in the Project Management Plan to fill the corresponding Key Contractor positions listed therein. Developer shall not terminate any Key Contract with a Key Contractor, or permit or suffer any substitution or replacement (by way of assignment of the Key Contract, transfer to another of any material portion of the scope of work, or otherwise) of such Key Contractor, except: (a) in the case of subcontracting portions of the Work by such Key Contractor, (b) in the case of material default by the Key Contractor; or (c) with Authority's prior written approval in its good faith discretion. For Key Contractors not known as of the Effective Date, Developer's selection thereof shall be subject to Authority's prior written approval in Authority's good faith discretion.

10.3.2 Key Contract Provisions

Each Key Contract shall:

10.3.2.1 expressly include the requirements and provisions set forth in this Project Agreement or other DBF Documents applicable to Contractors regarding Intellectual Property rights and licenses, DBE Requirements and OJT Requirements, as well as any other requirements and provisions expressly required to apply to Contractors (at each tier);

10.3.2.2 expressly require the Key Contractor to participate, at Developer's request, in meetings between Developer and Authority concerning matters pertaining to such Key Contractor, its work or the coordination of its work with other Contractors, provided that all direction to such Key Contractor shall be provided by Developer, and provided further that nothing in this Section shall limit the authority of Authority or GDOT to give such direction or take such action as in its opinion is necessary;

10.3.2.3 include an agreement by the Key Contractor to give evidence in any Dispute resolution proceeding pursuant to PA Section 17.9 (*Dispute Resolution Procedures*), if such participation is requested by either Authority or Developer;

10.3.2.4 without cost to Developer or Authority, expressly permit assignment to Authority or its successor, assign or designee of all Developer's rights under the Key Contract, contingent only upon delivery of written request from Authority following termination or expiration of this Project Agreement, allowing Authority or its successor, assign or designee to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guaranties and professional responsibility;

10.3.2.5 expressly state that any acceptance of assignment of the Key Contract to Authority or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Developer or for any amounts due and owing under the Key Contract for work or services rendered prior to assumption (but without restriction on the Key Contractor's rights to suspend work, demobilize, or terminate due to Developer's uncured breach);

10.3.2.6 expressly include a covenant to recognize and attorn to Authority upon receipt of Notice from Authority that it has exercised step-in rights under this Project Agreement, without necessity for consent or approval from Developer or to determine whether Authority validly exercised its step-in rights, and Developer's covenant to waive and release any claim or cause of action against the Key Contractor arising out of or relating to its recognition and attornment in reliance on any such Notice;

10.3.2.7 expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to Authority a new contract between the Key Contractor and Authority on the same terms and conditions as the Key Contract, in the event (a) the Key Contract is rejected by Developer in bankruptcy or otherwise wrongfully terminated by Developer and (b) Authority delivers written request for such new contract following termination or expiration of this Project Agreement. The Key Contract also shall include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Key Contractor was a party to an escrow agreement and Developer terminates it, then the Key Contractor also shall execute and deliver to Authority, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits pursuant to the new escrow agreement as made or provided under the terminated escrow agreement. This Section shall not apply to Key Contracts with Authority or Governmental Entities;

10.3.2.8 expressly include requirements that: the Key Contractor (a) will maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider), in no case, however, fewer or other than, at a minimum, those required under applicable Law or Governmental Approval, including as may be required of Developer hereunder, where Developer is obligated to compel the Key Contractor to maintain such Books and Records, (b) permit audit thereof with respect to the Project or Work by each of Developer, Authority and GDOT in accordance with PA Section 20.2 (*Audits*) and (c) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish Authority or GDOT under this Project Agreement;

10.3.2.9 include the right of Developer, and correspondingly Contractor, to terminate the Key Contract in whole or in part upon any Termination for Convenience of this Project Agreement or Authority Default, in each case without liability of Developer, Authority or GDOT for the Key Contractor's lost profits or business opportunity; and

10.3.2.10 Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of Authority will be null and void.

10.3.3 Additional Requirements for Design-Build Contracts

10.3.3.1 Before entering into a Design-Build Contract or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Design-Build Contract to Authority for review and comment. Authority may disapprove only if the Design-Build Contract (a) does not comply, or is inconsistent, in any material respect with the requirements of the DBF Documents, including that it does not comply or is inconsistent with this PA Article 10 (*Contracting and Labor Practices*) or with the applicable requirements of PA Section 20.1 (*Maintenance and Inspection of Records*) regarding maintenance of Books and Records, does not incorporate the applicable federal requirements set forth in PA Exhibit 8 (*Federal Requirements*), or is inconsistent with the requirements of the relevant scope of Work, (b) increases Authority's liability or (c) adversely affects Authority's step-in rights.

10.3.3.2 The Design-Build Contract also shall expressly require that the Design Work of the D&C Contractor shall not be assignable without Developer's and Authority's prior written consent, each in its sole discretion, provided that this provision shall not prohibit the subcontracting of portions of the Construction Work. The provision included pursuant to PA Section 10.3.2.10 (*Key Contract Provisions*) shall apply to such express provisions on personal services and non-assignment.

10.3.3.3 Notwithstanding the foregoing, Authority reserves the right to review all Contracts for compliance with the requirements of this Project Agreement and DBF Documents, including for prevailing wage requirements and for requirements as set forth under PA Exhibit 8 (*Federal Requirements*).

10.3.4 Additional Requirements for Certain Contracts

Each Contract shall:

10.3.4.1 Expressly require all Contractors (or each lower-tier Subcontractor) to sign and submit to its Contract (or Subcontract) counterparty (be it Developer, a Contractor, or any Subcontractor), with a certified copy delivered by Developer to Authority: (a) on or before the earlier of NTP2 and 15 days prior to the date such Contractor or Subcontractor commences of any portion of the Work), or (b) for any Contractor or Subcontractor not identified by NTP2, not later than 15 days prior to

the date such Contractor or Subcontractor commences any portion of the Work, the "Debarment and Suspension Certificate" attached as Attachment 7 to PA Exhibit 8 (*Federal Requirements*).

10.3.4.2 For those Contracts (or Subcontracts) valued at over $100,000, expressly require all Contractors (or each lower-tier Subcontractors) to sign and submit to its Contract (or Subcontract) counterparty (be it Developer, a Contractor, or any Subcontractor), the "Certificate Regarding Use of Contract Funds for Lobbying" attached as Attachment 8 to PA Exhibit 8 (*Federal Requirements*). Developer shall deliver a certified copy of each such certificate to Authority (a) for all Contractors and Subcontractors identified as of NTP2, no later than the earlier to occur of the date that NTP2 is issued or 15 days prior to the date such Contractor or Subcontractor commences any portion of the Work, or (b) for any Contractor or Subcontractor not identified by NTP2, not later than 15 days prior to the date such Contractor or Subcontractor commences any portion of the Work.

10.3.4.3 For those Contracts (or Subcontracts) valued at over $100,000 and for which a Contractor (or a Subcontractor) is paid $100,000 or more, expressly require all Contractors (or each lower-tier Subcontractor) to sign and submit to its Contract counterparty (be it Developer, a Contractor, or any Subcontractor), with a certified copy delivered by Developer to Authority on or before the earlier of NTP2 and 15 days prior commencement of any portion of the Work, the Standard Form-LLL (found, as of the Effective Date, at https://www.gsa.gov/forms-library/disclosure-lobbying-activities) referenced in Attachment 8 to PA Exhibit 8 (*Federal Requirements*).

10.4 Key Personnel; Required Personnel

10.4.1 Key Personnel

10.4.1.1 Developer shall retain, employ and utilize the individuals specifically listed in PA Exhibit 2 (*Proposal Commitments*) to fill the corresponding Key Personnel positions listed therein. Developer shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by Authority pursuant to PA Section 10.4.1.2 (*Key Personnel*). In such circumstances, Developer shall promptly propose a replacement for such position for approval by Authority in its good faith discretion.

10.4.1.2 Developer shall notify Authority in writing of any proposed replacement for any Key Personnel position. Authority will have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual, except in the case described under PA Section 10.4.1.1 (*Key Personnel*), in its sole discretion. In no case shall Developer propose a replacement Key Personnel that does not meet all of the Minimum Qualifications (Key Personnel) with respect to such Key Personnel position.

10.4.1.3 Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work, in no case less than those described in the Role (Key Personnel) for each such Key Personnel position.

10.4.1.4 Developer shall provide to Authority phone numbers and email addresses for all Key Personnel. Authority shall have the ability to contact Key Personnel at all times specified in the applicable availability requirements for Full-Time or Full-Time On-Call Key Personnel, as provided in TP Attachment 2-1 (Key Personnel and Required Personnel).

10.4.1.5 Subject to this PA Section 10.4 (*Key Personnel; Required Personnel*), if Developer fails either (a) to cause each individual filling a Key Personnel position to be available, as is required under PA Section 10.4.1.3 (*Key Personnel*) or PA Section 10.4.1.4 (*Key Personnel*), in the latter case as adjudged by Authority acting reasonably, or (b) to provide a proposed replacement under PA Section 10.4.1.2 (*Key Personnel*) that meets or exceeds the Minimum Qualifications (Key Personnel) to Authority within 30 days after notifying Authority of a proposed replacement for any Key Personnel position, then either such failure shall be subject to Liquidated Damages in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*) and PA Section 17.4.3 (*Liquidated Damages for Key Personnel-related Matters*).

10.4.1.6 Developer is not liable for Liquidated Damages under PA Section 10.4.1.5 (*Key Personnel*) if:

(a) Developer removes or replaces such individual at the direction of Authority; or

(b) such individual is unavailable due to retirement, death, disability, incapacity, injury or voluntary or involuntary termination of employment with the applicable Developer-Related Entity (provided that moving to an Affiliate of Developer, a Contractor, or a Subcontractor is not considered grounds for avoiding Liquidated Damages),

provided that Developer proposes a replacement for such personnel meeting the requirements and in accordance with the time limit specified in PA Section 10.4.1.5 (*Key Personnel*).

10.4.1.7 Upon approval of any Key Personnel replacement by Authority, the new individual shall be considered a Key Personnel for all purposes under the DBF Documents.

10.4.2 Required Personnel

10.4.2.1 Developer shall retain, make available and utilize the individuals to fill the Required Personnel positions listed in the Technical Provisions in accordance with the requirements set forth in the Technical Provisions.

10.4.2.2 Each of the Required Personnel shall fulfill the Roles (Required Personnel) and satisfy or exceed the Minimum Qualifications (Required Personnel) of such Required Personnel position.

10.4.2.3 Developer shall ensure, and cause any Contractor employing a Required Personnel to ensure, that each Required Personnel has the authority to fulfill the Roles (Required Personnel). If Developer intends to replace any Required Personnel, Developer shall:

(a) prior to replacement of any Required Personnel, notify Authority in writing of any replacement for such Required Personnel position; and

(b) ensure that any replacement satisfies or exceeds the Minimum Qualifications (Required Personnel) for that position.

10.4.2.4 If Authority reasonably believes that the replacement proposed by Developer under PA Section 10.4.2.3 (*Required Personnel*) does not have the qualifications, capability and experience that satisfy the Minimum Qualifications (Required Personnel), Authority may notify Developer and Developer shall provide a replacement that is sufficiently qualified.

10.4.2.5 Subject to this PA Section 10.4 (*Key Personnel; Required Personnel*), if Developer fails to provide a proposed replacement that meets or exceeds the Minimum Qualifications (Required Personnel) to Authority within 60 days after notifying Authority of a proposed replacement for any Required Personnel position, Developer will be subject to Nonrefundable Deductions assessed in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

10.4.3 [Reserved.]

10.5 Contracts with Affiliates

10.5.1 Developer shall have the right to have Work performed by Affiliates only under the following terms and conditions:

10.5.1.1 Developer shall execute a written Contract with the Affiliate;

10.5.1.2 the Contract shall comply with all applicable provisions of this PA Article 10 (*Contracting and Labor Practices*), be consistent with the DBF Documents and Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work with unaffiliated Contractors;

10.5.1.3 the Contract shall set forth the scope of Work and all the pricing, terms and conditions with respect thereto;

10.5.1.4 the pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

10.5.1.5 no Affiliate (other than the D&C Contractor if it is an Affiliate) shall be engaged to perform any Work that any DBF Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work that would be inconsistent with the requirements of the DBF Documents or Good Industry Practice.

10.5.2 Before entering into a written Contract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to Authority for review and comment, with a cover memorandum orienting Authority to all pricing terms, including demobilization and breakage terms and amounts. Authority will have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract and such Affiliate's selection as a Key Contractor is not known as of the Effective Date, the Affiliate shall be subject to Authority's approval as provided in PA Section 10.3.1 (*Use of and Change in Key Contractors*).

10.5.3 Developer shall make no payments to Affiliates for Work in advance of performance thereof, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

10.6 Labor Standards

10.6.1 In the performance of its obligations under the DBF Documents, Developer at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal

and State labor, occupational safety and health laws, standards, rules, regulations and federal and State orders.

10.6.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them.

10.6.3 If any individual employed by Developer or any Contractor is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then Authority may suspend the affected portion of the Work by delivering to Developer Notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the DBF Documents or entitle Developer to any additional compensation or time extension hereunder.

10.6.4 Certain Certifications; Compliance with Certain Laws

10.6.4.1 Developer, its Contractors, and all Subcontractors shall comply with the Georgia Immigration & Compliance Act ("Immigration Act"), O.C.G.A. § 13-10-90 *et seq.* Developer must deliver the affidavit certifying compliance with the Immigration Act using the form attached as PA Exhibit 16 (*Required State Certifications, Part A Georgia Security and Immigration Compliance Act Affidavit*). Developer's Form M-1, delivered with its Proposal, is deemed delivered as of the Effective Date.

10.6.4.2 Developer, its Contractors, and all Subcontractors must certify compliance with State of Georgia's Sexual Harassment Prevention Policy using the form attached as PA Exhibit 16 (*Required State Certifications, Part B Certification of Compliance with the State of Georgia's Sexual Harassment Prevention Policy*). Developer's Form R, delivered with its Proposal, is deemed delivered as of the Effective Date.

10.6.4.3 Developer, its Contractors, and all Subcontractors must certify compliance with the Drug-free Workplace Act, O.C.G.A. § 50-24-1 *et seq.* using the form attached as PA Exhibit 16 (*Required State Certifications, Part C Drug-Free Workplace*). Developer's Form U, delivered with its Proposal, is deemed delivered as of the Effective Date.

10.6.5 The required certificates and affidavits obtained by or for Developer under this PA Section 10.6.4 (*Certain Certifications; Compliance with Certain Laws*) must be filed with Authority and copies maintained by Developer and each Contractor as of the Effective Date, as well as any recertifications or other actions necessary to maintain the veracity of such certificates and affidavits (as may be required by other Governmental Entities or otherwise to comply with applicable Law). State officials, including officials of the Georgia Department of Labor, Authority and GDOT, retain the right to inspect and audit the Project and employment records of Developer and all Contractors without notice during normal working hours until the Work under the applicable Contract is complete, and as otherwise specified by Law.

10.7 Ethical Standards

10.7.1 Within 90 days after the Effective Date, Developer shall adopt written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel, in dealing with (a) Authority and GDOT and (b) employment relations. Such policy shall be subject to review and comment by GDOT prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

10.7.1.1 restrictions on gifts and contributions to, and lobbying of, Authority, GDOT, the State Transportation Board, and any of their respective Constituents;

10.7.1.2 protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

10.7.1.3 protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Developer-Related Entity;

10.7.1.4 restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

10.7.1.5 restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

10.7.1.6 restrictions on directors, members, officers or employees of any Developer-Related Entity performing any of the Work if the performance of such services would be prohibited under GDOT's published conflict of interest rules and policies applicable to GDOT's public-private partnership program.

10.7.2 Developer shall cause its Constituents, and require those Constituents of all other Developer-Related Entities, to adhere to and enforce the adopted policies on ethical standards of conduct. Developer shall establish reasonable systems and procedures to promote and monitor compliance with the policies.

10.8 Non-Discrimination; Equal Employment Opportunity

10.8.1 Developer shall not, and shall cause the Contractors to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work under the DBF Documents. Developer shall carry out, and shall cause the Contractors to carry out, applicable requirements in accordance with federal contract provisions. Failure by Developer or Contractor to carry out these requirements is a material breach of this Project Agreement, which may result in a Default Termination Event and the termination of this Project Agreement or such other remedy permitted hereunder as Authority deems appropriate (subject to Developer's rights to notice and opportunity to cure set forth in this Project Agreement), but is not limited to (a) withholding processing of Project Certificates from Developer under PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) for any Work performed until corrective action is taken (but not payments pursuant to Approved Project Certificates); (b) assessing sanctions; (c) Liquidated Damages and other Deductions; and/or (d) disqualifying Developer or the Contractor from future bidding as non-responsible.

10.8.2 Developer shall include the language set forth in PA Section 10.8.1 (*Non-Discrimination; Equal Employment Opportunity*) in every Contract (including purchase orders and in every

Contract of any Developer-Related Entity for Work), and shall require that they be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor and Subcontractor.

10.8.3 Developer confirms for itself and all Contractors that Developer and each Contractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Developer and each Contractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Developer shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in PA Exhibit 8 (*Federal Requirements*), and shall require its Contractors to comply with such provisions.

10.9 Disadvantaged Business Enterprise (DBE)

10.9.1 DBE General

10.9.1.1 Developer shall comply with, and ensure each Contractor complies with, 49 C.F.R. § 26 *et seq.*, as provided in the DBE Requirements, PA Exhibit 14 (*DBE Requirements)* and PA Exhibit 8 (*Federal Requirements*), Attachment 6 (*DBE Program Criteria for Acceptability*). The purpose of the DBE Requirements are to ensure that DBEs will have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Developer shall comply with the DBE Requirements and the provisions in Developer's accepted DBE Performance Plan.

10.9.1.2 Developer shall ensure that:

(a) all Contracts include provisions to effectuate the DBE Requirements and shall require that such provisions be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor; and

(b) all Contracts with DBEs to supply labor or materials are required to be performed in accordance with 49 C.F.R. § 26.53.

10.9.2 DBE Goals, Commitments

10.9.2.1 The DBE goal for the D&C Work is 14% of the overall D&C Amount, with respect to the race conscious participation by Developer ("DBE Goal"). Developer's DBE commitments list is included in PA Exhibit 2 (*Proposal Commitments*) ("DBE Commitments").

10.9.2.2 Developer shall submit its DBE Performance Plan to Authority for review in accordance with Section 1.1 (*DBE Overview*) of the DBE Requirements and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

10.9.2.3 Developer shall exercise good faith efforts to achieve the DBE Goal and meet the DBE Commitments through implementation of Developer's accepted DBE Performance Plan and in accordance with the requirements set forth in Section 1.3 (*Good Faith Efforts*) of the DBE Requirements.

10.9.2.4 Following issuance of NTP2, Developer shall submit, in accordance with the Submittal Requirements Database, a DBE Participation Report that meets the requirements set forth in Section 2 (*DBE Participation Reports*) of the DBE Requirements (the "DBE Participation Report").

10.9.2.5 If a Monthly DBE Participation Report shows that Developer is not on track to meet the DBE Goal or any DBE Commitments, Developer shall submit a DBE Recovery Plan to

Authority within 30 days after such Submittal in accordance with the requirements set forth in PA Exhibit 14 (*DBE Recovery Plan*) of the DBE Requirements.

10.9.2.6 If Developer fails to submit a Monthly DBE Participation Report in accordance with PA Section 10.9.2.4 (*DBE Goals, Commitments*) or a DBE Recovery Plan in accordance with PA Section 10.9.2.5 (*DBE Goals, Commitments*), Nonrefundable Deductions will be assessed against Developer in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

10.9.2.7 Developer acknowledges and agrees that Authority shall have the right to conduct monitoring, reviewing, inspection and other oversight functions in relation to Developer's compliance with the DBE Performance Plan and DBE Recovery Plan and Developer's exercise of good faith efforts to achieve the DBE Goal and meet the DBE Commitments in accordance with TP Section 3 (Developer Quality Program).

10.9.3 DBE Contractors

10.9.3.1 Developer:

(a) shall not terminate and/or substitute a DBE Contractor listed in the DBE Commitments (or an approved substitute DBE firm);

(b) shall not reduce the amount of work committed to a DBE Contractor; and

(c) shall ensure that each Contractor does not: (i) terminate and/or substitute a DBE Contractor listed in the DBE Commitments (or an approved substitute DBE firm); or (ii) reduce the amount of work committed to a DBE Contractor, in either case, without Authority's prior written consent in accordance with PA Section 10.9.3.6 (*DBE Contractors*). This includes instances in which a Contractor seeks to perform work originally designated for a DBE Contractor with its own forces or those of an Affiliate, a non-DBE firm or another DBE firm.

10.9.3.2 Developer shall include a provision in every Contract stating that:

(a) the Contractor shall utilize the specified DBE Contractors listed to perform the work and supply the materials for which each is listed in the DBE Commitments unless Developer obtains Authority's consent as provided in 49 C.F.R. § 26.53(f); and

(b) unless Authority's consent is provided under 49 C.F.R. § 26.53(f), the Contractor shall not have a right to claim any payment for work or material unless it is performed or supplied by the listed DBE Contractor.

10.9.3.3 Developer shall provide Authority a copy of each executed DBE Contract.

10.9.3.4 Developer shall notify Authority prior to a DBE Contractor commencing work on the Project in accordance with the requirements set forth in Section 1.8 (*DBE Contracts*) of the DBE Requirements.

10.9.3.5 Before Developer transmits to Authority a request to terminate, substitute and/or reduce the amount of work committed to a DBE Contractor, Developer or Contractor shall give notice in writing to the DBE Contractor, with a copy to Authority, of its intent to request to terminate, substitute and/or reduce the amount of work committed to a DBE Contractor, and the reason for the request. Developer or Contractor shall give the DBE Contractor five days to respond to the notice in order to advise

Authority and Developer or Contractor of the reasons, if any, why it objects to the proposed termination, substitution and/or reduction of its subcontract and why Authority should not approve the termination, substitution and/or reduction.

10.9.3.6 Authority may only provide written consent allowing Developer or a Contractor to terminate and/or substitute a DBE Contractor listed in the DBE Commitments or reduce the amount of work committed to a DBE Contractor if Authority agrees that Developer or Contractor has good cause to terminate, substitute and/or reduce the amount of work committed to the DBE Contractor. For the purposes of 49 C.F.R. § 26.53(f), good cause includes the following circumstances:

(a) the listed DBE Contractor fails or refuses to execute a written contract;

(b) the listed DBE Contractor fails or refuses to perform the work of its contract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE Contractor to perform its work on the contract results from the bad faith or discriminatory action of Developer or Contractor;

(c) the listed DBE Contractor fails or refuses to meet Developer's or Contractor's reasonable, nondiscriminatory surety bond requirements;

(d) the listed DBE Contractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(e) the listed DBE Contractor is ineligible to work on public works projects because of suspension or debarment proceedings pursuant to 23 C.F.R. Parts 180, 215 and 1,200 or applicable state law;

(f) the listed DBE Contractor voluntarily withdraws from the Project and provides Notice of its withdrawal;

(g) Authority has determined that the listed DBE Contractor is not a responsible contractor;

(h) the listed DBE Contractor is ineligible to receive DBE credit for the type of work required;

(i) a DBE owner dies or becomes disabled with the result that the listed DBE Contractor is unable to complete its work on the contract; or

(j) other documented good cause that Authority determines compels the termination of the DBE Contractor; provided that good cause does not exist if Developer or Contractor seeks to terminate a DBE Contractor it relied upon to obtain the work so that Developer or Contractor can self-perform the work for which the DBE Contractor was engaged or so that Developer or Contractor can substitute another DBE or non-DBE firm after the Effective Date.

10.9.3.7 When a DBE Contractor is terminated as provided in PA Section 10.9.3.6 (*DBE Contractors*), or fails to complete its work for any reason, Developer or Contractor, as applicable, is required to make good faith efforts to substitute another DBE for the original DBE Contractor. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of D&C Work as the DBE Contractor that was terminated, to the extent needed to meet the DBE Goal and DBE Commitment.

10.9.3.8 The good faith efforts described in PA Section 10.9.3.7 (*DBE Contractors*) shall be documented by Developer or Contractor. If Authority requests documentation of Developer or Contractor's exercise of good faith efforts, Developer or Contractor shall submit the documentation within seven days, which may be extended for an additional seven days if necessary at the request of Developer or Contractor, and Authority will provide a written determination stating whether or not good faith efforts have been demonstrated.

10.9.4 Job Training Program

10.9.4.1 Developer shall provide on-the-job training, and Developer shall submit to Authority for review and acceptance an OJT Plan meeting all requirements set forth in the OJT Requirements.

10.9.4.2 [Reserved.]

10.9.4.3 Developer shall include provisions to implement the OJT Plan in each Contract to which it is a party and shall require that such provisions be included in all Contracts at lower tiers so that such provisions will be binding upon each Contractor.

10.9.4.4 Developer shall comply with 23 C.F.R. § 230.111. Developer acknowledges that Developer's OJT Plan is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

10.9.4.5 This PA Section 10.9.4 (*Job Training Program*) shall not apply to Contracts with Governmental Entities, if any.

10.9.5 OJT Goal

10.9.5.1 The OJT Goal is set forth in PA Exhibit 15 (*OJT Requirements*), Section 2.1 (*OJT Goal and Requirements*) of the OJT Requirements.

10.9.5.2 Following issuance of NTP2, Developer shall submit, in accordance with TP Section 2.8 (Submittals) and the Submittal Requirements Database, an OJT Progress Report, as required under PA Exhibit 15 (*OJT Requirements*), Section 2.1 (*OJT Goal and Requirements*).

10.9.5.3 Developer shall notify Authority within 10 Business Days of the termination (for any reason) of a trainee under Developer's OJT Plan with respect to the Project.

10.9.5.4 Developer shall exercise good faith efforts to achieve the OJT Goal through implementation of Developer's accepted OJT Plan, and Developer (or its Contractors) shall document such good faith efforts undertaken by Developer or the Contractor. If Authority requests documentation of Developer's or Contractor's good faith efforts, Developer shall submit the documentation within seven days, which may be extended for an additional seven days if necessary at the request of Developer or Contractor, and Authority will provide a written determination stating whether or not good faith efforts have been demonstrated, as determined in Authority's sole discretion.

10.9.5.5 If Developer fails to submit an OJT Progress Report in accordance with PA Exhibit 15 (*OJT Requirements*), Section 2.1 (*OJT Goal and Requirements*) or otherwise fails to comply with the requirements set forth in the OJT Requirements, Nonrefundable Deductions will be assessed against Developer in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

10.9.5.6 Developer acknowledges and agrees that Authority shall have the right to conduct monitoring, reviewing, inspection and other oversight functions in relation to Developer's compliance with the OJT Plan and Developer's exercise of good faith efforts to achieve the OJT Goal in accordance with TP Section 3 (Developer Quality Program).

10.10 Prevailing Wages

10.10.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors or Subcontractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including the Davis-Bacon Act, and as provided in PA Exhibit 8 (*Federal Requirements*). Developer shall comply and cause its Contractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Contracts at any tier with Governmental Entities.

10.10.2 It is Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Project Agreement is in effect, Developer shall bear the cost of such changes and shall have no basis for any claim against Authority or GDOT at law or in equity on account of such changes (including on the basis of Developer's lack of knowledge or a misunderstanding of any such requirements).

10.10.3 Developer shall comply and require its Contractors, other than Authority, GDOT or Governmental Entities acting as Contractors, to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

10.11 No Retainage; Prompt Payment to Contractors and Pay When Paid Provisions

10.11.1 Upon receipt of payment from or on behalf of Authority, or otherwise as required to be paid from the Developer Financing, Developer shall pay each Contractor for satisfactory performance of their contracted portion of the Work no later than 10 calendar days from receipt of each Approved Project Certificate received from or on behalf of Authority to Developer. Any delay or postponement of any payment from Developer to a Contractor may take place only for good cause with prior written approval from Authority. Noncompliance with the foregoing payment obligation constitutes a breach of this Project Agreement, and Authority may withhold processing of Project Certificates from Developer under PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) for any Work performed until corrective action is taken. If corrective action is not taken, it may result in termination of this Project Agreement. Without limiting Developer's other obligations under the DBF Documents, Developer shall maintain records and documents of payments to Contractors, including DBEs, for a minimum of three years after the Final Acceptance Date. These records and documents shall be made available for inspection upon request by any authorized representative of Authority, GDOT, or the U.S. Department of Transportation. Developer shall require these requirements to be included in all Contracts and Subcontracts at each tier.

10.11.2 Authority shall have no obligation to pay or to see to the payment of money to the Contractors or Subcontractors, except as may otherwise be required by Law, provided however, that Authority reserves the right to make payments to Developer and jointly payable to any such parties where Developer has failed to remit payments properly due and as required.

10.11.3 For avoidance of doubt, "prompt payment" under this PA Section 10.11 (*No Retainage; Prompt Payment to Contractors and Pay When Paid Provisions*) is determined relative to the issuance of an Approved Project Certificate to Developer and not relative to payment made under any Approved Project Certificate, and Developer (or any Contractor) may be obligated under such "prompt

payment" obligations hereunder (to include GDOT Contract Special Provision – Prompt Payment, first use 2021, dated April 16, 2021, as may be updated from time to time) to pay Contractors (or any Subcontractor) prior to payment of any Approved Project Certificate.

10.11.4 Further, neither Developer, D&C Contractor, Contractor, nor any Subcontractor shall impose retainage upon any consultant, laborer, subcontractor, vendor, materialman or supplier with whom any of them have contracted.

10.11.5 Developer shall provide Authority with details regarding the withholding of any payments to Contractors or Subcontractors, including specificity as to amounts and the basis for such withholding and if any such Contractors or Subcontractors are included within Developer's DBE Performance Plan.

10.12 Suspension and Debarment

Developer shall deliver to Authority, not later than January 31 of each year through Final Acceptance, and upon Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from Developer, from each affiliate of Developer (as "affiliate" is defined in 29 C.F.R. § 98.905 or successor regulation of similar import), and from each Contractor whose Contract amount equals or exceeds $100,000. The annual certification shall be substantially in the form of paragraphs 1.a through 1.d of Attachment 7 to PA Exhibit 8 (*Federal Requirements*).

10.13 Developer Team Identification

Any uniforms, badges, logos and other identification worn by personnel of Developer-Related Entities or on Developer team vehicles used to access the Site or otherwise to perform the Work shall bear colors, lettering, design or other features (a) so as to be clearly visible from a distance, and (b) to assure clear differentiation from those of Authority, GDOT and their employees.

10.14 Boycott of Israel

Pursuant to O.C.G.A. Sec. 50-5-85, Developer agrees that for the duration of the Project, it will not engage in a boycott of Israel. Developer's Form M-2, delivered with the Proposal, is deemed delivered as of the Effective Date.

Article 11 RELATED AND OTHER FACILITIES

11.1 Integration with Related Transportation Facilities

11.1.1 Developer shall locate, configure, design, and construct the termini, interchanges, entrances and exits of the Project so that the Project will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe transition of traffic to and from, Related Transportation Facilities, as set forth in TP Section 1.3 (Related Transportation Facilities). The design for the Project shall include and provide for such compatibility, integration and transition. The design and construction of the Project shall satisfy all of the Technical Provisions and provisions of the Project Management Plan relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users.

11.1.2 Without limiting the foregoing, Developer shall cooperate and coordinate with Authority, GDOT and any third party that owns, constructs, manages, operates or maintains Related

Transportation Facilities with regard to the construction, maintenance and repair programs and schedules for such Related Transportation Facilities, in order to minimize disruption to the operation thereof.

11.1.3 To assist Developer, and in each case to the extent Authority has the legal right to do so and any of the following are reasonably accessible by or available to Authority, Authority will provide to Developer during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of Authority, GDOT or their contractors and consultants pertaining to Related Transportation Facilities. Developer, at its expense, shall have the right to make copies of the same. Developer, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to achieve compatibility, integration and transition with those Related Transportation Facilities identified in TP Section 1.3 (Related Transportation Facilities).

11.1.4 Authority will provide reasonable assistance to Developer, upon its request and at its expense, in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include Authority's participation in meetings and discussions. In no event shall Authority be required to bring any legal action or proceeding against any such third party.

11.1.5 Authority will have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on Authority's Related Transportation Facilities and all other facilities of the State transportation network in the area of the Project in accordance with its standard traffic management practices and procedures in effect from time to time.

11.2 Related Project Integration

11.2.1 Developer acknowledges that Authority is or will be developing, procuring and/or constructing the following projects during the Term that may interface with the Project: (i) future I-285 Westside Express Lanes Project (P.I. No. 0013917) and (ii) future I-20 Express Lanes (each a "Related Project") much of which interfaces with the Project. Developer shall coordinate the Work with the Related Projects as provided in TP Section 1 (General Requirements) and TP Attachment 1-7 (I-285 Westside Express Lanes Requirements). Authority will provide Developer with updates on the procurement and construction schedule for the Related Projects, including with respect to the planned substantial completion dates for each of the Related Projects.

11.2.2 Authority will provide Developer a Notice no later than 12 months prior to the date of the planned substantial completion date for the Related Project.

Article 12 SAFETY

12.1.1 Developer is responsible for the safety of the workers and public on the Site during the arising out of, relating to, or resulting from performance of the Work.

12.1.2 Developer shall take all reasonable precautions and provide protection against any and all unsafe, or potentially unsafe, conditions, as well as such other conditions that are inconsistent with Good Industry Practice or give rise to a threat to the health and safety of the public or workers (or both), or that would be inconsistent with applicable Laws.

12.1.3 Developer shall, and shall cause all Developer-Related Entities to, perform the Work in such a proper, safe, and skillful manner so as to diminish or eliminate any and all unsafe, or potentially unsafe, conditions, as well as such other conditions that are inconsistent with Good Industry Practice or

give rise to a threat to health and safety of the public or workers (or both) or that would be inconsistent with applicable Laws, that, in each case, pose, or could reasonably be determined to pose, a threat to the health and safety of the public or to workers (or both). The obligation under this PA Section 12.1.3 (*Safety*) includes making any and all improvements, repairs, reconstructions, rehabilitations, restorations, renewals, replacements, and changes in configuration or procedures respecting the Project as may be necessary to correct a specific safety condition or risk of the Project.

12.1.4 In performing the Work, Developer shall, and shall cause all Developer-Related Entities to, take such action as in its reasonable opinion is necessary to remove any immediate and present threat to the safety of life or property.

12.1.5 Developer shall implement the safety-related requirements and obligations as developed further to Project Management Plan, TP Attachment 2-4 (Safety Requirements) and TP Attachment 1-5 (Project Office Facilities and Equipment).

Article 13 RELIEF EVENTS; COMPENSATION EVENTS

13.1 Notices

13.1.1 General Notice Requirements

13.1.1.1 Except as otherwise expressly provided in this Project Agreement, in order to request relief, in the form of an extension of time, relief from obligations and/or relief from any rights of the Authority under PA Section 18.3 (*Termination for Developer Default*) (as applicable), or compensation pursuant to this PA Article 13 (*Relief Events; Compensation Events*), Developer shall submit:

(a) in respect of each Relief Event, an Initial Relief Event Notice followed by a Detailed Relief Event Notice,

(b) in respect of each Compensation Event, an Initial Compensation Event Notice followed by a Detailed Compensation Event Notice, and

(c) in respect of a precipitating event that is both a Relief Event and a Compensation Event, both an Initial Relief Event Notice and an Initial Compensation Event Notice, followed by the applicable detailed notices, to the Authority, all in accordance with this PA Section 13.1 (*Notices*). The first Initial Relief Event Notice shall be labeled "Initial Relief Event Notice No. 1" and the first Detailed Relief Event Notice with respect to Initial Relief Event Notice No. 1 shall be labeled "Detailed Relief Event Notice No. 1," with subsequent Relief Event Notices numbered sequentially. The first Initial Compensation Event Notice shall be labeled "Initial Compensation Event Notice No. 1" and the first Detailed Compensation Event Notice with respect to Initial Compensation Event Notice No. 1 shall be labeled "Detailed Compensation Event Notice No. 1," with subsequent Compensation Event Notices numbered sequentially.

13.1.1.2 Time is of the essence in Developer's delivery of its Relief Event Notice or Compensation Event Notice. Accordingly, if for any reason Developer fails to deliver a Relief Event Notice or Compensation Event Notice (or both) in strict accordance with PA Section 13.1.2 (*Relief Event Notice*) or PA Section 13.1.3 (*Compensation Event Notice*), Developer shall be deemed to have irrevocably and forever waived the right to assert a Relief Event or Compensation Event, or both, as applicable, with respect to the precipitating event.

13.1.1.3 From and after the Starting Date, Developer shall

(a) maintain daily records of claimed delays, in accordance with TP Section 2.5 (Developer Maintained Information Systems) and shall show such claimed delays including description of the asserted delay in accordance with TP Attachment 2-8 (Project Schedule and SOV Submittal Requirements), and

(b) maintain daily records of compensable amounts in accordance with PA Section 13.4 (*Compensation Events Principles*) and TP Section 2.5 (Developer Maintained Information Systems), including but not limited to actual equipment, labor and materials costs incurred, actual cost savings, and mitigation measures taken ("Compensation Event Records").

13.1.1.4 If any Relief Event Notice or Compensation Event Notice concerns any Hazardous Materials, then Developer shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that Authority is not afforded the opportunity to inspect such material or condition before it is disturbed; provided, however, that, without limiting Authority's actions under PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*), by and through GDOT under a TRIP response, and where Developer complies with corresponding requirements under TP Section 19 (Maintenance), no action by Developer to stabilize or minimize any Hazardous Materials Release (including any such action required by applicable Law) shall be deemed to waive Developer's right to collect any costs incurred in connection with any such Relief Event or Compensation Event, except and to the extent any such action to stabilize or minimize any Hazardous Materials Release exacerbates an existing release or condition.

13.1.2 Relief Event Notice

13.1.2.1 Initial Relief Event Notices. Developer shall deliver Initial Relief Event Notices within 15 Business Days following the Starting Date of the precipitating event. An Initial Relief Event Notice shall include:

(a) a statement that it is an Initial Relief Event Notice under this PA Section 13.1.2 (*Relief Event Notice*);

(b) a description of the relevant Relief Event (and citation to the corresponding clause in the definition of "Relief Event") upon which the delay or inability to perform is based, including its nature, the reasons why Developer believes additional time will or may be due, and the Starting Date, and its actual (or if it has not concluded, its anticipated) duration, all in reasonable detail based upon the information then available to Developer, having made reasonable inquiry;

(c) a statement as to the Developer's intention to claim an extension of time, relief from obligations and/or relief from any rights of the Authority under PA Section 18.3 (*Termination for Developer Default*) (as applicable) under this PA Article 13 (*Relief Events; Compensation Events*); and

(d) all Relief Event Records available as of the date of the Initial Relief Event Notice.

13.1.2.2 Detailed Relief Event Notices. Following submission of an Initial Relief Event Notice, the Developer shall submit a notice that complies with this PA Section 13.1.2.2 (a "Detailed Relief Event Notice") to the Authority as soon as practicable (and in any event within forty (40) Business Days of submission of the Initial Relief Event Notice or such longer period as the Parties agree in writing). A Detailed Relief Event Notice shall include:

(a) a statement that it is a Detailed Relief Event Notice under this PA Section 13.1.2;

(b) full details of the relevant Relief Event with reasonable specificity (as available to Developer having made reasonable inquiries), including:

(i) the nature of the Relief Event;

(ii) the Starting Date and duration of the Relief Event (to the extent the Relief Event has ceased) or estimated duration of the Relief Event (to the extent the Relief Event has not ceased);

(iii) the location and items of the Work or other obligations affected;

(iv) any entities involved, including any Developer Related Party, Authority Related Party, Utility Owner, and Governmental Entity; and

(v) the contractual basis for the Relief Event claim, including citation to the relevant clause of the definition of "Relief Event" and the relevant Section of this Agreement, including under the Technical Provisions;

(c) the effect of the Relief Event on Developer's ability to perform any of its obligations under the DBF Documents, including details of the relevant obligations claimed or reasonably likely to be claimed (as applicable) under this PA Article 13 (*Relief Events; Compensation Events*) as materially and adversely affected;

(d) a Time Impact Analysis in accordance with TP Section 2.3.5 (Time Impact Analysis) demonstrating that the relevant Relief Event will result in an identifiable and measurable disruption to the Work, which

(i) will impact a Critical Path activity; or

(ii) consume all the Float in respect of a non-Critical Path activity, such that in either case the Critical Path of the preceding statused Baseline Project Schedule is altered, and the time required to achieve a Milestone will be extended, after taking into account any reduction to the period of disruption due to a Concurrent Delay in accordance with PA Section 13.3.2 (*Limitations on Time Extensions*);

(e) an explanation of the measures that Developer has taken or proposes to undertake to mitigate all or some of the delay and other consequences of the Relief Event; and

(f) a Relief Event Package meeting the requirements specified in PA Section 13.1.4 (*Compensation Event Packages and Relief Event Packages*).

13.1.2.3 Continuing Relief Event; Additional Event(s).

(a) From and after delivery of the Initial Relief Event Notice, Developer shall report the status of the Relief Event , including any Relief Event Records recorded after the date of the immediately preceding report, to the Authority on a monthly basis, concurrent with the monthly Project Schedule Update Submittal in accordance with TP Section 2.3.3 (Project Schedule Updates).

(b) If, following delivery of a Detailed Relief Event Notice, while the asserted Relief Event is ongoing (i.e., the event has not concluded), Developer receives or becomes aware of any further information relating to the asserted Relief Event, but subject to PA Section 13.1.2.3(c) (*Continuing Relief Event; Additional Event(s)*), Developer shall amend its original Detailed Relief Event Notice (labeling as,

for example, "Amendment 1 to Detailed Relief Event Notice No. 1") and deliver such amended Notice to Authority not later than five Business Days after Developer's receipt or knowledge of the additional information. Authority may request from Developer any further information that Authority may reasonably require, and Developer shall supply the same within a reasonable period but not later than five Business Days after such Authority request. Within five Business Days after the conclusion of an asserted Relief Event, Developer shall update (or further update), by amendment, its Detailed Relief Event Notice (or if the Developer has not yet delivered the Detailed Relief Event Notice and the time for delivery of the Detailed Relief Event Notice has not lapsed, Developer shall amend its Initial Relief Event Notice) with the date of its actual or estimated conclusion. It is the intent of the Parties that the original Relief Event Notice meet all of the requirements of PA Section 13.1.2.1 (*Initial Relief Event Notice*) and PA Section 13.1.2.2 (*Detailed Relief Event Notice*) and not allow the Developer to present cursory or pro forma information to Authority, so as to rely on this PA Section 13.1.2.3 (*Continuing Relief Event; Additional Event(s)*) to provide information then-available at a later date, and Authority may, and shall be deemed to have reasonably, reject(ed) any purported amendment to the original Relief Event Notice offering such information.

(c) Any additional event asserted after delivery of the Detailed Relief Event Notice by Developer as a Compensation Event or Relief Event shall not be included in the amended Relief Event Notice(s) delivered pursuant to PA Section 13.1.2.3(a) (*Continuing Relief Event; Additional Event(s)*), as Developer's assertion of an entitlement to relief or compensation as a result of such additional events shall be handled separately as Compensation Event Notices or Relief Event Notices, as applicable, to proceed according to this PA Article 13 (*Relief Events; Compensation Events*).

13.1.3 Compensation Event Notice

13.1.3.1 Initial Compensation Event Notices. Developer shall deliver Initial Compensation Events Notices within 15 Business Days following the Starting Date of the precipitating event. An Initial Compensation Event Notice shall include:

(a) a statement that it is an Initial Compensation Event Notice under this PA Section 13.1.3;

(b) a description of the relevant Compensation Event (and citation to the corresponding clause in the definition of "Compensation Event") upon which Developer's asserted entitlement to additional monetary compensation is based, including its nature, the reasons why Developer believes additional costs will or may be due, the Starting Date and its actual (or if it has not concluded, its anticipated) duration, and the portion of the Project affected, all in reasonable detail based upon information then available to Developer, having made reasonable inquiry;

(c) a statement as to the Developer's intention to claim compensation under this PA Article 13 (*Relief Events; Compensation Events*); and

(d) all Compensation Event Records available as of the date of the Compensation Event Notice.

13.1.3.2 Detailed Compensation Event Notices. Following submission of an Initial Compensation Event Notice, the Developer shall submit a notice that complies with this PA Section 13.1.3.2 (a "Detailed Compensation Event Notice"), as soon as practicable (and in any event within forty (40) Business Days of submission of the Initial Compensation Event Notice or such longer period as the Parties agree in writing). A detailed Compensation Event Notice shall include:

(a) a statement that it is a Detailed Compensation Event Notice under this PA Section 13.1.3.2;

(b) full details of the relevant Compensation Event with reasonable specificity (as available to Developer having made reasonable inquiries), including:

(i) the nature of the Compensation Event;

(ii) the Starting Date and duration of the Compensation Event (to the extent the Compensation Event has ceased) or estimated duration of the Compensation Event (to the extent the Compensation Event has not ceased);

(iii) the location and items of the Work or other obligations affected;

(iv) any entities involved, including any Developer Related Party, Authority Related Party, Utility Owner, and Governmental Entity; and

(v) the contractual basis for the Compensation Event claim, including citation to the relevant clause of the definition of "Compensation Event" and the relevant Section of this Agreement, including under the Technical Provisions;

(c) a statement of the basis that any asserted additional work or costs are not already included in the Work;

(d) identification of particular elements of performance for which additional compensation may be sought;

(e) an explanation of the measures that Developer has taken or proposes to undertake to mitigate all or some of the costs and other consequences of the Compensation Event;

(f) Developer's current estimate of the anticipated adverse effects and increased costs, and beneficial effects or cost savings of the Compensation Event on the Project, and Developer's proposed mitigation efforts, including cost impacts with respect thereto; and

(g) a Compensation Event Package meeting the requirements specified in PA Section 13.1.4 (*Compensation Event Packages and Relief Event Packages*).

13.1.4 Compensation Event Packages and Relief Event Packages

13.1.4.1 Developer shall deliver to Authority as soon as practicable and in any event concurrent with the Detailed Compensation Event Notice for any asserted Compensation Event, and concurrent with the Detailed Relief Event Notice for any asserted Relief Event, a Compensation Event Package or a Relief Event Package, as applicable, labelled with the Compensation Event number or Relief Event number from the corresponding Compensation Event Notice or Relief Event Notice, and containing every item specified in PA Section 13.1.4.2 (*Compensation Event Packages and Relief Event Packages*).

13.1.4.2 If Developer promptly requests that Authority consent to provide Developer with additional time to provide certain information required for a Compensation Event Package or Relief Event Package, and Developer provides with its request reasonable evidence demonstrating that Developer is unable to provide such information within the required time and a specific schedule indicating when the Developer will provide the relevant information, then Authority may elect, in its sole discretion,

to grant a longer time period, specified by Authority in its sole discretion, for Developer to provide such currently unavailable information to Authority.

13.1.4.3 Each Compensation Event Package and Relief Event Package shall at a minimum include:

(a) (for asserted Relief Events only) a scope of work describing in detail satisfactory to Authority all activities associated with the asserted Relief Event;

(b) (for asserted Compensation Events only) a total cost estimate (based upon actual costs incurred from the Starting Date until the date of the Detailed Compensation Event Notice as evidenced by the Compensation Event Records plus estimated additional costs that Developer Expects to incur) that sets out the costs in such a way and in sufficient detail that a fair evaluation can be made. The cost estimate shall be in a form approved by Authority and shall include both a separate breakdown of costs that impact design and those that impact construction activities. Such breakdown shall include as separate items labor, materials, equipment, overhead (which includes all indirect costs) and profit, as and to the extent allowed under PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*) and this PA Article 13 (*Relief Events; Compensation Events*). Developer shall indicate whether it intends that the Work is to be performed by Contractors (and potentially Subcontractors), and if the work is sufficiently defined to obtain Contractor and Subcontractor quotes, Developer shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the relevant Contractor's and Subcontractor's stationery and shall include such quotes as back-up for Developer's estimate. If Developer intends to perform the Work with internal forces or Affiliates, Developer shall provide back-up for its cost estimate on an open-book basis in accordance with PA Section 13.4.1.6 (*Determining Compensable Amounts*). Developer shall amend the cost estimate in its Compensation Event Package to provide additional information replacing estimated costs with actual costs incurred as of the date of the amendment, in accordance with the process for amendments set forth in PA Section 13.1.6 (*Continuing Compensation Event; Additional Events*), and on a schedule to be aligned with Project Schedule Updates;

(c) if Developer claims that a Relief Event has occurred adversely affecting the Critical Path, the Time Impact Analysis provided for in PA Section 13.1.2.2(d) (*Detailed Relief Event Notice*);

(d) a narrative justification detailing all causes of the asserted Relief Event or Compensation Event, making specific reference and citing to the applicable provisions of the DBF Documents (including specifically the relevant clause of the definition(s) of Relief Event or Compensation Event), and describing the data and documents that establish the necessity of (in the case of Relief Events), any asserted relief and/or (in the case of Compensation Events) any asserted additional compensation;

(e) all Relief Event Records available as of the date of the Detailed Relief Event Notice, and all Compensation Event Records available as of the date of the Detailed Compensation Event Notice;

(f) a description of all insurance that is actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to PA Section 16.1 (*Insurance*), and that provides coverage to pay, reimburse or provide for any cost impacts attributable to the Compensation Event; and

(g) a sworn certification in the form provided in PA Exhibit 27 (*Certificate Regarding Relief Event and Compensation Event*) of Developer (and Contractor(s) and Subcontractor(s), as applicable, if involved in the Work or event).

13.1.5 Requests for Further Information. Following Developer's submission of a Relief Event Notice or Compensation Event Notice and prior to the Authority's Relief Event Determination or

Compensation Event Determination, or if disputed, its final determination pursuant to Dispute Resolution Procedures pursuant PA Section 17.9 (*Dispute Resolution Procedures*),

(a) Developer shall replace with actual incurred costs any estimates included in the Compensation Event Package pursuant to PA Section 13.1.4.3(b) (*Compensation Event Packages and Relief Event Packages*).

(b) The Authority may request from the Developer any further information that the Authority may reasonably require in order to evaluate the Developer's request for relief or compensation, and the Developer must supply such information within 5 Business Days after such request.

13.1.6 Continuing Compensation Event; Additional Event(s).

(a) From and after delivery of the Initial Compensation Event Notice, Developer shall report the status of the Compensation Event including any Compensation Event Records recorded after the date of the immediately preceding report, to the Authority on a monthly basis, on a schedule to be aligned with Project Schedule Updates.

(b) If, following delivery of a Detailed Compensation Event Notice, while the asserted Compensation Event is ongoing (i.e., the event has not concluded), Developer receives or becomes aware of any further information relating to the asserted Compensation Event, Developer shall amend its original Detailed Compensation Event Notice (labeling as, for example, "Amendment 1 to Detailed Compensation Event Notice No. 1") and deliver such amended Notice to Authority not later than five Business Days after Developer's receipt or knowledge of the additional information. Any such amendment shall be in addition to the monthly amendment updating the cost estimate with additional actual costs incurred through the date of the amendment, are required pursuant to PA Section 13.1.4.3(b) (*Compensation Event Packages and Relief Event Packages*), Authority may request from Developer any further information that Authority may reasonably require, and Developer shall supply the same within a reasonable period but not later than five Business Days after such Authority request. Within five Business Days after the conclusion of an asserted Compensation Event, Developer shall update (or further update), by amendment, its Detailed Compensation Event Notice (or if Developer has not yet delivered the Detailed Compensation Event Notice and the time for delivery of the Detailed Compensation Event Notice has not lapsed, Developer shall amend its Initial Compensation Event Notice) with the date of its actual or estimated conclusion. It is the intent of the Parties that the original Compensation Event Notice meet all of the requirements of PA Section 13.1.3.1 (*Initial Compensation Event Notice*) and PA Section 13.1.3.2 (*Detailed Compensation Event Notice*) and not present cursory or *pro forma* information to Authority, so as to rely on this PA Section 13.1.6 (*Continuing Compensation Event; Additional Event(s)*) to provide information then-available at a later date, and Authority may, and shall be deemed to have reasonably, reject(ed) any purported amendment to the original Compensation Event Notice offering such *pro forma* information.

(c) Any additional event asserted after delivery of the Detailed Compensation Event Notice by Developer as a Compensation Event shall not be included in the amended Compensation Event Notice(s) delivered pursuant to PA Section 13.1.6 (*Continuing Compensation Event; Additional Event(s)*), as Developer's assertion of an entitlement to relief or compensation as a result of such additional events shall be handled separately as Compensation Event Notices or Relief Event Notices, as applicable, to proceed according to this PA Article 13 (*Relief Events; Compensation Events*).

13.2 Relief Event and Compensation Event Determinations

13.2.1 No later than 40 Business Days after receiving the Relief Event Package and any additional information pursuant to PA Sections 13.1.5 (*Requests for Further Information*) or 13.1.6 (*Continuing Compensation Event; Additional Event(s)*), or such longer period of time to which the Parties

may mutually agree in writing, Authority will issue a Relief Event Determination. Authority will specify in the Relief Event Determination

(a) the relevant obligations for which relief is given or denied,

(b) the period of time set forth in the Baseline Project Schedule that will be extended, if any, based on the number of days of delay affecting a Critical Path, after consumption of Float available pursuant to PA Section 3.5 (*Float*), that is directly attributable to the Relief Event and that cannot be avoided through reasonable mitigation measures, and

(c) if applicable, the period of time, if any, that any Milestone Deadline and the Contract Time will be extended.

13.2.1.1 Developer shall be relieved from performance only to the extent set forth in the Relief Event Determination and documented in a Supplemental Agreement in accordance with PA Section 13.2.4 (*Relief Event and Compensation Event Determinations*).

13.2.1.2 If Authority is obligated to but does not provide a Relief Event Determination within such 40 Business Day period or such longer period of time to which the Parties may mutually agree in writing, Authority's failure to respond shall be deemed a denial of the Developer's claim.

13.2.2 No later than 40 Business Days after receiving the Compensation Event Package and any additional information pursuant to PA Section 13.1.5 (*Requests for Further Information*) and PA Section 13.1.6 (*Continuing Compensation Event; Additional Event(s)*), or such longer period of time to which the Parties may mutually agree in writing, Authority will issue a Compensation Event Determination. Authority will specify in the Compensation Event Determination:

(a) the specific obligations for which relief from performance is given or denied, if applicable,

(b) the modification of the DBF Contract Sum, breaking out changes to the D&C Amount and additional or adjusted Developer Financing Costs, if any, Breakage Costs, if any, and Breakage Benefits, if any, relating thereto.

Developer shall be relieved from performance only to the extent set forth in the Compensation Event Determination and documented in a Supplemental Agreement in accordance with PA Section 13.2.4 (*Relief Event and Compensation Event Determinations*).

13.2.3 If the Developer disagrees with the Relief Event Determination issued pursuant to PA Section 13.2.1 (*Relief Event and Compensation Event Determinations*), or any portion thereof, or the Compensation Event Determination issued pursuant to PA Section 13.2.2 (*Relief Event and Compensation Event Determinations*), or any portion thereof, the Developer may refer the matter for determination pursuant to the Dispute Resolution Procedures.

13.2.4 Any Relief Event Determination or Compensation Event Determination not disputed by Developer (or, if disputed, determined pursuant to Dispute Resolution Procedures set forth in PA Section 17.9 (*Dispute Resolution Procedures*)) shall be set forth in a Supplemental Agreement in accordance with PA Section 13.2 (*Relief Event and Compensation Event Determinations*). The Authority will draft a Supplemental Agreement and provide it to Developer. Such Supplemental Agreement shall provide for modification of the Contract Time and the Baseline Project Schedule, including to the extent so established by such Relief Event Determination, the Milestone Deadlines, or modification of the DBF Contract Sum pursuant to any such Compensation Event Determination, and if Developer Financing will be provided for

Approved Project Certificates issued in connection with the proposed Supplemental Agreement as contemplated in PA Section 14.6 (*Payment of Supplemental Agreements*), any other terms and conditions necessary to implement such Developer Financing, as the case may be.

13.2.5 Developer and Authority shall make diligent, good faith efforts to finalize the Supplemental Agreement promptly, and upon finalization will execute the Supplemental Agreement. The execution of a Supplemental Agreement shall constitute the Developer's full settlement and release of the Authority with respect to any claims arising out of or related to the subject matter of the Supplemental Agreement. Developer shall not be entitled to any additional compensation or time whether deriving from or related to a Supplemental Agreement.

13.3 Relief Events Constraints

13.3.1 Extensions of Time for Relief Events

13.3.1.1 Developer shall not be excused from compliance with applicable Laws, Governmental Approvals, or other portions of the DBF Documents due to the occurrence of a Relief Event, except temporary inability to comply as a direct result of a Relief Event or as finally accounted for under the Supplemental Agreement pursuant to any Relief Event Determination.

13.3.1.2 Without limiting Developer's rights with respect to monetary relief for Compensation Events as set forth in this Project Agreement, the extensions of time as provided, if any, pursuant to this PA Section 13.3 (*Relief Events Constraints*) are Developer's sole remedy for a Relief Event.

13.3.2 Limitations on Time Extensions

13.3.2.1 Developer shall be required to demonstrate to Authority's satisfaction that the change in the Work or other event or situation that is being asserted as a Relief Event will result in or has caused an identifiable and measurable delay of the Work that will impact or has impacted the Critical Path affecting any Milestone Deadline.

13.3.2.2 Any extension of any Milestone Deadline allowed hereunder shall exclude any delay to the extent that it did not impact the Critical Path affecting any Milestone Deadline or was a Concurrent Delay with any other delay for which Developer is not entitled to an extension.

13.3.2.3 To the extent that an extension of any Milestone Deadline is as a result of a precipitating event that is the subject of both a Relief Event Determination and a Compensation Event Determination under this PA Article 13 (*Relief Events; Compensation Events*), then, for the avoidance of doubt, any entitlement to additional costs shall exclude costs associated with any delay that did not impact the Critical Path affecting the Milestone Deadline or was concurrent with any other delay for which Developer is not entitled to an extension.

13.4 Compensation Events Principles

13.4.1 Determining Compensable Amounts

13.4.1.1 Without limiting PA Section 13.3.2 (*Limitations on Time Extensions*) and PA Section 14.6 (*Payment of Supplemental Agreements*), the Compensation Amount, if any, for any Compensation Event shall be determined by applying the following provisions. The calculation of the Compensation Amount will be based on the difference between the estimated increased costs after taking into account the impact of the Compensation Event (based upon documented actual costs as evidenced by the Compensation Event Records, and as specified in an Amendment to the Detailed Compensation Event

Notice pursuant to PA Section 13.1.6 (Continuing Compensation Event; Additional Event(s)) and projected costs immediately prior to the Starting Date , plus estimated additional costs that Developer expects to incur following the date of the Compensation Event Determination, if any, as specified in the Detailed Compensation Event Notice, as amended). Cost impacts shall:

(a) exclude:

(i) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of Authority in the regular course of business, and

(ii) unallowable costs under the following provisions of the federal Contract Cost Principles, 48 C.F.R. § 31.205: § 31.205-8 (contributions or donations), § 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), § 31.205-14 (entertainment costs), § 31.205-15 (fines, penalties, and mischarging costs), § 31.205-27 (organization costs), § 31.205-34 (recruitment costs), § 31.205-35 (relocation costs), § 31.205-43 (trade, business, technical and professional activity costs), § 31.205-44 (training and education costs), and § 31.205-47 (costs related to legal and other proceedings);

(b) exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

(c) exclude those costs incurred in asserting, pursuing, or enforcing any Compensation Event, Relief Event or Dispute;

(d) be reduced by any savings in costs resulting from the Compensation Event;

(e) exclude costs for any rejected Work that failed to meet the requirements of the DBF Documents and any necessary remedial Work;

(f) exclude any amount for overhead and profit in excess of a total of 15% of the total of additional costs incurred by Developer for labor, materials, and equipment;

(g) exclude costs for equipment at a rate in excess of 70 percent of those determined utilizing the Rental Rate Blue Book;

(h) exclude loss of profit;

(i) exclude consequential damages and indirect costs and expenses of any nature, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency, and amounts for risk and contingency;

(j) exclude attorney's fees, claims preparation expenses and costs of litigation; and

(k) to the extent not further restricted pursuant to the foregoing, otherwise be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 C.F.R. Part 31.

13.4.1.2 Compensation Amounts shall be required to:

(a) take into account demonstrated Developer Financing Costs, Breakage Costs, and Breakage Benefits; and

(b) be consistent and not exceed such amounts as set forth in the Technical Provisions, as may be applicable.

13.4.1.3 In all cases the Compensation Amount shall be net of

(a) the greater of:

(i) the proceeds received from insurance that Developer is required to carry pursuant to PA Section 16.1 (*Insurance*) (or if Developer has failed to carry such insurance, the proceeds that would have been received if Developer had not so failed) and provides coverage to pay, reimburse or provide for any of cost impacts attributable to the Compensation Event, or

(ii) the proceeds received from insurance that is actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to PA Section 16.1 (*Insurance*), and that provides coverage to pay, reimburse or provide for any cost impacts attributable to the Compensation Event; and

(b) deductibles and insurance amounts deemed to be self-insured by Developer under PA Article 16 (*Insurance; Performance Security; Indemnity*), with respect to cost impacts of the Compensation Event.

13.4.1.4 The Compensation Amount shall not include any amount on account of federal, State, or local income taxes. Further and notwithstanding anything to the contrary herein, the Compensation Amount shall not include, under any circumstances, costs incurred by Developer or any Contractors on account of charges or expenses due to (a) the business organization existence or maintenance of its business of any Developer-Related Entity or (b) labor or employment matters as a result of any Change in Law (other than recovery of costs for additional labor hours required directly as a result of a Change in Law).

13.4.1.5 If the Compensation Event is under clause (f) of the definition of "Compensation Event", then the Compensation Amount shall be limited to the incremental increase in costs of initial design and construction due to delay and disruption directly attributable to the court order; provided, however, that the Compensation Amount may include Financing Costs and Breakage Costs solely with respect to a Court Order that prevents Developer from progressing any material Work and prevents Developer from mitigating delay

13.4.1.6 Developer shall share with Authority all data, documents, and information pertaining to bids for any work that is the subject of a Compensation Amount, including but not limited to the Compensation Event Records, and all of the aforementioned shall be on an Open Book Basis.

13.4.1.7 Any Dispute resolution body(ies) shall apply the provisions of this PA Section 13.4 (*Compensation Events Constraints*) in determining the Compensation Amount.

13.4.1.8 Following a determination of the Compensation Amount by mutual agreement or the Dispute Resolution Procedures, Authority will pay such Compensation Amount (a) through periodic payments of the Compensation Amount in accordance with a written payment schedule determined by mutual agreement or through such concluded Dispute Resolution Procedures, (b) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, or (c) in such other manner as agreed upon by the Parties. Subject to PA Section 14.6 (*Payment of Supplemental Agreements*), Authority, in its sole discretion, shall be entitled to select one or any combination of the foregoing methods of compensation.

13.4.1.9 Without limiting Developer's rights with respect to non-monetary relief for Relief Events as set forth in this Project Agreement, the Compensation Amount shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event.

13.4.2 Limitations on Acceleration Costs

13.4.2.1 Acceleration costs shall be compensable hereunder only with express, written direction by Authority to Developer to accelerate its efforts pursuant to PA Section 14.3.1 *(Directive Letters*).

13.4.2.2 Acceleration costs are those fully documented increased costs reasonably incurred by Developer (i.e., costs over and above what Developer would otherwise have incurred) that are directly attributable to increasing the performance level of the Work in an attempt to complete necessary activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.

13.4.3 Limitations on Delay Damages

13.4.3.1 Delay damages with respect to and directly attributable to a Compensation Event are limited to the following items:

(a) additional direct hourly rates paid to employees for job site labor, including payroll taxes, welfare, insurance, benefits and all other labor burdens, directly attributable to the Compensation Event,

(b) documented additional costs for materials,

(c) documented idle equipment costs, based on the actual experienced cost for each piece of equipment. These rates shall be supported by equipment cost records furnished by the Contractor. In no case will equipment rates be allowed in excess of 70 percent of those determined utilizing the Rental Rate Blue Book,

(d) documented costs of extended job-site overhead,

(e) documented P&P Bond and insurance costs, and

(f) Subcontractor costs, as determined by, and limited to, those items identified as payable under PA Subsections 13.4.3.1(a), (b), (c), (d) and (e).

13.4.3.2 Before Developer may obtain any increase in the DBF Contract Sum to compensate for any delay damages or acceleration costs, Developer shall have demonstrated to Authority's satisfaction that:

(a) immediately prior to the Starting Date, the Baseline Project Schedule in fact sets forth a reasonable method for completion of the Work but for the occurrence of the relevant Compensation Event;

(b) the change in the Work or other event or situation that is the subject of the requested Supplemental Agreement has caused or will result in an identifiable and measurable delay of the Work and impact the Critical Path affecting Milestones listed in PA Exhibit 9 (*Milestone Schedule*);

(c) the delay damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Developer-Related Entity, and could not reasonably have been avoided by Developer, including by resequencing, reallocating or redeploying its forces to other portions of the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment) or other activities unrelated to the Work; and

(d) Developer has suffered or will suffer actual costs due to such delay, each of which costs shall be justified and documented in a manner satisfactory to Authority.

13.4.3.3 Nothing in this PA Section 13.4.3 (*Limitations on Delay Damages*) shall be construed to abrogate the limitations set forth in PA Section 13.3.2 (*Limitations on Time Extensions*).

13.4.4 Limitations on Disruption Damages

Disruption damages with respect to and directly attributable to a Compensation Event, shall exclude loss of efficiency, momentum or productivity.

13.4.5 Payment Options

13.4.5.1 The method and sources of payment for Compensable Amounts for a Compensation Event shall be set forth in a Supplemental Agreement.

13.4.5.2 The preferred approach by both Parties is that Supplemental Agreements will be paid on a lump sum basis, if the Parties can agree on a lump sum amount. Lump sum prices shall be based on the Compensation Cost Records and on the original allocations of the DBF Contract Sum to comparable activities. If reference to price allocations is inappropriate, or when requested by Authority or Developer, negotiation for lump sum Supplemental Agreements, or such other method of payment as mutually agreed upon by the Parties, shall be on an Open Book Basis and may be based on the pricing contained in the Detailed Cost and Pricing Data and the quantities identified in PA Exhibit 25 (*Material Indexation Adjustments*).

13.4.5.3 The Supplemental Agreement shall set forth the Parties' agreed one time lump sum payment amount or alternative payment schedule or method, and shall set forth the terms for any payments to be made by issuance of Approved Project Certificates as provided for in PA Section 14.6 (*Payment of Supplemental Agreements*). If the Parties can neither agree on a lump sum amount nor another alternative payment schedule or method, then payment amounts and terms will be determined pursuant to Dispute Resolution Procedures.

13.4.6 General Provisions, Obligations Relating to Relief Events, Compensation Events

13.4.6.1 Developer shall, and shall cause all Contractors, Subcontractors, and Suppliers to, ensure that all activities are undertaken in a manner that will minimize any adverse effects (including adverse monetary and non-monetary impacts) of any Relief Event or Compensation Event on the Project, as well as any adverse effect on surrounding property and to the public, in each case consistent with Good Industry Practice.

13.4.6.2 Notwithstanding anything to the contrary in the DBF Documents, the occurrence of any Relief Event or Compensation Event shall not excuse Developer from any liability or obligation that arose before such occurrence or that occurs concurrently.

13.4.6.3 Developer shall not be entitled to assert a Relief Event or Compensation Event with respect to the consequences of any violation of Law or Governmental Approval, or negligence,

recklessness, willful misconduct, fault, breach of contract, fraud, or other noncompliance with the requirements of the DBF Documents by any of Developer-Related Entity.

13.4.6.4 Developer acknowledges and agrees that no compensation, increase to the DBF Contract Sum, or extension of any Milestone Deadline is available except in the specific circumstances expressly provided for in this Project Agreement, including specifically the identified Relief Events and Compensation Events, and that Developer shall bear full responsibility for the consequences of all other conditions, events, and circumstances. Subject to the Relief Events and Compensation Events defined herein, a non-exhaustive list of matters that are Developer's exclusive responsibility include the following:

(a) Errors in the Design Documents or Construction Documents (including Errors traceable to Errors in the NEPA Basic Configuration or the "Mandatory Configuration Elements" listed in TP Section 1.4 (Mandatory Configuration Elements) that do not amount to a Necessary Basic Configuration Change;

(b) any design changes requested by or on behalf of Authority as Compliance Comments;

(c) defective or incorrect schedules for the Work or changes in the planned sequence of performance of the Work;

(d) action or inaction by (i) any adjoining property owner, agent, representative, or contractor, (ii) any Developer-Related Entity;

(e) untimely or non-delivery of equipment or materials; unavailability or defective materials; increases in costs for equipment or materials (regardless as to whether specified by the Technical Provisions), except as provided in PA Section 5.5 (*Additional Payment Constraints*) and PA Exhibit 25 (*Material Indexation Amounts*);

(f) assessment, remediation, and correction of Nonconforming Work;

(g) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of any Governmental Approval (that is not a Provided Environmental Approval);

(h) delays not to the Critical Path;

(i) any Developer Default;

(j) all other events beyond the control of Authority for which Authority has not expressly agreed to assume liability hereunder;

(k) any general "weather delay" or other weather-related basis that is not an express Force Majeure Event;

(l) claims relying on any purported materials allowance or other allowance in the GDOT Standard Specifications, any legacy versions of such GDOT Standard Specifications, or as any of them may be amended, except, and only to the extent, a materials allowance is expressly included in the Technical Provisions;

(m) costs relating to any materials not used in accordance with its manufacturer's specifications or recommendation; and

(n) time impacts, performance failures, and costs and expenses incurred reliant upon a Time Impact Analysis that was reasonably not accepted by Authority or is under Dispute.

13.5 Burden of Proof

Developer bears the burden of proving both the occurrence of a Relief Event or Compensation Event (or both, in any case, as applicable) and the resulting direct and adverse impacts on Developer.

13.6 Pandemic Event Compensation

13.6.1 Authority will pay for Developer Financing Costs and Breakage Costs actually incurred by Developer during a Pandemic Event for which Developer has received a Relief Event Determination.

13.6.2 In addition to Developer's obligations with respect to Relief Event Notices and Relief Event Packages under this PA Article 13 (*Relief Events; Compensation Events*), Developer shall include in its Relief Event Notice and Relief Event Package, as applicable, in each case, a statement of the amount of Developer Financing Costs actually incurred by Developer during the Pandemic Event, including such evidence, documentation or information as Authority may reasonable request with respect to the calculation and payment of such costs, consistent with analogous Compensation Event Notices and Compensation Event Packages under PA Article 13 (*Relief Events; Compensation Events*).

13.6.3 Authority's determination as to costs that are Developer Financing Costs eligible for reimbursement will be as set forth in its Relief Event Determination issued pursuant to PA Section 13.2 (*Relief Event and Compensation Event Determinations*). Any such costs will be documented in any Supplemental Agreement entered into by the Parties with respect to the Pandemic Event as Relief Event.

13.6.4 For avoidance of doubt, Developer bears the burden of proving costs claimed as Developer Financing Costs incurred during a Pandemic Event for which Developer has received a Relief Event as eligible for payment by Authority. Furthermore, if the Pandemic Event replicates, coincides with, or otherwise duplicates amounts that Developer might otherwise claim as a Compensation Event hereunder, Developer shall pursue the Compensation Event process under PA Article 13 (*Relief Events; Compensation Events*), with no double counting or double claim such that Developer would receive more than owed or payable.

Article 14 AUTHORITY CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

This PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*) sets forth the requirements for obtaining all Supplemental Agreements under this Project Agreement. Developer hereby acknowledges and agrees that any Supplemental Agreement negotiated with GDOT, as Authority's "project manager" constitutes a recommendation to Authority with respect to its subject matter (including specifically any change to the scope of the Work, compensation, or time to perform the Work), and no Supplemental Agreement is agreed, or deemed agreed, until accepted and executed by Authority and Developer. Furthermore, Developer hereby acknowledges and agrees that the DBF Contract Sum is full and adequate compensation for performance of all of the Work, subject only to those exceptions specified in PA Article 13 (*Relief Events; Compensation Events*) and this PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*). Developer absolutely, unconditionally and irrevocably waives the right to any claim under the DBF Documents, at law, or in equity for any monetary compensation or other relief in addition to that specifically provided under the terms of this Project Agreement, except in accordance with PA Article 13 (*Relief Events; Compensation Events*) and this PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*). The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), equity, *quantum meruit* or otherwise, and

encompasses all theories to extinguish contractual obligations, including impracticability, mutual mistake and frustration of purpose. Nothing in the Technical Provisions shall have the intent or effect or shall be construed to create any right of Developer to any Supplemental Agreement or other claim at law or in equity for additional monetary compensation or other relief, any of the Technical Provisions to the contrary notwithstanding.

14.1 Authority Changes

14.1.1 Authority's Right to Issue a Supplemental Agreement and Directive Letter

Authority may, at any time and from time to time, without notice to any Lender or Surety, authorize, cause or require, pursuant to a Supplemental Agreement or Directive Letter, changes in the Work, including additions or deletions, or in terms and conditions of the Technical Provisions (including changes in the standards applicable to the Work). For any Authority Request for Change Proposal or Directive Letter, Developer may only refuse to effect the requested or directed change to the extent such change to the Work or the Project would violate applicable Law.

14.1.2 Request for Change Proposal

14.1.2.1 If Authority desires to initiate an Authority Change or to evaluate whether to initiate such a change, then Authority may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed Authority Change.

14.1.2.2 Within five Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, Authority and Developer shall consult to define the proposed scope of the change. Within three Business Days after the initial consultation, or such longer period to which the Parties may mutually agree, Authority and Developer shall consult concerning the estimated financial and schedule impacts.

14.1.3 Within 40 Business Days following Authority's delivery to Developer of the Request for Change Proposal, Developer shall provide Authority with a written response as to whether, in Developer's opinion, the proposed change constitutes an Authority Change, will impact Developer's costs, and/or will impact Developer's schedule, and if so, a detailed assessment of the cost and schedule impact of the proposed Authority Change, including the following:

14.1.3.1 Developer's detailed estimate of the impacts on costs of carrying out the proposed Authority Change;

14.1.3.2 the effect of the proposed Authority Change on the Baseline Project Schedule, including achievement of the Milestone Deadlines, taking into consideration Developer's duty to mitigate any delay to the extent reasonably practicable; and

14.1.3.3 any other relevant information related to carrying out the proposed Authority Change.

14.1.4 Authority will be entitled, but not required, to obtain, from a qualified independent consultant of Authority's choosing, a report prepared in accordance with Good Industry Practice as to the proposed Authority Change related to the Design Work or the Construction Work, including recommendations and comments concerning Developer's estimate of the cost impacts and projected impact on the Baseline Project Schedule and Milestone Deadlines. Authority will pay for the work of any such consultant.

14.1.5 Authority and Developer, giving due consideration to any report described in PA Section 14.1.4 (*Request for Change Proposal*) and any study as may be commissioned by Authority, and without limiting PA Section 14.5.1 (*Reductions in the DBF Contract Sum*), shall exercise good faith efforts to negotiate a mutually acceptable Supplemental Agreement, including adjustment of the Baseline Project Schedule and Milestone Deadlines, any Compensation Amount to which Developer is entitled, and the timing and method for payment of any Compensation Amount, in accordance with PA Article 13 (*Relief Events; Compensation Events*).

14.1.6 If Authority and Developer are unable to reach agreement on a Supplemental Agreement, Authority may, in its sole discretion, deliver to Developer a Directive Letter pursuant to PA Section 14.3.1 (*Directive Letters*) directing Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Supplemental Agreement according to the Dispute Resolution Procedures, Developer shall implement and perform the Work in question as directed by Authority, subject to subsequent adjustment through the Dispute Resolution Procedures, which, as applicable, shall give effect to PA Section 14.5.1 (*Reductions in the DBF Contract Sum*).

14.1.7 Authority will be responsible for payment of the Compensation Amount agreed upon (without limiting PA Section 14.5.1 (*Reductions in the DBF Contract Sum*) or determined through the Dispute Resolution Procedures, which, as applicable, shall give effect to PA Section 14.5.1 (*Reductions in the DBF Contract Sum*), through one of the payment mechanisms set forth in PA Article 13 (*Relief Events; Compensation Events*), and the Baseline Project Schedule and Milestone Deadlines shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with PA Article 13 (*Relief Events; Compensation Events*), to reflect the effects of the Supplemental Agreement.

14.1.8 Authority will be entitled to the full benefit of the net cost savings, if any, allocated to Authority under PA Section 14.5.1 (*Reductions in the DBF Contract Sum*) and attributable to the Authority Change agreed upon or determined through the Dispute Resolution Procedures, and the Baseline Project Schedule and Milestone Deadlines shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with PA Article 13 (*Relief Events; Compensation Events*), to reflect the effects of the Supplemental Agreement.

14.2 Developer Changes

14.2.1 Developer may request Authority to approve modifications to the Technical Provisions by submittal of a written Change Request using a form approved by Authority. The Change Request shall set forth Developer's detailed estimate of impacts on costs and schedule attributable to the requested change.

14.2.2 Authority, in its sole discretion, may accept or reject any Change Request proposed by Developer, provided that Authority will accept a Change Request necessary to bring the Technical Provisions into compliance with applicable Law. Authority may condition its approval of a Change Request on new compensation or a modification of compensation for Authority under this Project Agreement in order to benefit equally, further to PA Section 14.5.2 (*Reductions in the DBF Contract Sum*), in the estimated net cost savings, if any, attributable to the proposed change. If Authority accepts such change, Developer shall execute a Supplemental Agreement and shall implement such change in accordance with this Project Agreement, the Supplemental Agreement, applicable Technical Provisions, the Project Management Plan, Good Industry Practice, and all applicable Laws.

14.2.3 Developer shall be solely responsible for the payment of any increased costs and for any Baseline Project Schedule delays or other impacts resulting from a Developer-proposed Change Request, other than on account of a Compensation Event or Relief Event accepted by Authority. If the

Change Request results in a decrease in the costs of designing or constructing the Project, the savings in costs shall be allocated between Developer and Authority further to PA Section 14.5.2 (*Reductions in the DBF Contract Sum*), to be set forth in the Supplemental Agreement.

14.2.4 Developer may implement and permit a Utility Owner to implement, without a Change Request or Supplemental Agreement, changes to a Utility Adjustment design that do not vary from the Technical Provisions, but such changes are subject either to Authority's approval as part of a Utility Work Plan as provided in TP Section 7.3.8 (Utility Work Plan), or, if the changes are Utility Adjustment Field Modifications, to Authority's review and comment as provided in TP Section 7.4.3 (Utility Adjustment Field Modification Procedures).

14.2.5 No Change Request shall be required to implement any change to the Work that is not a deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction and is not specifically regulated or addressed by the DBF Documents or applicable Law.

14.2.6 Certain minor changes without significant cost savings may be approved in writing by Authority as deviation, change, modification, alteration or exception from applicable Technical Provisions regarding design or construction, as described in PA Section 7.2.4 (*Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions*), and in such event shall not require a Supplemental Agreement. Any other change in the requirements of the DBF Documents shall require a Supplemental Agreement.

14.3 Directive Letters

14.3.1 Authority may at any time issue a Directive Letter to Developer regarding any matter for which a Supplemental Agreement can be issued or in the event of any Dispute regarding the scope of the Work or whether Developer has performed in accordance with the requirements of the DBF Documents. The Directive Letter will state that it is issued under this PA Section 14.3 (*Directive Letters*), will describe the Work in question and will state the basis for determining compensation, if any. Subject to PA Section 14.1.6 (*Request for Change Proposal*), Developer shall proceed promptly as directed in the Directive Letter, pending the execution of a formal Supplemental Agreement (or, if the Directive Letter states that the Work is within Developer's original scope of Work or is necessary to comply with the requirements of the DBF Documents, Developer shall proceed with the Work as directed but shall have the right to assert that an Authority Change has occurred). If Developer asserts that an Authority Change has occurred, Developer shall maintain Relief Event Records and Compensation Event Records with respect thereto, as applicable, and shall provide such records to Authority on a monthly basis in accordance with PA Section 13.1.2.3 (*Continuing Relief Event; Additional Event(s)*) and PA Section 13.1.6 (*Continuing Compensation Event; Additional Event(s)*).

14.3.2 The fact that a Directive Letter was issued by Authority will not be considered evidence that in fact an Authority Change occurred. The determination whether an Authority Change in fact occurred shall be based on an analysis of the original requirements of the DBF Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements. For avoidance of doubt, a directive issued via Formal Communication from Authority to Developer to perform the Work is not a Directive Letter.

14.4 Final Relief Event and Compensation Event Determinations

Any final Relief Event Determination that Developer is entitled to relief and/or final Compensation Event Determination that Developer is entitled to compensation issued by the Authority that has not been subject to dispute within 10 days, or, if disputed, finally determined pursuant to Dispute Resolution

Procedures, shall be set forth in a Supplemental Agreement. Such Supplemental Agreement shall provide for modification of the Contract Time, the Baseline Project Schedule and the Milestone Deadlines (pursuant to any such Relief Event Determination) and any modification of the DBF Contract Sum (pursuant to any such Compensation Event Determination), as the case may be.

14.5 Reductions in the DBF Contract Sum

14.5.1 If a Request for Change Proposal results in a net decrease in the cost of any of the Work, then any payment due from Authority to Developer under this Project Agreement may be adjusted downwards (or a credit may be owed in the future), reflecting any adjustments necessary for Breakage Costs or Breakage Benefits, if any, in accordance with PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) to reflect that Authority shall take the benefit of **50**% of such net decrease or such net savings, and Authority shall take the benefit of **100**% of the effect, if any, on the Baseline Project Schedule and Milestone Deadlines resulting from such Request for Change Proposal; provided, however, that alterations or changes in the Work resulting from Authority Requests for Change Proposal shall not reduce the scope of the Work by more than **10**% of the DBF Contract Sum in the aggregate.

14.5.2 If a Change Request results in a net decrease in the cost of any of the Work, then any payment due from Authority under this Project Agreement may be adjusted downwards (or a credit may be owed in the future), reflecting any adjustments necessary for Breakage Costs or Breakage Benefits, if any, to reflect the sharing in Authority's **50**% share of the net decrease in costs and such net savings, and where applicable, Authority shall also take the benefit of **50**% of the effect, if any, on the Baseline Project Schedule and Milestone Deadlines resulting from such Change Request.

14.6 Payment of Supplemental Agreements

Supplemental Agreements shall provide for the method and sources of payment as and when required in accordance with PA Section 13.4.5 (*Payment Options*). In connection with any Supplemental Agreement where the Authority notifies Developer that Authority intends to provide for payment through issuance of Approved Project Certificates, Developer shall undertake reasonable efforts to engage with Lenders on financing Supplemental Agreement payments through Approved Project Certificates. Prior to finalizing the payment terms of the relevant Supplemental Agreement, Authority and Developer shall meet and confer in good faith to discuss the feasibility of Developer accessing the financial markets to obtain financing for Approved Project Certificates issued through the proposed Supplemental Agreement, evaluate payment options, including the cost of financing through Approved Project Certificates. For the avoidance of doubt, and notwithstanding anything to the contrary in PA Section 13.4.1.1(c) and (j), (*Determining Compensable Amounts*), Developer shall be entitled to compensation as Developer Financing Costs for reasonable out-of-pocket expenses, including reasonable attorneys' fees, that Developer incurs in seeking to obtain financing for Approved Project Certificates that Authority proposes to issue through a Supplemental Agreement in accordance with this PA Section 14.6 (*Payment of Supplemental Agreements*), and reasonable and customary costs incurred to close any such Developer Financing.

14.7 Specific Change-Related Matters

14.7.1 Project Standards Changes

Developer shall provide prior Notice to Authority of any actual or pending Project Standards Change prior to implementing any changed Project Standards in the Work. Authority reserves the right to direct Developer not to implement any such Project Standards Change in the Work. If Developer commenced implementation of any such Project Standards Change prior to receiving Authority's response as to whether Developer should implement any such Project Standards Change, then Developer shall credit Authority for the cost of any unnecessary work performed, or shall exclude any additional costs associated

with redoing the work already performed prior to any receipt of Authority's response (even if such response confirms that Developer should implement any such Project Standards Change). For avoidance of doubt, Authority's response as to whether Developer should implement any such Project Standards Change is not, nor shall be deemed to be, a Directive Letter under PA Section 14.3 (*Directive Letters*). Refer to PA Section 7.2.6 (*Performance, Design and Construction Standards, Deviations; Permitted Design Exceptions*) for provisions relating to changes to certain design and construction standards raised by Authority to Developer.

14.7.2 Necessary Basic Configuration Changes

14.7.2.1 Developer shall be responsible for any cost increases or delays (or both) resulting from changes in requirements and obligations of Developer relating to the Project due to Errors in (a) the NEPA Basic Configuration or (b) the "Mandatory Configuration Elements" listed in TP Section 1.4 (Mandatory Configuration Elements) other than those that require a Necessary Basic Configuration Change.

14.7.2.2 If Developer commenced any Construction Work affected by the Necessary Basic Configuration Change after the earliest of (a) the date Developer knew of such conditions, (b) the date Developer had actual notice of such conditions, and (c) such date at which point Developer should have known of such conditions, in each case, that would require a Necessary Basic Configuration Change but prior to delivery of an appropriate Relief Event Notice or Compensation Event Notice (or both), then the Supplemental Agreement, following any final Relief Event Determination or final Compensation Event Determination (or both) shall allow Authority a credit for the cost of any unnecessary Work performed and shall exclude any additional costs associated with redoing the Work already performed after such date.

14.7.2.3 Developer's right to seek relief under this PA Section 14.7.2 (*Necessary Basic Configuration Changes*) is contingent upon performing the obligations and processes under PA Section 2.7 (*Developer Proposed/State Acquired Right of Way*).

14.7.3 Noise Barrier-Related

14.7.3.1 Authority Noise Barrier-Related Requests for Change Proposal

(a) Promptly following any Authority Request for Change Proposal pertaining to Noise Barriers, Developer shall prepare and submit to Authority for review, comment and acceptance the Submittals set forth in TP Section 5.4 (Noise Barriers).

(b) Following Authority's acceptance of the Submittals referred to in PA Section 14.7.3.1(a) (*Authority Noise Barrier-Related Requests for Change Proposal*):

(i) Authority will prepare an updated Traffic Noise Model to reflect the proposed Authority Change;

(ii) Developer shall update the Shop Drawings and RFC Design Documents to reflect the proposed Authority Change; and

(iii) following Developer's update under PA Section 14.7.3.1(b)(ii) (*Authority Noise Barrier-Related Requests for Change Proposal*), Authority will prepare a Noise Addendum and submit such Noise Addendum to FHWA for approval.

(c) If FHWA rejects the Noise Addendum submitted under PA Section 14.7.3.1(b)(iii) (*Authority Noise Barrier-Related Requests for Change Proposal*), Authority's precipitating Request for Change Proposal shall be deemed to have been withdrawn, and the Parties shall not enter into a Supplemental Agreement with respect to the original request pertaining to Noise Barriers.

(d) If FHWA approves the Noise Addendum submitted under PA Section 14.7.3.1(b)(iii) (*Authority Noise Barrier-Related Requests for Change Proposal*), the Parties shall enter into a Supplemental Agreement in accordance with PA Section 14.1.5 (*Request for Change Proposal*), and Developer shall proceed with implementing the Authority Change.

14.7.3.2 Developer-Proposed Noise Barrier-Related Changes

(a) Prior to proposing a Developer Change with respect to a change to the Noise Barrier Baseline Requirements, Developer shall submit a Developer Noise Barrier Change Memorandum in accordance with TP Section 5.4.2 (Developer Proposed Noise Barrier Location Changes) and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

(b) If Authority accepts the Developer Noise Barrier Change Memorandum, then Developer may propose a Developer Change with respect to a change to the Noise Barrier Baseline Requirements. Developer shall ensure that the Developer Change:

(i) meets the requirements set forth in the GDOT Noise Policy;

(ii) includes a copy of the Developer Noise Barrier Change Memorandum that sets out all required information in accordance with TP Section 5.4.2.2 (Requirements for Developer Noise Barrier Location Changes); and

(iii) includes noise barriers for all receivers identified in the Provided Environmental Approvals as benefiting from a noise barrier,

provided that if (i) and (iii) are inconsistent (in other words, if a noise barrier at a particular benefitted receiver location is required in order to satisfy (iii) but the GDOT Noise Policy would exclude such location), then the proposed Developer Change to the Noise Barrier Baseline Requirement shall include such location even though it conflicts with the GDOT Noise Policy.

(c) Promptly following issuance by Authority of a draft Supplemental Agreement under a Change Request under PA Section 14.2 (*Developer Changes*) with respect to a Developer Change described in this PA Section 14.7.3.2 (*Developer-Proposed Noise Barrier-Related Changes*), Developer shall prepare and submit to Authority the information specified in TP Section 5.4.2.4 (Change Information).

(d) Following receipt of the information referenced in PA Section 14.7.3.2(c) and the Authority's acceptance of the Submittals referred to in PA Section 14.7.3.2 (*Developer-Proposed Noise Barrier-Related Changes*):

(i) Authority shall cause GDOT to prepare an updated Traffic Noise Model to reflect the Developer Change;

(ii) Developer shall update the Shop Drawings and RFC Design Documents to reflect the Developer Change; and

(iii) the Authority shall cause GDOT to prepare a Noise Addendum and submit such Noise Addendum to FHWA for approval.

(e) If FHWA rejects the Noise Addendum submitted under PA Section 14.7.3.2(d)(iii) (*Developer-Proposed Noise Barrier-Related Changes*), then the draft Supplemental Agreement shall be deemed to have been withdrawn and the Parties shall not enter into a Supplemental Agreement in accordance with PA Section 14.2 (*Developer Changes*).

(f) If FHWA approves the Noise Addendum submitted under PA Section 14.7.3.2(d)(iii) (*Developer-Proposed Noise Barrier-Related Changes*), then the Parties shall enter into a Supplemental Agreement in accordance with PA Section 14.2 (*Developer Changes*) and Developer shall proceed with implementing the Developer Change.

14.7.4 Injunctions, Restraining Orders, Legal Restraints

If Developer seeks relief under clause (f) of the definition of "Compensation Event" or clause (j) of the definition of "Relief Event," then, at the sole option of Authority, and at such time as Authority may elect, Authority may deem such injunction, restraining order, or other legal restraint as a Termination by Court Ruling as set forth in PA Section 18.11 (*Termination by Court Ruling*) and PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

14.7.5 Snow and Ice Control Activities

If Authority determines that Developer is entitled to compensation regarding certain Maintenance Defects determined under TP Section 19.4.2 (Snow and Ice Damage and Post-Winter Inspections), then Developer and Authority will enter into a Supplemental Agreement memorializing the agreed costs (such a Supplement Agreement under this PA Section 14.7.5 *(Snow and Ice Control Activities)* to be limited to once per Fiscal Year for costs in the immediately preceding Fiscal Year).

14.7.6 Pre-Existing Hazardous Materials

If Developer has delivered a Compensation Event Notice pertaining to clause (e)(i)(A) or clause e(ii) of the definition of "Compensation Event," then Developer may seek compensation in its Detailed Compensation Event Notice for costs incurred with respect to such Compensation Event, calculated in accordance with PA Section 13.4.1 (*Determining Compensable Amounts*); provided, however, that (i) Developer may only submit a claim for compensation in respect of any individual Compensation Event for Pre-existing Hazardous Materials pursuant to clause (e)(i)(A) or clause (q)(e)(ii) of the definition of "Compensation Event" after incurring $100,000 of compensable costs in respect of such Compensation Event, and (ii) the Authority shall not be required to pay to Developer the first $100,000 of compensable costs for any individual Compensation Event for Pre-existing Hazardous Materials pursuant to clause (e)(i)(A) or clause (e) (ii) of the definition of "Compensation Event".

Article 15 REPRESENTATIONS AND COVENANTS

15.1 Developer Representations and Covenants

Developer hereby represents to and covenants with Authority as follows:

15.1.1 During all periods necessary for the performance of the Work, Developer, its employees and its Contractor(s) have maintained and will maintain all required authority, license status, applicable licensing standards, certification standards, accrediting standards, professional ability, skills and capacity to perform the Work.

15.1.2 As of the Effective Date, Developer has evaluated the constraints affecting design and construction of the Project, including the Property, the Project Limits, as well as the conditions of the NEPA

Approval, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

15.1.3 Developer has evaluated the feasibility of performing the Work within the time and for the amount herein, accounting for the aforementioned and following constraints, as well as other factors, and has reasonable grounds for believing and does believe that performance of the Work is feasible and practicable.

15.1.4 Except as to parcels that GDOT or Authority lacked title or access to prior to the Effective Date, but subject to Authority's obligations regarding Hazardous Materials under PA Section 7.8 (*Environmental Compliance*) and PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*), relief under the terms, and subject to the conditions, under PA Section 7.13 (*Existing Improvements and Latent Defects*), and Developer's rights to seek relief under PA Article 13 (*Relief Events; Compensation Events*), Developer, in accordance with Good Industry Practice and the requirements of the DBF Documents, conducted a Reasonable Investigation and otherwise examined the Existing Right of Way and, to the extent not then within the Existing Right of Way, the Property, as well as surrounding locations, and as a result of such review, inspection, examination and other activities Developer is familiar with, and has satisfied itself as to, the character of the Site, including quality and quantity of surface, subsurface, and latent physical conditions, materials or obstacles that may be encountered, including to the extent required under O.C.G.A. § 32-2-60, and accepts the physical requirements of the Work.

15.1.5 Developer has familiarized itself with the requirements of any and all applicable Laws, including O.C.G.A. § 48-13-30 *et seq.*, and the conditions of any required Governmental Approvals prior to entering into this Project Agreement. Except as specifically permitted under PA Article 13 (*Relief Events; Compensation Events*) or PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*), Developer has complied and shall comply with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the DBF Documents. As of the Effective Date, Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the DBF Documents.

15.1.6 All Work furnished by Developer will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the DBF Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them, it being understood further that the award of the Project Agreement was based, in part, on the qualifications and experience of the personnel listed in the Proposal, and accordingly, Developer's commitment that such individuals will be available to undertake and perform the Work as was proposed and committed.

15.1.7 Developer shall at all times schedule and direct the Work to provide an orderly progression thereof so as to complete the applicable portions thereof by the applicable Milestone Deadlines, in each case in accordance with the accepted and then-current Baseline Project Schedule, including furnishing of such employees, materials, facilities, equipment and working such hours and shifts (including extra shifts and overtime shifts, Sundays and State of Georgia or federal public holidays), in each case as may be necessary to accomplish the foregoing, in each case at Developer's sole cost and expense, except as expressly stated otherwise under this Project Agreement.

15.1.8 As of the Effective Date, Developer is a limited liability company, duly organized and validly existing under the laws of the State of Georgia, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the DBF Documents, the Principal Project Documents as and to the extent applicable, and any Developer Financing Agreements to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do business, and is in good standing, in the State of Georgia as of the Effective Date, and will remain duly qualified and in good standing throughout the term of this Project Agreement and for as long thereafter as any obligations remain outstanding under the DBF Documents.

15.1.9 The execution, delivery and performance of the DBF Documents, the Principal Project Documents, and any Developer Financing Agreements to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing the DBF Documents and all other such Project related documents, on behalf of Developer has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Developer; and the DBF Documents, and all such other Project related documents have been (or will be) duly executed and delivered by Developer.

15.1.10 Neither the execution and delivery by Developer of the DBF Documents, the Principal Project Documents, and Developer Financing Agreements to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer or any agreement, judgment, or decree to which Developer is a party or is bound.

15.1.11 As of the Effective Date, each of the DBF Documents, the Principal Project Documents, and Developer Financing Agreements to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each Developer Member, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.1.12 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer that challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the DBF Documents, and all other Project related documents to which Developer is a party, or that challenges the authority of Developer's official executing the DBF Documents, the Principal Project Documents, or Developer Financing Agreements; and Developer has disclosed to Authority or GDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware. Developer has no current, pending or outstanding criminal, civil, or enforcement actions initiated by GDOT, Authority or the State and agrees that it will immediately notify Authority of any such actions.

15.1.13 As of the Proposal Due Date, Developer disclosed to Authority in writing all organizational conflicts of interest of Developer and its Contractors of which Developer was actually aware; and between the Proposal Due Date and the Effective Date, Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Developer or its Contractors identified in its Proposal that have not been approved in writing by Authority. For this purpose, organizational conflict of interest has the meaning set forth in the RFP.

15.1.14 If the D&C Contractor is not Developer, then Developer represents and warrants, as of the effective date of the Design-Build Contract, as follows: (a) the D&C Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business, and is in good standing, in the State; (b) with respect to Persons that individually hold more than

10% of the capital stock of the D&C Contractor (including options, warrants and other rights to acquire capital stock), such stock is owned by the Persons whom Developer has set forth in a written certification delivered to Authority or GDOT prior to the Effective Date; (c) the D&C Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the D&C Contractor (i) has obtained and will maintain all necessary or required registrations, permits, licenses and approvals required under applicable Law, and (ii) has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the design and construction of the Project in accordance with the DBF Documents; (e) the D&C Contractor is not in breach of any applicable Law that would have a material adverse effect on the design and construction of the Project; and (f) the D&C Contractor will comply with all health, safety and environmental Laws in the performance of any Work activities for, or on behalf of, Developer for the benefit of GDOT and Authority.

15.1.15 Neither the execution and delivery by Developer of this Project Agreement and all other Project related documents to which Developer is a party nor the consummation of the transactions hereby or thereby, has resulted or will result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.1.16 The execution and delivery by Developer of the DBF Documents and performance by Developer of its obligations thereunder will not conflict with any Laws applicable to Developer that are valid and in effect on the Effective Date. As of the Effective Date, Developer is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the DBF Documents.

15.1.17 No event that, with the passage of time or the giving of notice, would constitute a Developer Default has occurred and has not yet been cured.

15.1.18 Developer certifies, by entering into this Project Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Project Agreement by any federal agency or by any department, agency or political subdivision of the State, including GDOT and Authority. For purposes of this PA Section 15.1.18 (*Developer Representations and Covenants*), the term "principal" for purposes of this Project Agreement means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Developer.

15.1.19 Developer represents, warrants and certifies by entering into this Project Agreement, that neither it nor its Affiliates are presently in arrears in payment of Taxes, permit fees or other statutory, regulatory or judicially required payments to Authority, GDOT or the State.

15.1.20 Developer acknowledges and agrees, that as a requirement to enter into the DBF Documents, the Proposal documents delivered pursuant to the RFP, and the Detailed Cost and Pricing Data, collectively constitute all the information used in the preparation of the Proposal, and that no other Proposal preparation information will be considered in the resolution of Disputes. Developer also agrees that nothing in the Proposal documents delivered pursuant to the RFP shall change or modify the terms or conditions of the DBF Documents.

15.1.21 Developer represents, warrants, and certifies that the Proposal Schedule meets all requirements of TP Section 2 (Project Management), including specifically all Milestone Deadlines consistent with the Milestone Schedule, as each may be adjusted pursuant to Proposal Commitments, if any.

15.1.22 Developer agrees to provide Notice to Authority promptly after (i) the occurrence of a breach of any material provision of Developer Financing Agreements and before all cure periods thereunder with respect to any such default have expired without cure or waiver of such breach by the applicable party or (ii) the termination of any Developer Financing Agreement.

15.2 Authority Representations and Covenants

Authority hereby represents to and covenants with Developer as follows:

15.2.1 As of the Effective Date, Authority has full power, right and authority to execute, deliver and perform the DBF Documents, the Intergovernmental Agreement, the Estate for Years, and the Principal Project Documents to which Authority is a party and to perform each and all of the obligations of Authority provided for herein and therein.

15.2.2 As of the Effective Date, each of the DBF Documents, the Intergovernmental Agreement, the Estate for Years, and the Principal Project Documents to which Authority is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Authority, enforceable against Authority in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.2.3 The execution and delivery by Authority of the DBF Documents, the Intergovernmental Agreement, the Estate for Years, and the Principal Project Documents to which Authority is a party will not result, at the time of execution, in a default under any other agreement or instrument to which Authority is a party or by which it is bound.

15.2.4 The execution and delivery by Authority of the DBF Documents, the Intergovernmental Agreement, the Estate for Years, and performance by Authority of its obligations thereunder will not conflict with any Laws applicable to Authority that are valid and in effect on the Effective Date.

15.2.5 Authority, pursuant and subject to the Intergovernmental Agreement, has authorized and appointed GDOT to act as Authority's project manager, representative, and agent for the purpose of causing the acquisition, design, building, and financing of the Project.

15.2.6 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and properly served on Authority, or, to Authority's knowledge, without obligation to investigate, threatened, that challenges Authority's authority to execute, deliver or perform, or the validity or enforceability of, the DBF Documents, the Intergovernmental Agreement, the Estate for Years, and all other Project related documents to which Authority is a party.

15.2.7 As of the Effective Date, there has been no amendment, variation, modification or waiver of any terms of the Joint Resolution since its adoption.

15.2.8 As of the Effective Date, there has been no amendment, variation, modification or waiver of any terms of the Intergovernmental Agreement, the MOU, or the Estate for Years since its execution.

15.2.9 Authority will promptly notify Developer if it becomes aware of any amendment, variation, modification or waiver of any terms of the Intergovernmental Agreement or the Estate for Years.

15.2.10 Authority will at all times seek to enforce its rights under the Intergovernmental Agreement and the Estate for Years to the extent necessary to fulfill its obligations under this Project Agreement.

15.2.11 As of the Effective Date, no event that, with the passage of time or the giving of notice, would constitute an Authority Default has occurred and has not yet been cured.

15.3 Special Remedies for Mutual Breach of Representations and Covenants

Notwithstanding any other provision of this Project Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the representations or covenants set forth in this PA Article 15 (*Representations and Covenants*) by both Developer and Authority but does not also constitute or result in any other breach or default by either Party, then such breaches shall not form the basis for a Compensation Event by Developer against Authority or damage claim by Authority against Developer. Instead, the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the DBF Documents and Principal Project Documents as set forth in PA Section 22.13 (*Severability*), or Termination by Court Ruling as set forth in PA Section 18.11 (*Termination by Court Ruling*) and PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

Article 16 INSURANCE; PERFORMANCE SECURITY; INDEMNITY

16.1 Insurance

16.1.1 Insurance Policies and Coverage

At minimum, Developer shall procure and keep in effect the Insurance Policies through the Warranty Period, or cause them to be procured and kept in effect through the Warranty Period, and in each case satisfy the requirements set forth in this PA Section 16.1 (*Insurance*) and PA Exhibit 17 (*Insurance Coverage Requirements*). All insurance placed shall be consistent with, and comply with the policies and requirements of O.C.G.A. § 50-21-37. Authority reserves the right to review the proposed terms and conditions of all project-specific Insurance Policies, for compliance with the requirements of this PA Section 16.1 (*Insurance*) and PA Exhibit 17 (*Insurance Coverage Requirements*) prior to final placement of such Insurance Policies. Developer shall be a named insured on all Insurance Policies, unless otherwise noted.

16.1.2 General Insurance Requirements

16.1.2.1 Qualified Insurers

Each of the Insurance Policies required hereunder shall be procured from an insurer that, at the time coverage under the applicable policy commences is:

(a) authorized to do business in the State and having a current policyholder's management and financial size category rating of A- (A minus) or better and Class VIII by A.M. Best and Company's Insurance Reports Key Rating Guide; or

(b) otherwise approved in writing by Authority.

If an insurer providing any of the Insurance Policies (i) loses the ratings set forth in PA Section 16.1.2.1(a) (*Qualified Insurers*), or (ii) becomes the subject of bankruptcy proceedings, becomes insolvent or is the subject of an order by the State, Developer shall replace, or procure the replacement of, the insurer

complying with the same coverages, terms and conditions of this PA Section 16.1 (*Insurance*) and PA Exhibit 17 (*Insurance Coverage Requirements*) within 60 days, as approved by Authority.

16.1.2.2 Deductibles

(a) Neither Authority nor GDOT shall have any liability for deductibles or self-insured retentions ("SIRs") and amounts in excess of the coverage provided, unless part of a Compensation Amount or Termination Compensation. Developer may use SIRs in lieu of deductibles with respect to Insurance Policies, so long as Developer disclosed all such Insurance Policies, on a continuing basis, by Formal Communication to Authority.

(b) Developer may allocate responsibility and liability for the payment of the deductible or SIR to the Developer-Related Entity responsible for the matter giving rise to an insurable claim under the applicable Insurance Policy under which it is a named insured, however Developer shall remain the party with primary responsibility for payment of any deductible or SIR.

16.1.2.3 Primary Coverage

Each Insurance Policy specified in PA Exhibit 17 (*Insurance Coverage Requirements*) shall provide that the coverage thereof is primary and non-contributory coverage with respect to all named or additional insureds except for coverage that by its nature cannot be written as primary. Any other insurance maintained by an insured or an additional insured shall be excess of and non-contributory with any insurance available to the Project, and Developer shall provide evidence sufficient, in Authority's sole determination, by Formal Communication, of such other insurance that Developer intends to rely upon to respond to claims or potential claims with respect to the Work or the Project as and when the corresponding or analogous insurance is required to be placed hereunder.

16.1.2.4 Verification of Coverage

(a) At any time Developer is required to obtain or cause to be obtained any Insurance Policy, including insurance coverage required of Contractors, and thereafter not later than five days prior to the expiration date of each Insurance Policy, Developer shall deliver to Authority a certificate of insurance. At or before the time initial proof of insurance coverage is to be provided, Developer shall provide Authority with a copy of the insurance company binder or, if available, the policy as evidence that compliant coverage is in place, if not previously provided.

(b) In addition, within a reasonable time after coverages are initially bound or renewed (but not to exceed 60 days after placement), Developer shall deliver to Authority (i) a complete certified copy of each such project specific insurance policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto and (ii) satisfactory evidence of payment of the premium therefor.

(c) If Developer has not provided Authority with the foregoing proof of coverage and payment within five days after Authority delivers to Developer Notice of a Developer Default under PA Section 17.1.1.6 (*Developer Default*) and demand for the foregoing proof of coverage, Authority may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in place, (i) obtain such an Insurance Policy; and Developer shall reimburse Authority for the cost thereof upon demand, and (ii) suspend all or any portion of Work and close the Project until Authority receives from Developer such proofs of coverage in compliance with this PA Section 16.1 (*Insurance*) (or until Authority obtains an Insurance Policy, if it elects to do so).

(d) In addition to the foregoing, promptly following Authority's request, Developer shall make available for Authority's review, copies of all such project Insurance Policies and reports of all losses reported and incurred on the Project, whether such losses are covered by Project-specific policies or not.

16.1.2.5 Project-Specific Insurance

Except as expressly provided otherwise in PA Exhibit 17 (*Insurance Coverage Requirements*), all Insurance Policies required hereunder shall be purchased specifically and exclusively for the Project with coverage limits, purchased on a Project term basis to include the design, construction, any warranty period and any extended discovery or reporting period called for, devoted solely to the Project. Developer must disclose the expected costs of all Project specific insurance policies obtained or proposed to be obtained. Developer may include Project insurance requirements under this PA Section 16.1 (*Insurance*) and PA Exhibit 17 (*Insurance Coverage Requirements*) within or under a Developer-Related Entity/ies corporate or insurance program, so long as the program affords the Project dedicated policy limits and sublimits, as applicable, under each Insurance Policy, with Developer as a named insured.

16.1.2.6 Policies with Insureds in Addition to Developer

All Insurance Policies that are required to insure Persons (whether as named or additional insureds) in addition to Developer shall comply or be endorsed to comply with the following provisions.

(a) The General Liability and Builders Risk Insurance Policies shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project or Developer's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, managers, directors, officers, employees, agents and Project consultants).

(b) The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Such provision shall provide that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of another named insured, or any breach by named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage for the other insureds on the policy.

(c) All endorsements adding additional insureds to required Insurance Policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the Insurance Policy generally.

16.1.2.7 Additional Terms and Conditions

(a) Each Insurance Policy shall be endorsed to state that coverage cannot be canceled or materially reduced in coverage or in limits (except with respect to payments under the policy that by their nature erode or deplete the limits of such policy) by the insurer after 30 days' prior written Notice (or 10 days' Notice for non-payment of premium) by mail (registered or certified, return receipt requested) or by email (with a "hard copy" to follow), has been given to Authority and each other insured or additional insured party requiring such notice; provided that Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in PA Section 16.1.8 (*Uninsurable Risks*). Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(b) Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability Insurance Policies).

(c) Each Insurance Policy shall otherwise not contain exclusions or gaps that reduce coverage below the minimum levels and required limits set forth herein.

16.1.2.8 Waivers of Subrogation

Developer waives all rights against the Indemnified Parties, for any claims to the extent covered by valid and collectible insurance placed by or on behalf of Developer, including insurance obtained pursuant to this PA Section 16.1 (*Insurance*), except such rights as they may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under PA Section 16.1.4.3 (*Prosecution of Insurance Claims*), then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Contractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each Insurance Policy, including workers' compensation if permitted under the applicable workers' compensation insurance Laws, shall include an express waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss, whether by endorsement or otherwise.

16.1.2.9 No Recourse

There shall be no recourse against Authority, GDOT, the State or any other agency or department thereof, or any of their respective Constituents for payment of premiums, deductibles and SIRs, or other amounts with respect to the Insurance Policies required hereunder, except to the extent of increased premium costs recoverable under PA Article 13 (*Relief Events; Compensation Events*) or PA Section 14.1 (*Authority Changes*).

16.1.2.10 Support of Indemnifications

The Insurance Policies shall support but are not intended to limit Developer's indemnification obligations under the DBF Documents.

16.1.2.11 Adjustments in Coverage Amounts

(a) During the Term, as and to the extent that Authority elects to increase any minimum coverage limits as required pursuant hereto and as set forth under PA Exhibit 17 (*Insurance Coverage Requirements*), such additional premium costs shall be reimbursed to Developer as a Compensation Event. Any such requirement for additional coverage shall be subject to Developer's ability to obtain such additional coverage as and to the extent reasonably and commercially available.

(b) Any Dispute regarding increases in limits or adjustments to deductibles shall be resolved according to the Dispute Resolution Procedures.

16.1.2.12 Contractor Insurance Requirements

(a) Developer's obligations regarding Contractors' insurance are contained in PA Exhibit 17 (*Insurance Coverage Requirements*).

(b) If any Contractor fails to procure and keep in effect the insurance required of it under PA Exhibit 17 (*Insurance Coverage Requirements*) and Authority asserts the same as a Developer Default hereunder, Developer may, within the applicable cure period, cure such Developer Default by (i) causing

such Contractor to obtain the requisite insurance and providing to Authority proof of insurance, (ii) procuring the requisite insurance for such Contractor and providing to Authority proof of insurance or (iii) terminating the Contractor and removing its personnel from the Site.

(c) Notwithstanding the foregoing, and for avoidance of doubt, the D&C Contractor shall place insurance consistent with the requirements for Developer and not Contractors.

16.1.2.13 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional and pollution liability Insurance Policies.

16.1.2.14 Contesting Denial of Coverage

If any insurer under an Insurance Policy denies coverage with respect to any claims reported to such insurer, upon Developer's request, Authority and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

16.1.2.15 Requirements Not Limiting

(a) The Parties acknowledge and agree that: (i) requirements of specific coverage features or limits contained in this PA Article 16 (*Insurance; Performance Security; Indemnity*) and in PA Exhibit 17 (*Insurance Coverage Requirements*) are minimum coverages only and not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any Insurance Policy; (ii) specific reference to a given coverage feature is not intended to be all-inclusive, or to the exclusion of other coverage, or a waiver of any type; and (iii) all insurance coverage and limits provided by Developer, or by third parties pursuant to obligations of Developer hereunder, and, in each case, available or applicable to this Project Agreement are intended to apply to the full extent of the Insurance Policies, and nothing contained in this Project Agreement limits, or shall be deemed to limit, the application of such insurance coverage.

(b) It is understood that insurance coverage described herein does not limit any obligations or liability of Developer under the Project Agreement. Furthermore, the insurance limits required hereunder are minimum limits only and not intended to restrict the liability imposed on Developer, any Contractor, or any of its or their Subcontractors or Suppliers at any tier, or otherwise to limit or reduce coverage amounts or limits under any insurance policies procured by any such Persons.

16.1.2.16 Adjustments to Insurance Requirements

In the event that Substantial Completion is not achieved by March 14, 2031 or Final Acceptance is not achieved by September 10, 2031, Developer may submit a request to Authority to adjust the insurance requirements for all remaining Work to be performed under the Project Agreement to (1) allow the use of corporate program insurance policies for all required coverages and/or (2) to made specific adjustment to reduce excess liability limits and sublimits and increase deductibles in light of the remaining Work to be performed and the then-current conditions of the relevant insurance market. Such request shall set forth Developer's detailed rationale for the request and comparison of the cost of extending the original insurance (if extension is available) versus modifying the requirements in the manner proposed by Developer to avoid excessive premium increases, including supporting documentation. The Authority shall consider such

request in good faith, taking into account the facts presented by Developer, provided that the Authority may grant or reject the Developer's request, or propose alternative requirements, in the Authority's sole discretion. If the Authority determines to permit modification of the insurance requirements based upon the Developer's request, the parties shall document mutually agreed modifications in an amendment to this Agreement.

16.1.3 Lender Insurance Requirements; Additional Insurance Policies

16.1.3.1 If under the terms of any Developer Financing Agreements, Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles, or broader coverage than required under this Project Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Project Agreement provided such Insurance Policy meets all the other applicable requirements of this PA Section 16.1 (*Insurance*) and PA Exhibit 17 (*Insurance Coverage Requirements*).

16.1.3.2 If Developer carries (or procures) any other insurance applicable to this Project (other than Developer's customary blanket coverage), then Developer shall include the Indemnified Parties as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in PA Section 16.1.2.6(c) (*Policies with Insureds in Addition to Developer*); and Developer shall provide to Authority the proofs of coverage and copy of the policy described in PA Section 16.1.2.4 (*Verification of Coverage*). If, however, Developer demonstrates to Authority that inclusion of such Persons as additional insureds will increase the premium, Authority will elect either to pay the increase in premium or forego additional insured coverage. The provisions of PA Sections 16.1.2.4 (*Verification of Coverage*), 16.1.2.6 (*Policies with Insureds in Addition to Developer*), 16.1.2.7 (*Additional Terms and Conditions*), 16.1.2.8 (*Waivers of Subrogation*), 16.1.2.9 (*No Recourse*), 16.1.2.14 (*Contesting Denial of Coverage*) and 16.1.4 (*Prosecution of Insurance Claims*) shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

16.1.4 Prosecution of Insurance Claims

16.1.4.1 Unless otherwise directed by Authority in writing with respect to Authority's insurance claims and subject to the requirements of PA Sections 16.5 (*Indemnity by Developer*) and 16.6 (*Defense and Indemnification Procedures*) below, Developer shall be responsible for reporting and processing all potential claims by Authority or Developer against the Insurance Policies required hereunder. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all matters that may give rise to an insurance claim by Developer or Authority or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

16.1.4.2 Authority agrees to promptly notify Developer of Authority's incidents, potential claims against Authority, and matters that may give rise to an insurance claim against Authority, to tender to the insurer Authority's defense of the claim under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

16.1.4.3 If in any instance Developer has not performed its obligations respecting insurance coverage set forth in the DBF Documents or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims

diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from Authority to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Developer performed such obligations and not committed such failure. Nothing in this PA Section 16.1.4 (*Prosecution of Insurance Claims*) or elsewhere in this PA Section 16.1 (*Insurance*) shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer that at the time the Insurance Policy is written meets the rating qualifications set forth in this PA Section 16.1 (*Insurance*).

16.1.4.4 Developer shall not settle or accept any settlement of any insurance claim that is in excess of $250,000 or that involves any claim that has been asserted against Authority, GDOT, the State or any agency or department thereof, without prior written approval of Authority, provided that Developer shall not be required to obtain Authority approval for workers' compensation claims. Developer shall provide Notice to Authority and GDOT promptly after settling or accepting any settlement of any insurance claim.

16.1.4.5 If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by Authority or another Indemnified Party, then Authority or the other Indemnified Party may, but is not obligated to, (a) notify Developer in writing of Authority's intent to report the claim directly with the insurer and thereafter process the claim, and (b) proceed with reporting and processing the claim if Authority or the other Indemnified Party does not receive from Developer, within 10 days after so notifying Developer, written proof that Developer has reported the claim directly to the insurer. Authority or the other Indemnified Party may dispense with such notice to Developer if Authority or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

16.1.5 Umbrella and Excess Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall be "following-form" and comply with all insurance requirements, terms and provisions set forth in this Project Agreement for the applicable type of coverage.

16.1.6 Application of Insurance Proceeds

All insurance proceeds received for physical property damage to the Project under any Insurance Policies, other than any business interruption or similar insurance maintained as part of such Insurance Policies, shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Project with respect to which such proceeds were received. For avoidance of doubt, and without limiting either the provisions of PA Section 7.9.6 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) or Developer's right to assert a Relief Event or Compensation Event (or both), Developer assumes all liabilities regarding, and shall maintain, rebuild, repair, restore or replace, all Work or other portions of the Project, whether owned by Developer or another Person, or both, in each case that is damaged due to any construction or design defect, or that is damaged due to any other cause related to the Developer's warranty Work, until expiration of the Warranty Period regardless of the cause of the damage or injury, at no additional cost to Authority.

16.1.7 Inadequacy of Required Coverages

Authority makes no representation that the scope of coverage and limits of liability specified for any Insurance Policy to be carried pursuant to this Project Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under this Project Agreement to Authority, or its

liabilities to any third party. It is the responsibility of Developer and each Contractor to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude Authority from taking any actions as are available to it under the DBF Documents, or otherwise at Law.

16.1.8 Uninsurable Risks

16.1.8.1 If a risk usually covered by Builder's Risk, General Liability, Professional Liability or Umbrella Liability Insurance Policy/ies, in each case required under this Project Agreement, becomes an Uninsurable Risk, then Developer shall notify Authority as soon as reasonably practicable and in any event within 15 Business Days of the earlier of:

(a) Developer becoming aware that the risk is likely to be an Uninsurable Risk; and

(b) The risk becoming an Uninsurable Risk, and in any event at least 15 Business Days before expiry or cancellation of any existing insurance with respect to that risk (in each case irrespective of the reason for the same). Developer shall provide Authority with such information as Authority reasonably requests regarding the Uninsurable Risk.

16.1.8.2 If both Parties agree, or it is determined pursuant to the Dispute Resolution Procedures, that the risk is an Uninsurable Risk, Authority and Developer shall consider in good faith alternative insurance packages and programs that provide comparable coverage as is possible under then-existing insurance market conditions and other means by which the risk should be managed or shared (including considering the issue of self-insurance by either party).

16.2 Performance and Payment Security

Developer shall have the option of furnishing, or causing D&C Contractor to furnish, either both of the P&P Bonds (and Warranty Bond, as and when required and elected, if placed) meeting the requirements of this PA Section 16.2 (*Performance and Payment Security*) as performance and payment security for the Work, and that shall not include security specific to any Developer Financing. Such performance and payment security is being furnished pursuant to O.C.G.A. § 32-2-80(e). Notwithstanding anything to the contrary in the DBF Documents, Developer shall provide payment and performance security such that Authority (and all additional obligees under surety bonds) have access thereto from the Effective Date through expiration of the Warranty Period. Furthermore, notwithstanding anything to the contrary in the DBF Documents, performance by a Surety or Guarantor of any of the obligations of Developer shall not relieve of any of its obligations hereunder.

16.2.1 P&P Bonds

16.2.1.1 Developer shall obtain and maintain, or cause to be obtained and maintained by the D&C Contractor, and deliver to Authority P&P Bonds, each in the amount, subject to PA Section 16.2.1.5 (*P&P Bonds*) equal to 50% of the D&C Amount (excluding the Unexpected Subsurface Conditions Allowance and the price for Independent Administrative Quality Assurance and Independent Design Quality Assurance services under the IQF Contracts), identifying Developer (or if D&C Contractor is furnishing, D&C Contractor) as the P&P Obligor, and Authority as the Obligee (or if D&C Contractor is furnishing, Authority and Developer as Obligees) in substantially the respective form attached at PA Exhibit 21 (*Forms of P&P Bonds, Warranty Bond*), securing Developer's obligations to perform the Work and to ensure that payments owing to Claimants are made with respect to such Work. If the D&C Contractor is furnishing the P&P Bonds, then the Design-Build Contract (a) shall obligate the D&C Contractor to perform all of the D&C Work, (b) shall include the D&C Contractor's express representation and warranty that the D&C Contractor understands and agrees that its scope of work under

the D&C Contract is intended to be coextensive with Developer's obligations with respect to the D&C Work, and (c) shall provide that such representation, warranty and agreement are given for the benefit of GDOT as a third party beneficiary.

16.2.1.2 The P&P Bonds shall each be issued by a properly licensed and U.S. Treasury listed surety(ies) that have not less than A or better and Class VIII by A.M. Best and Company's Insurance Reports Key Rating Guide, and listed on Treasury Department Circular 570 (each such surety, a "Surety"). If either of the P&P Bonds are issued by more than one Surety, such P&P Bond(s) shall be executed on a joint and several basis, identifying the lead Surety (that will be the sole recipient of Authority communications, on behalf of all Sureties).

16.2.1.3 The performance bond of the P&P Bonds shall provide performance security from the Effective Date up to the Final Acceptance Date. The payment surety bond of the P&P Bonds shall provide payment security from the Effective Date up to the date that is the later of (i) two years from the date of Final Acceptance and (ii) expiration of the Warranty Period.

16.2.1.4 If Authority does not receive any certificate, release, certified payroll or affidavit of wages paid as required by PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), it may require Developer to immediately increase the penal sum of the payment surety bond of the P&P Bonds to such amount as Authority determines is appropriate to protect Authority's and GDOT's interests and the Project, provided that the amount of any such increase shall not exceed the value of Work for which Authority did not receive any such certificate, release, certified payroll or affidavit of wages paid.

16.2.1.5 The penal sum of each of the P&P Bonds shall be adjusted pursuant to any Supplemental Agreement or Project Agreement amendment that adjusts the D&C Amount so as to conform to the valuation requirement set forth in PA Section 16.2.1.1 (*P&P Bonds*).

16.2.2 Warranty Period Payment and Performance Security

16.2.2.1 Developer shall, as a condition to Final Acceptance, either (a) furnish, or cause the furnishing of, the Warranty Bond, and deliver the Warranty Bond, in the amount equal to **10**% of the D&C Amount, as may have been further adjusted pursuant to this Project Agreement, identifying Developer as the P&P Obligor and Authority as the Obligee in substantially the respective form attached at PA Exhibit 21 (*Forms of P&P Bonds, Warranty Bond*), securing Developer's obligations to perform the Warranty Work, or (b) cause the penal sum of the performance bond of the P&P Bonds to be reduced to **10**% of the D&C Amount, as may have been further adjusted pursuant to this Project Agreement (and provide such evidence, as is sufficient in GDOT's sole discretion, to reflect the reduction). For avoidance of doubt, the payment surety bond of the P&P Bonds shall remain in full force and effect to ensure that payments owing to Claimants are made with respect to such Work for the duration described in PA Section 16.2.1.3 (*P&P Bonds*); provided, however, that at the expiration of the later of (a) one year following the Final Acceptance Date and (b) expiration of the statute of limitations under State Law, Developer may reduce the penal sum of such payment surety bond to the amount described in this PA Section 16.2.2.1 (*Warranty Period Payment and Performance Security*), or, deliver a new payment surety bond with penal sum equal to the amount described in this PA Section 16.2.2.1 (*Warranty Period Payment and Performance Security*).

16.2.2.2 When Developer delivers the Warranty Bond (and, if applicable, a new payment surety bond of the P&P Bonds) from a Surety under this PA Section 16.2.2 (*Warranty Period Payment and Performance Security*), then, without limiting the general requirement with respect to duration under PA Section 16.2 (*Performance and Payment Security*), Authority will release the existing surety bond(s) in exchange for the new surety bond(s).

16.3 Letters of Credit

16.3.1 General Provisions

Except for those additional or different requirements as pertain to the Financial Close Security that is a letter of credit, wherever in the DBF Documents Developer has the option or obligation to deliver to Authority a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the DBF Documents:

16.3.1.1 Developer shall ensure that the letter of credit shall:

(a) be a standby letter of credit;

(b) at all times during the term of such letter of credit be maintained by a financial institution with (i) long-term, unsecured debt ratings of not less than "A" or "A2," as applicable, issued by at least two of the Rating Agencies and (ii) an office in the continental United States at which the letter of credit can be presented for payment;

(c) without limiting PA Section 16.3.2.2 (*Special Letter of Credit, Financial Close Security Provisions*) be in form approved by Authority in its good faith discretion;

(d) be payable immediately, conditioned only on written presentment from Authority to the issuer of a sight draft drawn on the letter of credit and a certificate stating that Authority has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to Authority, without requirement to present the original letter of credit;

(e) provide an expiration date not earlier than one year from date of issue (or such longer term as may be required under the DBF Documents);

(f) allow for multiple draws; and

(g) name Authority and GDOT as the beneficiaries, except as otherwise expressly provided to the contrary in the DBF Documents.

16.3.1.2 Authority will have the right to draw on the letter of credit after not less than five Business Days' prior Notice to Developer for draws under clause (a) below and without prior notice to Developer for draws under clause (b) below, unless otherwise expressly provided in the DBF Documents with respect to the letter of credit if, (a) Developer has failed to pay or perform when due the duty, obligation or liability under the DBF Documents for which the letter of credit is held, or (b) Developer for any reason fails to deliver to Authority a new or replacement letter of credit on the same terms as (x) required under PA Section 16.3.1.5 (*General Provisions*), or (y) by not later than 30 days before the expiration date of the existing letter of credit, unless the applicable terms of the DBF Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question. For all draws conditioned on prior Notice from Authority to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security of Developer. If Authority draws on the letter of credit under clause (a) above, Authority will use and apply the proceeds as provided in the DBF Documents for such letter of credit. If Authority draws on the letter of credit under clause (b) above, Authority will be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit without payment of interest to Developer.

16.3.1.3 Authority will use and apply draws on letters of credit toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). If Authority receives proceeds of a draw in excess of the relevant obligation, Authority will promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

16.3.1.4 Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from Authority a refund of the proceeds that are misapplied, interest thereon, at the Default Interest Rate from the date of improper draw until repaid, and subject to PA Section 17.6.4 (*Limitations on Remedies*), reimbursement of the reasonable costs Developer incurs as a result of such misapplication; provided that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Project Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

16.3.1.5 If at any time, the issuer of any outstanding letter of credit delivered in accordance with the terms of this Project Agreement receives a current credit rating lower than that specified in PA Section 16.3.1.1(b) (*General Provisions*), Developer shall (i) immediately after becoming aware, notify Authority thereof in writing and (ii) promptly replace such letter of credit with a new letter of credit, conforming with the requirements of PA Section 16.3.1.1 (*General Provisions*). Developer shall obtain and furnish all letters of credit and replacements thereof required hereunder at its sole cost and expense, and shall pay all charges imposed in connection with Authority's presentment of sight drafts and drawing against letters of credit or replacements thereof.

16.3.1.6 In the event Authority makes a permitted assignment of its rights and interests under this Project Agreement, Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

16.3.1.7 Authority acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), Authority's draw may only be based on the underlying obligations of such Person.

16.3.2 Special Letter of Credit, Financial Close Security Provisions

16.3.2.1 Except as pertains to the Financial Close Security that is a letter of credit, any terms and conditions applicable to a particular letter of credit that Developer or a Lender is required to or may provide under the DBF Documents shall be consistent with the terms and conditions with respect to the P&P Bonds and, in Authority's sole discretion, the Warranty Bond, as and when the case may be, subject to any revisions thereto as may be set forth in a Supplemental Agreement.

16.3.2.2 The Financial Close Security that is provided at or before the Effective Date shall remain compliant with the requirements of the definition of "Financial Close Security" hereunder.

16.4 Guaranties

16.4.1 Developer shall, as a condition to the effectiveness of this Project Agreement, furnish to Authority one or more Guaranty/ies. Each Guaranty shall (a) comply with the requirements of Section 1.3.8 of the ITP, (b) be substantively in the form attached as Form S to the ITP, or in such other form as Authority may approve, in its sole discretion, (c) be effective through the end of the Warranty Period and (d) expressly include Authority and GDOT as a guaranteed party under such Guaranty/ies.

16.4.2 In the event Developer, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of any other Key Contractor, Developer shall cause such Person to furnish a guaranty with respect to such Person's obligations under its Contract in compliance with this PA Section 16.4 (*Guaranties*).

16.4.3 Each guaranty furnished pursuant to this PA Section 16.4 (*Guaranties*) shall (a) guaranty the performance and completion of all of the Person's obligations under this Project Agreement (and the applicable Contract, if applicable) (including its warranty and indemnification obligations), with the same protections and rights of notice, enforcement and collection as are available to Developer, any Affiliate or any Lender with respect to such Person's obligations under this Project Agreement (and the applicable Contract, if applicable), subject, in each case, to any limitation of liability and exceptions hereunder (or thereunder) as set forth herein (or in the applicable Contract), and (b) provide that the rights and protections of Authority and GDOT shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of performance and payment to another guaranteed party. A duplicate original of any guaranty furnished under this PA Section 16.4 (*Guaranties*) shall be delivered to Authority.

16.4.4 Authority agrees to forbear from its right to compel Guarantor payment or performance of the guaranteed obligations under any such Guaranty so long as Developer is diligently pursuing applicable remedial action as required by this Project Agreement.

16.5 Indemnity by Developer

16.5.1 Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all (a) Third Party Claims and Third Party Losses, (b) Personal Injury Losses, and (c) Property Damage Losses, in each case, arising out of, relating to or resulting from:

16.5.1.1 the breach or alleged breach of the DBF Documents by Developer;

16.5.1.2 the failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management);

16.5.1.3 any actual or alleged patent or copyright infringement or other actual or allegedly improper appropriation or use by any Developer-Related Entity of Intellectual Property of any third party in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to Authority, GDOT or another Indemnified Party pursuant to the DBF Documents; provided that this indemnity shall not apply to any infringement resulting from Authority's or GDOT's failure to comply with specific written instructions regarding use provided to Authority or GDOT by Developer;

16.5.1.4 any actual or alleged negligent; reckless, willful, or intentional misconduct (excluding intentional Developer Default); illegal activities (or inaction); fraud; criminal conduct; or bad

faith on the part of any Developer-Related Entity in, arising out of, relating to, caused by, or otherwise associated with performance of the Work;

16.5.1.5 any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, the use of any property or income of any Developer-Related Entity with respect to any payment for the Work made to or earned by any Developer-Related Entity;

16.5.1.6 any and all stop notices, Liens and claims filed in connection with the Work, including all reasonable expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, Lien or claim, and any other liability to Contractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, including interest and attorney's fees, provided that Authority is not in default in payments owing (if any) to Developer with respect to such Work;

16.5.1.7 any actual or threatened Developer Release(s) of Hazardous Materials;

16.5.1.8 any dispute or claim by a Utility Owner related to any Developer-Related Entity's performance of, or failure to perform, the obligations under any Betterment Agreement;

16.5.1.9 (a) any Developer breach of or failure to perform an obligation that Authority or GDOT owes to a third Person, including Governmental Entities, under Law or under any agreement between Authority and GDOT and a third Person, where Authority or GDOT has expressly delegated performance of the obligation to Developer pursuant to the terms of the DBF Documents, or (b) the negligent or willful acts or omissions of any Developer-Related Entities that render Authority or GDOT unable to perform or abide by an obligation that Authority or GDOT owes to a third Person, including Governmental Entities, under any agreement between Authority or GDOT and a third Person, where the agreement is previously disclosed or known to Developer;

16.5.1.10 any actual or alleged negligent; reckless, willful, or intentional misconduct (excluding intentional Developer Default); illegal activities (or inaction); fraud; criminal conduct; bad faith; violation of Law; violation or breach of contract (excluding breach of this Project Agreement); arbitrary or capricious acts on the part of any Developer-Related Entity in, arising out of, relating to, caused by, or otherwise associated with performance of real property acquisition services under the DBF Documents;

16.5.1.11 inverse condemnation, trespass, nuisance, interference with use and enjoyment of property or similar taking of or harm to real property by reason of (a) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of the DBF Documents, Project Management Plan or Governmental Approvals, (b) the intentional misconduct or negligence of any Developer-Related Entity, or (c) the entry onto or encroachment upon another's property by any Developer-Related Entity;

16.5.1.12 if applicable, any violation of any federal or state securities or similar law by any Developer-Related Entity;

16.5.1.13 Defects or Errors:

(a) in the design of the Project and/or of Utility Adjustments, or the Work, included in the Design Work that fails to comply with Good Industry Practice; or

(b) in the construction of the Project and/or of Utility Adjustments, or the Work, included in the Construction Work;

16.5.1.14 any claim asserted or alleged against either Authority or GDOT in contradiction of PA Section 6.3.11 (*Limitations on Developer's Right to Rely*);

16.5.1.15 all fines, penalties, or other fees imposed by any Governmental Entity arising out of, relating to, resulting from, or caused by the ownership, use, or operation of UASs in connection with the Work; or

16.5.1.16 the claim or assertion by any other developer or contractor that any Developer-Related Entity interfered with, or hindered the progress or completion of, work being performed by such other developer or contractor, or failed to cooperate reasonably with such other developer or contractor so as to cause inconvenience, disruptions, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work.

16.5.2 Subject to the releases and disclaimers herein, including all the provisions set forth in PA Section 6.3.11 (*Limitations on Developer's Right to Rely*), Developer's indemnity obligation shall not extend to any Third Party Claims, Third Party Losses, Personal Injury Losses, and Property Damage Losses to the extent caused or contributed to by:

16.5.2.1 the sole negligence; recklessness, willful, or intentional misconduct (excluding intentional Developer Default); illegal activities (or inaction); fraud; criminal conduct; bad faith; violation or breach of contract (excluding breach of this Project Agreement); or arbitrary or capricious acts on the part of the Indemnified Party;

16.5.2.2 Authority's breach of any of its obligations under the DBF Documents, subject to PA Section 6.3.11 (*Limitations on Developer's Right to Rely*);

16.5.2.3 an Indemnified Party's violation of any Laws or Governmental Approvals;

16.5.2.4 solely with respect to Third Party Losses, any material defect inherent in a prescriptive design, or construction specification included in the DBF Documents that was not drafted or provided by Developer under this Project Agreement, but only where, prior to occurrence of the Third Party Loss, Developer complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, of such material defect or, if Developer actually knew of the deficiency, unsuccessfully sought Authority's waiver or approval of a deviation, change, modification, alteration or exception from such specification; or

16.5.2.5 any Compensation Event or Relief Event.

16.5.3 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this PA Section 16.5 (*Indemnity by Developer*) shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

16.5.4 For purposes of this PA Section 16.5 (*Indemnity by Developer*), "Third Party Claim" includes a claim, dispute, disagreement, cause of action, demand, suit, action, judgment, investigation, or legal or administrative proceeding that (a) is asserted, initiated or brought by any Indemnified Party's employee, agent or contractor against an Indemnified Party, (b) is within the scope of the indemnities and (c) is not covered by the Indemnified Party's workers' compensation program. For purposes of this PA Section 16.5 (*Indemnity by Developer*), "Third Party Loss" includes any actual or alleged Loss sustained or incurred by such employee, agent or contractor.

16.6 Defense and Indemnification Procedures

16.6.1 If any of the Indemnified Parties receives notice of a claim that it believes is within the scope of the indemnities under PA Section 16.5 (*Indemnity by Developer*), Authority will by writing as soon as practicable after receipt of the claim, (a) inform Developer of the claim, (b) send to Developer a copy of all written materials Authority has received asserting such claim and (c) notify Developer that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Developer accepts the tender of the claim in accordance with PA Section 16.6.3 (*Defense and Indemnification Procedures*). As soon as practicable after Developer receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable Insurance Policies and comply with all notice requirements contained in such Insurance Policies. Authority and other Indemnified Parties also shall have the right to tender such claims to such insurers.

16.6.2 Subject to PA Section 16.6.4 (*Defense and Indemnification Procedures*), if the insurer under any applicable Insurance Policy accepts the tender of defense, Authority and Developer shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then PA Section 16.6.3 (*Defense and Indemnification Procedures*) shall apply.

16.6.3 If the defense is tendered to Developer, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a Notice stating that Developer:

16.6.3.1 accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

16.6.3.2 accepts the tender of defense but with a "reservation of rights" in whole or in part, with a detailed statement as to the reasons for the "reservation of rights"; or

16.6.3.3 rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Project Agreement, with a detailed statement as to the reasons for the denial.

16.6.4 If Developer accepts the tender of defense under PA Section 16.6.3.1 (*Defense and Indemnification Procedures*), Developer acknowledges and agrees (and has caused the insurer to be so notified of the statutory requirements) that the Attorney General of the State shall represent and defend the State, GDOT, Authority and any officer, director, commissioner or employee of such Indemnified Parties; but Authority will request that the Attorney General of the State, without limiting the authority of the Attorney General of the State, consider attorneys recommended by Developer for appointment as SAAG to represent and defend the referenced Indemnified Parties. Developer may, at the option of the Attorney General, have the right to participate in the defense of the Indemnified Parties. In the event of litigation, any settlement on behalf of the Indemnified Parties must be expressly approved by the Attorney General of the State. The foregoing shall not relieve Developer's obligation to bear the fees and costs of defending and settling such claim. During such defense:

16.6.4.1 Developer shall fully and regularly inform the Indemnified Party and the Attorney General of the State of the progress of the defense and of any settlement discussions; and

16.6.4.2 each Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial

and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Developer concerning such defense.

16.6.5 If Developer responds to the tender of defense as specified in PA Section 16.6.3.2 (*Defense and Indemnification Procedures*) or 16.6.3.3 (*Defense and Indemnification Procedures*), such Indemnified Parties shall also be represented by the Attorney General of the State who shall otherwise control the defense of such claim, including settlement. The foregoing shall not relieve Developer from its obligations to bear the fees and costs of defending and settling such claim.

16.6.6 Even if the Attorney General of the State has appointed counsel selected by Developer to represent any of the Indemnified Parties, the Attorney General of the State may assume the defense of the applicable Indemnified Parties by delivering to Developer Notice of such election and the reasons therefor, if the Indemnified Parties, at the time such Indemnified Party or Parties gives notice of the claim or at any time thereafter, reasonably determine(s) that:

16.6.6.1 a conflict exists between it and Developer that prevents or potentially prevents Developer from presenting a full and effective defense;

16.6.6.2 Developer is otherwise not providing an effective defense in connection with the claim; or

16.6.6.3 Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

16.6.7 If any of the Indemnified Parties is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a current basis all reasonable costs and expenses any such Indemnified Parties incur in investigating and defending, including attorney's fees. In the event the Indemnified Parties are entitled to and elect to conduct their own defense, then:

16.6.7.1 in the case of a defense conducted under PA Section 16.6.3.1 (*Defense and Indemnification Procedures*), it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed;

16.6.7.2 in the case of a defense conducted under PA Section 16.6.3.2 (*Defense and Indemnification Procedures*), it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court following reasonable notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

16.6.7.3 in the case of a defense conducted under PA Section 16.6.3.3 (*Defense and Indemnification Procedures*), it shall have the right to settle or compromise the claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

16.6.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party that has assumed control of defense is entitled to do so under PA Section 16.6.6 (*Defense and Indemnification Procedures*), shall be submitted in accordance with the Dispute Resolution Procedures. Developer shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

16.6.9 In determining responsibilities and obligations for defending suits pursuant to this PA Section 16.6 (*Defense and Indemnification Procedures*), specific consideration shall be given by the Parties to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

16.6.10 Notwithstanding anything to the contrary set forth in PA Section 16.5 (*Indemnity by Developer*) or this PA Section 16.6 (*Defense and Indemnification Procedures*), the Attorney General of the State of Georgia shall be acceptable, and, for avoidance of doubt, is the only counsel authorized to represent Authority, GDOT or any State affiliated agencies or departments. In the event that there is any potential conflict of interest that could reasonably arise in the representation of any Indemnified Party and Developer in the defense of any action, suit or proceeding pursuant to PA Section 16.5 (*Indemnity by Developer*) or in the event that state or local law requires the use of specific counsel, (i) such Indemnified Party may elect in its sole discretion whether to waive such conflict of interest, and (ii) unless such Indemnified Party elects to waive such conflict of interest, or in any event if required by state or local law, then the counsel designated by the Indemnified Party shall solely represent such Indemnified Party and, if applicable, Developer shall retain its own separate counsel, each at Developer's sole cost and expense. The Attorney General of the State of Georgia will consider counsel recommended by Developer for appointment as a SAAG.

16.6.11 If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against any of the Indemnified Parties, Developer shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by the Attorney General of the State of Georgia subject to the obligations of indemnification as set forth in PA Section 16.5 (*Indemnity by Developer*).

16.6.12 Developer, subject to PA Section 16.1.4.4 (*Prosecution of Insurance Claims*), may settle the claim without the consent or agreement of the Indemnified Parties, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Parties to comply with restrictions or limitations that adversely affect or materially impair the reputation and standing of the Indemnified Parties, (ii) would require the Indemnified Parties to pay amounts that Developer or its insurer does not fund in full, (iii) would not result in the Indemnified Parties full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement, or (iv) directly involves any such Indemnified Parties (in which case the Attorney General of the State of Georgia shall be the only counsel authorized to represent such parties with respect to any such settlement).

Article 17 DEFAULT; REMEDIES; OTHER AUTHORITY RIGHTS; DISPUTE RESOLUTION

17.1 Default by Developer; Cure Periods

17.1.1 Developer Default

Subject to relief from its performance obligations pursuant to PA Article 13 (*Relief Events; Compensation Events*), Developer shall be in breach under this Project Agreement upon the occurrence of any one or more of the following events or conditions (each a "Developer Default"):

17.1.1.1 Developer (a) fails to begin the applicable Work within 30 days following issuance of NTP1; (b) fails to satisfy all conditions to issuance of NTP2 under PA Section 3.3.3 (*Notice to Proceed 2*) by the NTP2 Conditions Deadline; or (c) fails to satisfy all conditions to issuance of NTP3 under PA Section 3.3.4 (*Notice to Proceed 3*) by the NTP3 Conditions Deadline, as each of the same may be extended pursuant to this Project Agreement;

17.1.1.2 an Abandonment;

17.1.1.3 Developer fails to achieve (i) Substantial Completion by the Substantial Completion Long Stop Date or (ii) Final Acceptance by the Final Acceptance Long Stop Date;

17.1.1.4 Developer fails to make any undisputed payment due to Authority under the DBF Documents when due;

17.1.1.5 any representation or warranty in the DBF Documents made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to Authority pursuant to the DBF Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made;

17.1.1.6 Developer fails to obtain, provide, maintain and deliver originals, certificates or required evidence of any insurance, surety bonds, guaranties, letters of credit or other payment or performance security as and when required under this Project Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Project Agreement pertaining to the amount, terms or coverage of the same;

17.1.1.7 Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Project Agreement, the Project or Developer's Interest, or there occurs a Change of Control, in violation of PA Article 19 (*Assignment and Transfer*);

17.1.1.8 Developer materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the DBF Documents (including failure to perform the Design Work, Construction Work, or any material portion thereof in accordance with the DBF Documents and including failure to comply with any Governmental Approval or Law); provided that this PA Section 17.1.1.8 (*Developer Default*) shall not apply to (a) Developer Defaults specifically addressed by other provisions of PA Section 17.1.1 (*Developer Default*) and (b) failures for which a Nonrefundable Deduction was assessed;

17.1.1.9 unless continued performance of this Project Agreement is permitted under the terms of a debarment agreement with the State, and after any rights of appeal have been exhausted, (a) there occurs any disqualification, suspension, or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing, or contracting with any federal or State department or agency of (i) any Developer-Related Entity (excluding Subcontractors) or (ii) any Affiliate for whom transfer of ownership would constitute a Change of Control, or (b) Developer has not dismissed any Contractor or Subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency;

17.1.1.10 Developer fails to (a) deliver to Authority any remedial action plan as may be required pursuant to PA Section 17.3.4 (*Remedial Action Plan Delivery and Implementation*) or (b) otherwise fails to fully comply with the schedule or portions, or take required actions required under, any such approved remedial action plan;

17.1.1.11 Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or

generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

17.1.1.12 an involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 days;

17.1.1.13 any voluntary or involuntary case or other act or event described in PA Sections 17.1.1.11 (*Developer Default*) and 17.1.1.12 (*Developer Default*) shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (a) any Developer Member, (b) any Affiliate for whom transfer of ownership would constitute a Change of Control, (c) any Guarantor of material Developer obligations to Authority under the DBF Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty, (d) D&C Contractor (unless Developer provides a reasonable replacement satisfactory to Authority within such 60 day period, or demonstrates to Authority's satisfaction that it can continue to perform the Work), or (e) any equity member, joint venture participant, or partner of D&C Contractor;

17.1.1.14 Developer fails to comply with Authority's written suspension of Work order issued in accordance with PA Section 17.3.6 (*Suspension of Work*) or PA Section 17.7 (*Suspensions for Safety*) within the time reasonably allowed in such order;

17.1.1.15 a levy under execution or attachment has been made against all or any part of the Project or any interest therein (including Developer's Interest) as a result of any Lien (other than a Lien relating to any Developer Financing Agreements) created, incurred, assumed or suffered to exist by Developer or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of GDOT or Authority;

17.1.1.16 termination of the Design-Build Contract for any reason;

17.1.1.17 Developer fails to make any undisputed payment due to any Key Contractor or DBE Contractor when due; or

17.1.1.18 occurrence of a Persistent Breach.

17.1.2 Cure and Forbearance Periods

For the purpose of Authority's exercise of other remedies, subject to PA Section 17.2.2 (*Effect of Warning Notice on Developer Cure Period*) and subject to remedies that this PA Article 17 (*Default; Remedies; Other Authority Rights; Dispute Resolution*) expressly states may be exercised before lapse of a cure period, Developer shall have the following cure periods with respect to the following Developer Defaults:

17.1.2.1 respecting a Developer Default under PA Section 17.1.1.1 (*Developer Default*), 17.1.1.2 (*Developer Default*), 17.1.1.4 (*Developer Default*), or 17.1.1.10 (*Developer Default*), a period of 10 days after Authority delivers to Developer Notice of Developer Default;

17.1.2.2 respecting a Developer Default under PA Section 17.1.1.6 (*Developer Default*) for a period of 15 days after Authority delivers to Developer Notice of Developer Default; provided that Authority will have the right, but not the obligation, to effect cure, at Developer's expense, if a Developer Default under PA Section 17.1.1.6 (*Developer Default*) continues beyond five days after such Notice is delivered;

17.1.2.3 respecting a Developer Default under PA Section 17.1.1.15 (*Developer Default*), a period of 30 days after Authority delivers to Developer Notice of Developer Default;

17.1.2.4 respecting a Developer Default under PA Sections 17.1.1.5 (*Developer Default*) or 17.1.1.8 (*Developer Default*), a period of 30 days after Authority delivers to Developer Notice of Developer Default; provided that (a) if Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure promptly after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure, and (b) as to PA Section 17.1.1.5 (*Developer Default*), cure will be regarded as complete when the adverse effects of the breach are cured;

17.1.2.5 respecting a Developer Default under PA Sections 17.1.1.3 (*Developer Default*), 17.1.1.7 (*Developer Default*), 17.1.1.11 (*Developer Default*), 17.1.1.12 (*Developer Default*), 17.1.1.14 (*Developer Default*), 17.1.1.16 (*Developer Default*), 17.1.1.17 (*Developer Default*), or 17.1.1.18 (*Developer Default*), no cure period, and there shall be no right to notice of a Developer Default under PA Sections 17.1.1.11 (*Developer Default*) or 17.1.1.12 (*Developer Default*);

17.1.2.6 respecting a Developer Default under PA Section 17.1.1.9 (*Developer Default*), no cure period; provided, however, if the debarred or suspended Person is a managing member, general partner or controlling investor of Developer, cure will be regarded as complete when Developer proves it has removed such Person from any position or ability to manage, direct or control the decisions of Developer or to perform Work, and if the debarred or suspended Person is a Key Contractor cure will be regarded as complete when Developer replaces the Key Contractor with Authority's prior written approval in its good faith discretion as provided in PA Section 10.3.1 (*Use of and Change in Key Contractors*); and

17.1.2.7 respecting a Developer Default under PA Section 17.1.1.13 (*Developer Default*), a period of 10 days from the date of Developer Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to Authority or the Lender Agent for the benefit of the Project, in the amount of, as applicable, (a) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Developer or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor.

17.1.3 Certain Curative Actions; Status Report

17.1.3.1 If Developer Default consists of failure to give Authority a required prior notice and opportunity to complete an applicable review and comment or approval procedure under PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*) before action is taken by Developer, such Developer Default shall be curable only by reversing or suspending the action until the

notice and review and comment or approval procedures are followed and completed, unless Developer finished the action before receiving the notice of Developer Default or unless waived by Authority.

17.1.3.2 If Developer Default consists of any Developer activity or failure to act that constitutes a change from Developer's activities immediately prior to Developer Default, such Developer Default shall be curable only by reinstating the activity as it was being performed immediately prior to Developer Default.

17.1.3.3 For any Developer Default for which a Warning Notice has been delivered by Authority to Developer, Developer may request from Authority a status report as to Developer's progress in effecting a cure, by delivering to Authority a written request accompanied by Developer's own report as to its progress in effecting a cure. Authority will provide its response within 10 Business Days after receipt of Developer's written request and report. The response shall be provided solely for purposes of informing Developer as to Authority's view of the progress in effecting a cure for Developer Default, shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute and shall not limit in any way Authority's right to terminate this Project Agreement in accordance with PA Section 18.3 (*Termination for Developer Default*) should cure not be effected within the relevant period.

17.2 Warning Notices

17.2.1 Warning Notice Events

Without prejudice to any other right or remedy available to Authority, Authority may, but in no case shall be required to, deliver a Notice (a "Warning Notice") to Developer, with a copy to Lender Agent, stating explicitly that it is a "Warning Notice" and stating in reasonable detail the matter or matters giving rise to the Warning Notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such Warning Notice, whenever there occurs an act or omission of Developer that may become a Developer Default.

17.2.2 Effect of Warning Notice on Developer Cure Period

17.2.2.1 Any Notice of a Developer Default issued under PA Section 17.1 (*Default by Developer; Cure Periods*) may, if it concerns a matter under PA Section 17.2.1 (*Warning Notice Events*), also be issued as a Warning Notice. In such case, the cure period available to Developer, if any, shall be as set forth in PA Section 17.1.2 (*Cure and Forbearance Periods*).

17.2.2.2 If Authority issues a Warning Notice under PA Section 17.2.1 (*Warning Notice Events*) for any Developer Default after it issues a notice of such Developer Default, then the cure period available to Developer, if any, for such Developer Default before Authority may seek to appoint a receiver for Developer, remove Developer or terminate this Project Agreement on account of such Developer Default shall be extended by the time period between the date the notice of such Developer Default was issued and the date the Warning Notice is issued. No later issuance of a Warning Notice shall extend the time when Authority may exercise any other remedy respecting such Developer Default.

17.2.3 Other Effects of Warning Notice

17.2.3.1 The issuance of a Warning Notice shall entitle Authority to increase the level of oversight as provided in PA Section 17.3.8 (*Increased Oversight, Testing, and Inspection*).

17.2.3.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in PA Section 18.3 (*Termination for Developer Default*).

17.3 Remedies for Developer Default

17.3.1 Termination

In the event of any Developer Default that is or becomes a Default Termination Event set forth in PA Section 18.3.1 (*Developer Defaults Triggering Authority Termination Rights*), Authority may terminate this Project Agreement and Authority thereupon may take control of the Work, which termination shall, among other things, automatically terminate all of Developer's rights under PA Section 2.1 (*Grant of Authority for Undertaking*), whereupon Developer shall take all action required to be taken by Developer under PA Section 18.6 (*Termination Procedures and Duties*).

17.3.2 Step-in Rights

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, Authority will have the right, but not the obligation, for so long as such Developer Default remains uncured by Authority or Developer, to pay and perform all or any portion of Developer's obligations and the Work that are the subject of such Developer Default, as well as any other then-existing breaches or failures to perform for which Developer received prior Notice from Authority but has not commenced or does not continue diligent efforts to cure; provided, that (i) except with respect to Developer's lawful claims for third party bodily injury or property damage arising out of such Authority action, neither Authority nor GDOT will incur any liability to Developer for any act or omission of Authority and/or GDOT or any other Person in the course of remedying or attempting to remedy any Developer Default and (ii) Authority's cure of any Developer Default will not waive or affect Authority's rights against Developer by reason of Developer Default.

17.3.2.1 In connection with such action, Authority may, to the extent reasonably required for, or incident to, curing Developer Default or such other breaches or failures to perform for which Developer received prior Notice from Authority but has not commenced and continued diligent efforts to cure:

(a) perform or attempt to perform or caused to be performed, such Work;

(b) employ security guards and other safeguards to protect the Project;

(c) spend such sums as Authority deems are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

(d) draw on and use proceeds from P&P Bonds, the Warranty Bond (if placed), guaranties, or other letters of credit or performance security to the extent available under the terms thereof to pay such sums;

(e) execute all applications, certificates and other documents as may be required;

(f) make decisions respecting, assume control over and continue Work as may be reasonably required;

(g) meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably

appoints Authority as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead;

(h) take any and all other actions it may in its sole discretion consider necessary to effect cure and perform the Work; and

(i) prosecute and defend any action or proceeding incident to the Work undertaken.

17.3.2.2 Developer shall reimburse Authority on demand Authority Recoverable Costs in connection with the performance of any act or Work authorized by this PA Section 17.3.2 (*Step-in Rights*).

17.3.2.3 Neither Authority, GDOT nor any of their respective Constituents shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto any portion of the Site in order to perform under this PA Section 17.3.2 (*Step-in Rights*), unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this PA Section 17.3.2 (*Step-in Rights*), it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, or construction unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person.

17.3.2.4 The rights under this PA Section 17.3.2 (*Step-in Rights*) are subject to the obligation of any Surety under P&P Bonds (or Warranty Bond, if placed) to assume performance and completion of all bonded work. For the avoidance of any doubt, if a Surety is called upon to assume the performance and completion of any or all bonded work under the P&P Bonds (or Warranty Bond, if placed), then such Surety shall be entitled to be the beneficiary of certain designated Approved Project Certificates.

17.3.2.5 In the event Authority takes action described in this PA Section 17.3.2 (*Step-in Rights*) and it is later finally determined that Authority lacked the right to do so because there did not occur a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, then Authority's action shall be treated as a Directive Letter for an Authority Change.

17.3.2.6 In addition to their other rights of access to the Site contained in the DBF Documents, Authority and GDOT shall have, and Developer hereby grants, a perpetual, non-rescindable right of entry by Authority and its contractors, subcontractors, vendors and employees onto all Temporary Interests, exercisable at any time without notice, for the purpose of carrying out Authority's step-in rights under this PA Section 17.3.2 (*Step-in Rights*).

17.3.3 Damages; Offset

17.3.3.1 Subject to PA Section 5.1.3 (*Payment Offset Generally*), PA Section 5.2.5 (*Project Payments*), PA Section 17.3.10 (*Cumulative, Non-Exclusive Remedies*) and PA Section 17.3.11 (*Limitation on Consequential Damages*) and the provisions on Deductions set forth in PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*), Authority will be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages and without duplicate recovery) on account of the occurrence of a Developer Default, including, to the extent available at Law, (a) loss of any compensation due Authority under the DBF Documents proximately caused by Developer Default, (b) actual and projected costs incurred by Authority or GDOT to remedy any defective part of the Work, (c) actual and projected costs incurred by Authority or GDOT to rectify any breach or failure to perform by Developer and/or to bring the condition of the Project to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance

with the DBF Documents, (d) actual and projected costs to Authority and GDOT to terminate, take over the Project, re-procure and replace Developer, and (e) actual and projected increases in costs to Authority and GDOT to complete the Project if not completed, together with interest thereon at the Default Interest Rate commencing from the date any amount becomes due to Authority until paid. Developer shall owe any such damages that accrue after the occurrence of Developer Default and the delivery of notice thereof, if any, required by this Project Agreement regardless of whether Developer Default is subsequently cured.

17.3.3.2 In addition, subject to PA Section 5.1.3 (*Payment Offset Generally*), PA Section 5.2.5 (*Project Payments*), PA Section 17.3.10 (*Cumulative, Non-Exclusive Remedies*) and PA Section 17.3.11 (*Limitation on Consequential Damages*) and the provisions on Deductions set forth in PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*), Authority may deduct and offset the amount of any demand for payment of money or damages from Developer to Authority then due and owing to Authority (or prospectively on the next succeeding Project Certificate(s)) from and against any amounts Authority may owe to Developer or any Affiliate pursuant to this Project Agreement (other than amounts identified on an Approved Project Certificate or with respect to Breakage Costs (or both)); *provided* that, notwithstanding anything herein to the contrary, prior to Authority deducting any amount from a Project Certificate, Developer shall first have the option to directly pay Authority the equivalent amount of such deduction in lieu of reducing the amount payable under the applicable Project Certificate. If Authority or GDOT determines that a deduction is to be applied to a Project Certificate in accordance with this PA Section 17.3.3.2 (*Damages; Offset*) and PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), then in accordance with PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), at the Project Certificate Review Meeting for the applicable Project Certificate, the Developer may elect to pay Authority directly for such deductions. If Developer makes such election in accordance with Section 4 of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), Authority and GDOT shall not include such deduction amount in the relevant Project Certificate and upon payment of such amount by Developer, Authority and GDOT shall have no further right to offset or deduct such amount from any Project Certificate or other amounts Authority may owe Developer or any Affiliate pursuant to this Project Agreement; *provided* that, if Developer has failed to make such payment by the delivery of the draft Project Certificate for the next succeeding Project Certificate Period, then Authority may apply the amount of such deduction to such succeeding Project Certificate in accordance with the process set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) and Developer shall not have the further right to elect to pay such deductions.

17.3.4 Remedial Action Plan Delivery and Implementation

17.3.4.1 Upon the occurrence of a Developer Default, Authority will have the right, but is not obligated, to demand that Developer shall, within 10 days after Notice of such Developer Default, be required to prepare and submit a remedial action plan for Authority approval, in Authority's sole discretion.

17.3.4.2 The remedial action plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance and cure Developer Default. Such actions may include improvements to Developer's quality management practices, plans and procedures, revising and restating components of the Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, corrective measures necessary to expedite the progress of construction and to demonstrate ability to achieve any Milestone Deadline including (i) working additional shifts or overtime and/or (ii) supplying additional manpower, equipment and facilities, and delivery of security to Authority.

17.3.4.3 Within 15 Business Days after receipt of a remedial action plan for Authority approval, Authority will notify Developer whether the remedial action plan is approved. Without

limiting Authority's rights under PA Section 17.3.9 (*Other Rights and Remedies*), if Authority does not approve Developer's remedial action plan, then Authority may, but shall not be obligated to, require Developer to revise and resubmit a remedial action plan, consistent with Authority's direction (which shall not be, nor be construed to be, an Authority Change hereunder), and Developer shall resubmit a remedial action plan consistent with such Authority direction for Authority approval, in Authority's sole discretion. If approved, then Developer shall complete the approved remedial action plan in accordance with its terms.

17.3.4.4 Developer's failure to complete any such approved remedial action plan shall be deemed a further Developer Default.

17.3.5 Performance Security

17.3.5.1 Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the applicable cure period, if any, under PA Section 17.1.2 (*Cure and Forbearance Periods*), without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, Authority will be entitled to make demand upon and enforce any surety bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to Authority under this Project Agreement with respect to Developer Default in question in any order in Authority's sole discretion. Where access to a surety bond, letter of credit or other payment or performance security is to satisfy damages owing, Authority will be entitled to make demand, draw, enforce and collect regardless of whether Developer Default is cured subsequent to such draw. Authority will apply the proceeds of any such action to the satisfaction of Developer's obligations under the DBF Documents, including payment of amounts due Authority. The foregoing does not limit or affect any other right of Authority to make demand upon and enforce any surety bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security, immediately after Authority is entitled to do so under the surety bond, letter of credit, guaranty or other payment or performance security.

17.3.6 Suspension of Work

17.3.6.1 Authority will have the right and authority to suspend any affected portion of the Work by written order to Developer for Developer's failure to cure, within the applicable cure period available to Developer (if any), the following:

(a) failure to perform the Work in compliance with, or other breach of, the DBF Documents;

(b) discovery of Nonconforming Work or of any activity that is proceeding or about to proceed that would constitute or cause Nonconforming Work where the Nonconforming Work or activity is not substantially cured within 15 days after Authority delivers notice thereof to Developer or within such 15 days, Developer provides and submits to Authority a plan for cure, such plan to be diligently executed and completed no later than 30 days after submission of such plan to Authority, unless Developer demonstrates to Authority's reasonable satisfaction that full and complete cure of the Nonconforming Work, and verification of such cure, will remain practicable despite continuation of Work without suspension;

(c) failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archaeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(d) failure to remove and replace personnel as set forth in PA Section 10.6.3 (*Labor Standards*);

(e) failure to provide proof of required insurance coverage as set forth in PA Section 16.1.2.4(c) (*Verification of Coverage*);

(f) failure to carry out and comply with Directive Letters;

(g) failure to satisfy any condition to commencement of construction set forth in PA Section 7.4.1 (*Developer's General Responsibilities*);

(h) failure to maintain, extend or replace any P&P Bonds or the Warranty Bond (if placed) and or when required under this Project Agreement, unless a call upon any surety bond has been made under same in the amount of the required coverage provided for in PA Section 16.1.6 (*Application of Insurance Proceeds*) and the proceeds of such drawing are held by Authority;

(i) to comply with any court order or judgment (although it may qualify as a Compensation Event under clause (f) of the definition of "Compensation Event" or a Relief Event under clause (j) of the definition of "Relief Event");

(j) Authority's performance of data recovery respecting archaeological, paleontological or cultural resources;

(k) the existence of conditions unsafe for workers, other Project personnel or the general public; or

(l) Developer has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, or (ii) deliver any certificate, release, certified payroll or affidavit of wages paid required with any Project Certificate.

17.3.6.2 Authority will lift the suspension order promptly after Developer fully cures and corrects the applicable breach or failure to perform.

17.3.6.3 Developer shall promptly comply with any such written suspension order, even if Developer Disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of Notice from Authority directing Developer to resume Work.

17.3.6.4 Neither Authority nor GDOT shall have any liability to Developer, and Developer shall have no right to a Relief Event or Compensation Event, in connection with any suspension of Work properly founded on any of the other grounds set forth in this PA Section 17.3.6 (*Suspension of Work*) (except potential Relief Events or Compensation Events in the case of suspensions under PA Sections 17.3.6.1(i) (*Suspension of Work*) and 17.3.6.1(j) (*Suspension of Work*)). If Authority orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, or if Authority orders suspension of Work for any other reason, it shall be treated as a Directive Letter for an Authority Change.

17.3.7 During any suspension periods directed by Authority under this PA Section 17.3 (*Remedies for Developer Default*), Developer shall continue to be responsible for the Project and shall prevent damage, loss or injury to the Project. Without limiting the generality of the foregoing, Developer shall specifically provide for drainage, protect any known or suspected Hazardous Materials or known or suspected archaeological, paleontological, biological, or cultural resources (including taking affirmative steps to protect the site from vandalism and unauthorized investigations), protect the Site from accidental damage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. Developer shall also maintain all Insurance Policies, P&P Bonds, the Warranty Bond (if placed), guaranties, letters of credit and other security for payment or performance placed or required to be in place

under this Project Agreement and to comply with all applicable Governmental Approvals and applicable Laws. Developer shall, unless otherwise directed by Authority, continue to be responsible for traffic control, erosion control, and maintenance of the roadway in accordance with this Project Agreement.

17.3.8 Increased Oversight, Testing, and Inspection

17.3.8.1 If Authority cannot confirm that: (a) a portion of the Design Work or the Construction Work is in accordance with the requirements of the DBF Documents due to a lack of documented inspection or testing by Developer as required under the DBF Documents, or (b) Developer is implementing, revising, or updating a testing and inspection plan in accordance with the DBF Documents for the Design Work or the Construction Work, Authority will have the right but not the obligation, to increase monitoring, inspection, sampling, measuring, testing and oversight (collectively, "Increased Oversight") over the Project. The Increased Oversight will continue until Developer corrects such deficiencies in Authority's reasonable discretion.

17.3.8.2 If the Increased Oversight reveals: (i) a failure to perform such Work in accordance with the Quality Management Plan, (ii) that the Quality Management Plan does not comply with the DBF Documents, or (iii) that such Work is not in accordance with the DBF Documents, Developer shall be responsible for the costs of such Increased Oversight. Without limiting Authority's right to offset amounts under PA Section 17.3.3 (*Damages; Offset*), Developer shall pay and reimburse Authority within 30 days after receipt of written demand and reasonable supporting documentation for all increased costs and fees Authority incurs in connection with such Increased Oversight, including Authority Recoverable Costs.

17.3.8.3 If the Increased Oversight does not reveal any failure set forth in PA Section 17.3.8.2 (*Increased Oversight, Testing, and Inspection*), the costs of the Increased Oversight shall be borne by Authority.

17.3.8.4 The foregoing does not preclude Authority, at its sole discretion and expense, from Increased Oversight at other times.

17.3.9 Other Rights and Remedies

Subject to PA Sections 17.3.11 (*Limitation on Consequential Damages*), 17.4.8.2 (*Deductions as Exclusive Monetary Remedy*) and 18.9 (*Exclusive Termination Rights*), Authority will also be entitled to exercise any other rights and remedies available under this Project Agreement or any other DBF Documents, or available at law or in equity, and shall be authorized to permit GDOT to exercise any of such remedies on Authority's behalf.

17.3.10 Cumulative, Non-Exclusive Remedies

Subject to PA Sections 17.3.11 (*Limitation on Consequential Damages*), 17.4.8.2 (*Deductions as Exclusive Monetary Remedy*) and 18.9 (*Exclusive Termination Rights*), each right and remedy of Authority or GDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Authority or GDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Authority or GDOT of any or all other such rights or remedies.

17.3.11 Limitation on Consequential Damages

17.3.11.1 Notwithstanding any other provision of the DBF Documents, to the extent legally permissible, and except as set forth in PA Section 17.3.11.2 (*Limitation on Consequential Damages*), to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect or incidental, or consequential damages, whether arising out of breach of this Project Agreement, tort (including negligence) or any other theory of liability, and Authority releases Developer from any such liability, as provided pursuant to this Project Agreement or otherwise to the extent recoverable from insurance.

17.3.11.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit, nor be construed to apply to or limit, any right of recovery Authority may have respecting the following, each of which are agreed by the Parties to be, or to give rise to, direct damages, and not special, indirect or incidental, or consequential damages:

(a) Deductions;

(b) any amounts paid or payable pursuant to Developer's indemnification obligations hereunder;

(c) Losses arising out of Developer Release(s) of Hazardous Materials;

(d) any amounts Developer may be obligated to reimburse to Authority or that are otherwise due from Developer to GDOT under the express provisions of the DBF Documents, including Authority Recoverable Costs;

(e) any Losses, claims (including claims of any Indemnified Parties), and amounts arising out of, relating to, or resulting from any Developer-Related Entity's gross negligence, reckless or willful misconduct, violation of Law and other illegal activities (or inaction), criminal conduct, bad faith, intentional misconduct (which excludes intentional Developer Default), arbitrary or capricious acts, or fraud under or relating to this Project Agreement.

17.3.11.3 The foregoing limitations and list of (or basis for) direct, rather than special, indirect or incidental, or consequential damages, shall not limit, nor be construed to limit, payment or recovery of damages that would otherwise be covered under the Insurance Policies placed by or on behalf of Developer or any Contractors hereunder.

17.4 Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions

17.4.1 Liquidated Damages for Delayed Substantial Completion, Final Acceptance

17.4.1.1 In addition to any other remedies available to Authority under this Project Agreement, Developer acknowledges that Developer shall be liable for and pay to Authority Liquidated Damages with respect to any failure to achieve Substantial Completion by the Substantial Completion Deadline, or any failure to achieve Final Acceptance by the Final Acceptance Deadline, as the same may be extended pursuant to this Project Agreement, as set forth pursuant to PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*). Such liability shall apply even though (a) a cure or remedy period remains available to Developer under this Project Agreement or (b) cure or remedy occurs.

17.4.1.2 The amounts of Liquidated Damages for failures to achieve Substantial Completion by the Substantial Completion Deadline, or any failure to achieve Final Acceptance by the

Final Acceptance Deadline are set forth in PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

17.4.1.3 Such Liquidated Damages shall commence on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable, as the same may be extended pursuant to this Project Agreement, and shall continue to accrue until the Substantial Completion Date or the Final Acceptance Date, as applicable, or until termination of this Project Agreement.

17.4.2 [Reserved.]

17.4.3 Liquidated Damages for Key Personnel-related Matters

17.4.3.1 In addition to any other remedies available to Authority under this Project Agreement, Developer acknowledges that Developer shall be liable for and pay to Authority Liquidated Damages with respect to the failures relating to Key Personnel set forth under PA Section 10.4.1.5 (*Key Personnel*) and as set forth pursuant to PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*), subject to the limitations in PA Section 10.4.1.6 (*Key Personnel*).

17.4.3.2 Such liability shall apply even though cure or remedy occurs.

17.4.3.3 The amounts of Liquidated Damages for such failures are set forth in PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

17.4.3.4 Such Liquidated Damages shall commence, as to PA Section 10.4.1.5(a) (*Key Personnel*) on the date of unavailability, as determined by Authority in its good faith discretion, and as to PA Section 10.4.1.5(b) (*Key Personnel*) on the 31st day after the date of Developer's Notice of proposed replacement for a Key Personnel, and, in each case, shall continue to accrue until the Key Personnel position is filled and such individual is available, also as determined by Authority in its good faith discretion, or until termination of this Project Agreement.

17.4.4 Lane Closure Deductions

17.4.4.1 In addition to any other remedies available to Authority under this Project Agreement, Developer acknowledges that Developer shall be liable for and pay to Authority Lane Closure Deductions with respect to certain failures relating to lane availability described in PA Exhibit 13 (*Lane Closure Deductions*).

17.4.4.2 Such liability shall apply even though cure or remedy occurs.

17.4.4.3 The amounts of Lane Closure Deductions are set forth in PA Exhibit 13 (*Lane Closure Deductions*).

17.4.4.4 Such Lane Closure Deductions shall commence and accrue until they cease as set forth in PA Exhibit 13 (*Lane Closure Deductions*), or until termination of this Project Agreement.

17.4.5 Nonrefundable Deductions

17.4.5.1 In addition to any other remedies available to Authority under this Project Agreement, Developer acknowledges that Developer shall be liable for and pay to Authority Nonrefundable Deductions with respect to certain failures identified in further detail in PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

17.4.5.2 Such liability shall apply even though cure or remedy occurs.

17.4.5.3 The amounts of the Nonrefundable Deductions are determined in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

17.4.5.4 Such Nonrefundable Deductions shall commence and accrue until they cease as set forth in PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*), or until termination of this Project Agreement.

17.4.5.5 Nonrefundable Deductions Assessment Process.

(a) For those occurrences for which Nonrefundable Deduction may be assessed that are annotated in the table within Section 1.5 of PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*) as affording Developer a NRD Notice, Authority will issue a NRD Notice to Developer's Authorized Representative no later than 10 Business Days prior to the date that, if not remedied, Authority intends to assess a Nonrefundable Deduction, directing remedy of the occurrence that forms the basis for assessment of such Nonrefundable Deduction. Developer shall commence to remedy such occurrence promptly, and in no case later than the date identified in the NRD Notice. If not remedied at such time, Authority may assess, and Developer shall be liable to Authority for, the applicable Nonrefundable Deductions as set forth pursuant to PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

(b) For those occurrences for which Nonrefundable Deduction may be assessed that are annotated in the table within Section 1.5 of PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*) as not affording Developer a NRD Notices, or for which the NRD Notice would not be timely related to the nature of the occurrence (e.g., the Nonrefundable Deduction at 1.C in the table within Section 1.5 of PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*), where the submission timing is clear), Authority will notify Developer's Authorized Representative, directing remedy of the occurrence and, in Authority's discretion, a reasonable timeframe for remedy and Authority's intent to assess a Nonrefundable Deduction, it being the intent that any such Authority will nevertheless offer opportunities to cure possible Nonrefundable Deductions where feasible, as determined in Authority's discretion. Developer shall commence to remedy such occurrence promptly, and if not remedied within such timeframe, if afforded a timeframe, Authority may assess, and Developer shall be liable to Authority for, the applicable Nonrefundable Deductions as set forth pursuant to PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

17.4.6 Acknowledgements Regarding Liquidated Damages, Lane Closure Deductions, Nonrefundable Deductions

17.4.6.1 Developer further agrees and acknowledges that:

(a) Liquidated Damages with respect to failure to achieve Substantial Completion by the Substantial Completion Deadline, or any failure to achieve Final Acceptance by the Final Acceptance Deadline, as the same may be extended pursuant to this Project Agreement, as set forth pursuant to PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*), are reasonable in order to compensate Authority for damages Authority or GDOT will incur as a result of late Substantial Completion or late Final Acceptance. Such damages include Authority's loss of use, enjoyment and benefit of the Project and connecting Authority and GDOT transportation facilities by the general public, injury to the credibility and reputation of Authority's and GDOT's transportation improvement programs with policy makers and with the general public who depend on and expect availability of service by the Substantial Completion Deadline, which injury to credibility and reputation may directly result in loss of ridership on

the Project and connecting Authority and GDOT transportation facilities and additional costs of administering this Project Agreement (including engineering, legal, accounting, overhead and other administrative costs). The Parties acknowledge and agree that each of the foregoing damages are not indirect, incidental or consequential damages hereunder.

(b) [Reserved.]

(c) Liquidated Damages with respect to certain Key Personnel-related matters under PA Section 10.4.1.5 (*Key Personnel*) and as set forth pursuant to PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*) are reasonable in order to compensate Authority for damages Authority or GDOT will incur as a result of increased project management efforts, loss of the benefits of the qualifications and experience of the personnel listed in the Proposal and Developer's commitment that such individuals would be available to undertake and perform the Work, injury to the credibility and reputation of Authority's and GDOT's transportation improvement programs with policy makers and with the general public who depend on and expect that which was procured so as to ensure further the timely and professional delivery of the Project, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting Authority and GDOT transportation facilities and additional costs of administering this Project Agreement (including engineering, legal, accounting, overhead and other administrative costs). The Parties acknowledge and agree that each of the foregoing damages are not indirect, incidental or consequential damages hereunder.

(d) Authority and GDOT will incur substantial damages in the event that Developer fails to satisfy its financing obligations under PA Section 4.2.1 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*), and Authority's right to draw upon the Financial Close Security under PA Section 18.5.3.2 (*Termination for Failure to Achieve Financial Close*) is reasonable in order to compensate Authority for the cost of forgoing alternative opportunities and for other costs incurred by Authority in reliance upon Developer's agreement to enter into the transactions contemplated by this Project Agreement. The Parties acknowledge and agree that each of the foregoing damages are not indirect, incidental or consequential damages hereunder.

(e) Lane Closure Deductions are reasonable in order to compensate Authority for damages Authority or GDOT will incur as a result of the unavailability of travel lanes, Authority's loss of use, enjoyment and benefit of the Project and connecting Authority and GDOT transportation facilities by the general public, injury to the credibility and reputation of Authority's and GDOT's transportation improvement programs with policy makers and with the general public who depend on and expect availability of service consistent with the Baseline Project Schedule, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting Authority and GDOT transportation facilities and additional costs of administering this Project Agreement (including engineering, legal, accounting, overhead and other administrative costs). The Parties acknowledge and agree that each of the foregoing damages are not indirect, incidental or consequential damages hereunder.

(f) Nonrefundable Deductions are reasonable in order to compensate Authority for damages Authority or GDOT will incur as a result of the increased project management efforts, unavailability of portions of the Project, Authority's loss of use, enjoyment and benefit of the Project and connecting Authority and GDOT transportation facilities by the general public, injury to the credibility and reputation of Authority's and GDOT's transportation improvement programs with policy makers and with the general public who depend on and expect delivery of a quality Project, which injury to credibility and reputation may directly result in loss of ridership on the Project and connecting Authority and GDOT transportation facilities and additional costs of administering this Project Agreement (including engineering, legal, accounting, overhead and other administrative costs). The Parties acknowledge and agree that each of the foregoing damages are not indirect, incidental or consequential damages hereunder.

17.4.6.2 Developer further acknowledges and agrees that:

(a) each of damages reflected in the Deductions in this PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*) are incapable of accurate measurement and difficult to prove because of, among other things, the unique nature of the Project and the unavailability of a substitute for it. Developer further acknowledges that Developer hereby waives any claim or defense that the Deductions are equivalent to the assessment of a penalty;

(b) the amounts of the Deductions, and manner by which Deductions are determined under this Project Agreement represent good faith estimates and evaluations by the Parties as to the actual potential damages that Authority would incur as a result of (i) late Substantial Completion, (ii) late Final Acceptance, (iii) unavailable or absent Key Personnel, (iv) failure to finance, (v) Lane Closures that are not Excused Closures, and (vi) events giving rise to Nonrefundable Deductions, in each case, do not constitute a penalty or to otherwise operate as a deterrent for the breach of any obligations of Developer under this Project Agreement;

(c) the Parties have agreed to such Deductions in order to fix and limit Developer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Developer;

(d) such amounts, and manner for determination, of Deductions are reasonable in light of the anticipated or actual harm caused by (i) late Substantial Completion, (ii) late Final Acceptance, (iii) unavailable or absent Key Personnel, (iv) failure to finance, (v) Lane Closures that are not Excused Closures, and (vi) events giving rise to Nonrefundable Deductions, as well as the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy;

(e) in each case such Deductions are reasonable, as determined as of the Effective Date, in light of the respective injuries and damages that may be caused by Developer's breach and given that such injuries and damages, which include but shall not be limited to, public inconvenience, increased administration and oversight by or on behalf of Authority (and any other related agencies), and other damages to the general public, Authority, GDOT (and such other related agencies); and

(f) such Deductions are not intended to, and do not, liquidate Developer's liability under the indemnification provisions of PA Section 16.5 (*Indemnity by Developer*), even though Third Party Claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such Deductions.

17.4.6.3 Despite the intent of the parties to deduct the Deductions as part of the preparation process for final Project Certificates under PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), and without limiting PA Section 17.4.7 (*Deductions; Payment; Satisfaction; Waiver*), Deductions shall be deemed to be due and payable by Developer to Authority when and as assessed hereunder, without right of offset, deduction, reduction or other charge.

17.4.7 Deductions; Payment; Satisfaction; Waiver

17.4.7.1 Authority will deduct all Deductions, accrued month to date and owing under this PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*), whether subject to Dispute, as part of Authority's review of the Project Certificate during the Project Certificate Review Meetings under Section 3 of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

17.4.7.2 If any Deductions deducted from the Project Certificate are in Dispute, then upon conclusion of the Dispute, the Parties shall, pursuant to the next successive Project Certificate Review Meeting, adjust the next succeeding Project Certificate to reflect the results of the Dispute, unless

otherwise agreed by the Parties (and without limiting the valuation and constraints provisions under Section 2 of Exhibit 7 (*DBF Contract Sum and Payment Terms*)).

17.4.7.3 If Deductions remain after the Final Certificate, then Authority will invoice Developer for the remaining Deductions, and Developer shall pay any undisputed Deductions owing under this PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*) within 20 days after Authority delivers to Developer Authority's invoice or demand therefor. If unpaid, Authority also shall have the right to draw or call on any surety bond, certificate of deposit, letter of credit or other security provided by Developer pursuant to this Project Agreement, to satisfy Deductions not paid when due.

17.4.8 Deductions as Exclusive Monetary Remedy

17.4.8.1 To the extent legally permissible, each item of Deductions provided under this PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*), when paid or recovered, constitutes Authority's sole and exclusive monetary remedy with respect to the breach of this Project Agreement giving rise to such Deduction; provided, however, that the foregoing shall not, and shall not be construed to, limit or substitute Authority's right to assess other or additional Deductions under this PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*).

17.4.8.2 Authority's right to, and imposition of, Deductions are in addition, and without prejudice, to any other rights and remedies available to Authority under the DBF Documents, at law or in equity respecting the breach, failure to perform or Developer Default that is the basis for the Deductions or any other breach, failure to perform or Developer Default, except for recovery of the monetary damage that the Deductions are intended to compensate and for which Deductions shall be the only amount recoverable on account of such damages.

17.5 Default by Authority; Cure Periods

17.5.1 Authority Default

Authority will, subject to any applicable cure period as set forth in PA Section 17.5.2 (*Cure Periods*) below, be in breach under this Project Agreement upon the occurrence of any one or more of the following events or conditions (each an "Authority Default"):

17.5.1.1 Authority fails to make any Project Payment due to Developer or to any holder of an Approved Project Certificate or other transferred right of payment under this Project Agreement on the date that any such payment shall be due, provided that such payment (excluding any payment made pursuant to Approved Project Certificate or Breakage Costs) is not subject to a good faith Dispute;

17.5.1.2 any representation or warranty made by Authority in this Project Agreement is false or materially misleading or materially inaccurate when made or omits material information when made and which frustrates or renders it impossible for Developer to perform all or a substantial part of Developer's obligations under this Project Agreement;

17.5.1.3 GDOT or Authority confiscates, sequesters, condemns, or appropriates the Project or any other material part of Developer's Interest, excluding any such action pursuant to the exercise of any right of Authority (or GDOT) under this Project Agreement;

17.5.1.4 Authority assigns this Project Agreement in violation of PA Section 19.3 (*Assignment by Authority*), except where directed or required by federal or State statute or final, non-appealable order of any court of competent jurisdiction; or

17.5.1.5 to the extent permitted under Law, Authority commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. Bankruptcy, insolvency or other similar Law.

17.5.2 Cure Periods

Authority will have the following cure periods with respect to the any of the conditions set forth in PA Section 17.5.1 (*Authority Default*):

17.5.2.1 respecting an Authority Default under PA Section 17.5.1.1 (*Authority Default*), a period of 30 days after the earlier of (i) Authority's actual knowledge of such failure and (ii) Authority's receipt of Developer's Notice of Authority's non-payment or, for any payment due under an Approved Project Certificate, a period of 30 days after the date on which a payment should have occurred after delivery of that Approved Project Certificate for payment in accordance with PA Exhibit 7 (*DBF Contract Sum and Payment Terms*);

17.5.2.2 respecting an Authority Default under PA Section 17.5.1.2 (*Authority Default*) or PA Section 17.5.1.3 (*Authority Default*), a period of 60 days after Authority received Notice of Authority Default; provided that (a) if Authority Default is of such a nature that the cure cannot with diligence be completed within such time period and Authority has commenced meaningful steps to cure promptly after receiving the default Notice, Authority will have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) as to PA Section 17.5.1.2 (*Authority Default*), cure will be regarded as complete when the adverse effects of the breach are cured; and

17.5.2.3 respecting an Authority Default under PA Section 17.5.1.4 (*Authority Default*) or PA Section 17.5.1.5 (*Authority Default*), a period of 120 days after Authority receives Notice of Authority Default; provided that if Authority commences meaningful steps to cure promptly after receiving the default Notice, Authority will have such additional period of time, up to a maximum cure period of 270 days, as is reasonably necessary to diligently effect cure.

17.6 Developer Remedies for Authority Default

17.6.1 Termination and Suspension

17.6.1.1 Subject to PA Section 18.9 (*Exclusive Termination Rights*) Developer will have the right to suspend performance of the Work on account of an Authority Default subject to any applicable notice and cure periods as set forth in PA Section 17.5.2 (*Cure Periods*).

17.6.1.2 Further, Developer may, upon Notice of not less than 15 days to Authority following expiration of such applicable cure period, where such Authority Default is continuing, exercise the right to terminate this Project Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, PA Section 18.4 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*).

17.6.2 Damages and Other Remedies

Developer shall have and may exercise the following remedies upon the occurrence of an Authority Default and expiration, without cure, of the applicable cure period:

17.6.2.1 if Developer does not terminate this Project Agreement, then, subject to PA Section 17.6.4 (*Limitations on Remedies*), Developer may treat Authority Default as a Relief Event and a Compensation Event, as to each on the terms and conditions set forth in PA Article 13 (*Relief Events; Compensation Events*) and Authority will pay the full Compensation Amount;

17.6.2.2 if Authority Default is a failure to pay when due any undisputed portion of any payment owing under a Supplemental Agreement and Authority fails to cure such Authority Default within 30 days after receiving from Developer Notice thereof, Developer shall be entitled to suspend the Work under the Supplemental Agreement until the default is cured, subject to the following terms and conditions:

(a) Developer shall be responsible for safely securing and monitoring the Site, all materials and equipment;

(b) Developer shall continue to provide traffic management in accordance with the Transportation Management Plan;

(c) Developer shall not suspend or cancel any Insurance Policies, any P&P Bond, or the Warranty Bond (if placed); and

(d) Developer shall resume performance of the Work within 10 days after Authority Default is cured; and

17.6.2.3 subject to PA Sections 17.6.4 (*Limitations on Remedies*) and 18.9 (*Exclusive Termination Rights*), Developer also shall be entitled to exercise any other remedies available under this Project Agreement or at law or in equity. Subject to PA Section 17.6.4 (*Limitations on Remedies*) and PA Section 18.9 (*Exclusive Termination Rights*), each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

17.6.3 Offset Rights

17.6.3.1 Developer may deduct and offset any amount due and owing to Developer that has been liquidated through Dispute Resolution Procedures as provided in PA Section 17.9 (*Dispute Resolution Procedures*) from and against any amounts Developer may owe to Authority.

17.6.3.2 Except as specifically set forth in this PA Section 17.6.3 (*Offset Rights*), Developer shall have no rights of offset or deduction, whether available at law or in equity, and Developer hereby irrevocably waives and releases any such right.

17.6.4 Limitations on Remedies

17.6.4.1 Notwithstanding any other provision of the DBF Documents and except as forth in PA Section 17.6.4.2 (*Limitations on Remedies*), to the extent permitted by applicable Law, neither Authority nor GDOT shall be liable for punitive damages or any indirect, incidental or consequential

damages, whether arising out of breach of this Project Agreement or any DBF Documents, tort (including negligence) or any other theory of liability, and Developer releases Authority and GDOT from any such liability.

17.6.4.2 The foregoing limitation on Authority's and GDOT's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

(a) losses directly caused by the gross negligence, reckless or willful misconduct, violation of Law and other illegal activities (or inaction), violation of contract, criminal conduct, bad faith, intentional misconduct (which excludes intentional Authority Default), arbitrary or capricious acts, or fraud on the part of Authority, GDOT, or those Persons listed in clause (c) of the definition of "Authority-Related Entities";

(b) losses arising out of Authority Release(s) of Hazardous Materials;

(c) any amounts Authority may be obligated to reimburse Developer, or that are otherwise due from Authority to Developer under the express provisions of this Project Agreement for Compensation Events or events of termination;

(d) any other specified amounts Authority may be obligated to reimburse Developer, or that are otherwise due from Authority to Developer under the express provisions of the DBF Documents;

(e) interest and charges that the DBF Documents expressly state are due from Authority to Developer; and

(f) any credits, deductions or offsets that the DBF Documents expressly provide to Developer against amounts owing Authority.

17.6.4.3 The measure of compensation available to Developer as set forth in this Project Agreement for a Compensation Event or an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from the State, Authority or GDOT arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from the State, Authority or GDOT. No award of compensation or damages shall be duplicative.

17.6.4.4 Without limiting the effect of PA Section 17.6.4.3 (*Limitations on Remedies*), in the event Authority wrongfully withholds an approval or consent required under this Project Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Project Agreement, Developer's sole remedies against Authority or GDOT shall be extensions of time, or compensation, or both, in either case as provided in PA Article 13 (*Relief Events; Compensation Events*).

17.6.5 Procedure for Payment of Judgments

Promptly after any final, non-appealable order or judgment awarding compensation or damages to Developer, Authority will institute payment procedures as set forth in applicable Law.

17.7 Suspensions for Safety

17.7.1 Notwithstanding anything to the contrary herein, and further to Authority's rights and Developer's obligations under PA Article 12 (*Safety*), Developer acknowledges that Authority may issue an order suspending Work wholly or in part and to take appropriate action when public safety is jeopardized,

as determined by or on behalf of Authority in its sole discretion. Developer shall promptly comply with any such written suspension order. Developer shall promptly recommence performance of the scope of the work upon receipt of notice from Authority directing Developer to resume performance. Any such suspension shall not be, nor be deemed to be, a suspension under PA Section 17.3.6.1 (*Suspension of Work*), requiring notice and opportunity to cure or otherwise. Authority shall have no liability to Developer in connection with any such suspension, and Developer shall have no basis for relief under this Project Agreement by virtue of such a suspension under this PA Section 17.7.1 (*Suspensions for Safety*).

17.7.2 During any suspension periods directed by Authority under this PA Section 17.7.2 (*Suspensions for Safety*), Developer shall continue to be responsible for the Project and shall prevent damage, loss or injury to the Project. Without limiting the generality of the foregoing, Developer shall specifically provide for drainage, protect any known or suspected Hazardous Materials or known or suspected archaeological, paleontological, biological, or cultural resources (including taking affirmative steps to protect the site from vandalism and unauthorized investigations), protect the Site from accidental damage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. Developer shall also maintain all Insurance Policies, P&P Bonds, the Warranty Bond (if placed), guaranties, letters of credit and other security for payment or performance placed or required to be in placed under this Project Agreement and to comply with all applicable Governmental Approvals and applicable Laws. Developer shall, unless otherwise directed by Authority, continue to be responsible for traffic control, erosion control, and maintenance of the roadway in accordance with this Project Agreement.

17.8 Partnering

17.8.1 Authority and Developer shall establish and maintain throughout the Term a partnering relationship and participate in partnering meetings in accordance with this PA Section 17.8 (*Partnering*) and TP Section 2.2.1.3 (Team Communications and Partnering Plan). The purpose of the partnering relationship is to facilitate effective communication between the Parties and to cooperate in identifying and resolving critical issues relating to the delivery of the Project.

17.8.2 The Parties acknowledge and agree that: (a) the partnering relationship and any discussions between the Parties at the partnering meetings will not amend or waive any of the terms, covenants, conditions, rights, remedies or obligations of the Parties under this Project Agreement; (b) no such discussions, or memorializations thereof, shall function as an amendment to this Project Agreement, and the terms of PA Section 22.2 (*Amendments*) shall apply exclusively in respect thereof; and (c) no such discussions, or memorializations thereof, shall function as a waiver of any term, covenant, condition, right, remedy or obligation of a Party under this Project Agreement, and the terms of PA Section 22.3 (*Waiver*) shall apply in respect thereof.

17.8.3 Refer to TP Section 2.2.1.3 (Team Communications and Partnering Plan) for additional requirements pertaining to planning and facilitating partnering meetings contemplated by this PA Section 17.8 (*Partnering*). The independent partnering facilitator identified in TP Section 2.2.1.3 (Team Communications and Partnering Plan) shall be engaged by Developer at Developer's sole cost and expense, and on such terms as are acceptable, in advance of engagement, as are acceptable to Authority.

17.8.4 Nothing in this PA Section 17.8 (*Partnering*) shall be construed to replace, supplant, or otherwise preclude the Parties' obligations to endeavor to resolve Disputes under the Dispute Resolution Procedures, it being the intent of the Parties that their respective obligations under this PA Section 17.8 (*Partnering*) do not contemplate Dispute resolution but instead all other matters for which partnering may be in the interest of the respective Parties and the Project, which may include Dispute avoidance. All references to either of the Parties' right to bring a Dispute hereunder shall not be construed to require any

prior obligation to submit the basis for the Dispute to or through any partnering process under this PA Section 17.8 (*Partnering*).

17.9 Dispute Resolution Procedures

17.9.1 The Parties shall endeavor to resolve any Dispute that may arise between them through good faith negotiations. If the Dispute is not resolved to the mutual satisfaction of all Parties within 30 days after Notice of such Dispute, or such longer time as is mutually agreed, the Dispute shall next be submitted in accordance with PA Section 17.9.2 (*Dispute Resolution Procedures*).

17.9.2 If, despite good faith negotiations between the Parties, any Disputes are not resolved within 30 days after Notice of such Dispute, then:

17.9.2.1 within 10 Business Days of expiry of such time period, either Party may submit the Dispute to a Dispute Review Board for review and recommendation ("DRB Review") in accordance with this PA Section 17.9.2 (*Dispute Resolution Procedures*) if such Dispute is of a predominantly technical nature and arises before the Final Acceptance Date (a "Technical Dispute"). The following Disputes shall not be submitted for DRB Review: (i) a Dispute of predominantly a legal, or commercial or financial (and not technical) nature; or (ii) a Dispute which either Party disagrees as to whether such Dispute is a Technical Dispute; or

17.9.2.2 if such Dispute: (a) is not referred by either Party for DRB Review or cannot be referred to DRB Review in accordance with PA Section 17.9.2.1 (*Dispute Resolution Procedures*); or (b) is referred by either Party for DRB Review in accordance with PA Section 17.9.2.1 (*Dispute Resolution Procedures*), and: (i) the Parties mutually agree to withdraw the Dispute from the DRB Review process in accordance with PA Section 17.9.3.2 (*Dispute Resolution Procedures*); or (ii) the Dispute Review Board's recommendation is rejected or deemed rejected in accordance with PA Section 17.9.3.1(c) (*Dispute Resolution Procedures*), then either Party may submit such Dispute to non-binding mediation in accordance with PA Section 17.9.4 (*Dispute Resolution Procedures*).

17.9.3 No later than 120 days after NTP1 the Parties shall establish a dispute review board to provide special expertise and to assist in and facilitate the timely and equitable resolution of Technical Disputes between Authority and Developer in accordance with PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1 (*Establishment of Dispute Review Board*) (the "Dispute Review Board"), and Authority, Developer and all members of the Dispute Review Board shall execute a Dispute Review Board Agreement substantially in the form of PA Exhibit 23 (*DRB Review Procedures*), Part B (*Form of Dispute Review Board Agreement*).

17.9.3.1 Following referral of a Dispute to DRB Review under PA Section 17.9.2.1 (*Dispute Resolution Procedures*), the Dispute Review Board shall commence the DRB Review of such Dispute in accordance with the following procedures:

(a) unless the Parties request the Dispute Review Board's issuance of a written recommendation only without holding a hearing in accordance with PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.1 (*Written Recommendation*), the Dispute Review Board shall conduct a hearing for the Dispute in accordance with PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.2 (*Hearing Requirements*);

(b) the Dispute Review Board shall provide to Authority and Developer its recommendation for resolution of the Dispute in writing within 10 Business Days of referral of the Dispute to the Dispute Review Board (if the Parties request that the Dispute Review Board issue a written

recommendation without holding a hearing), or otherwise within 10 Business Days after completion of the hearing (or such longer time period as the Parties agree in writing);

(c) within 20 Business Days of receiving the Dispute Review Board's recommendation (whether such recommendation were issued without a hearing pursuant to PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.1 (*Written Recommendation*) or following the hearing pursuant to PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.2 (*Hearing Requirements*)), both Authority and Developer shall respond to the other and to the Dispute Review Board in writing, signifying either acceptance or rejection of the Dispute Review Board's recommendation; provided, however, if either Party fails to accept or reject the Dispute Review Board's recommendation within such time period, the recommendation shall be deemed rejected;

(d) if both Parties accept any recommendation of the Dispute Review Board in accordance with PA Section 17.9.3.1(c) (*Dispute Resolution Procedures*), each Party shall (unless otherwise specified in the relevant recommendation) give effect to such recommendation as soon as is reasonably practicable. Where giving effect requires changes to the Work in accordance with PA Article 13 (*Relief Events; Compensation Events*) or PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*), such effect will be given by way of a Supplemental Agreement. The Dispute Review Board will not be involved in the drafting of any Supplemental Agreement and shall not oversee the implementation of its recommendation; and

(e) if the Dispute Review Board's recommendation is rejected or deemed rejected in accordance with PA Section 17.9.3.1(c) (*Dispute Resolution Procedures*), then either Party may submit such Dispute to non-binding mediation in accordance with PA Section 17.9.4 (*Dispute Resolution Procedures*).

17.9.3.2 At any time during a DRB Review process, the Parties may mutually agree to withdraw the Dispute in question from the DRB Review process, following which either Party may submit such Dispute to non-binding mediation in accordance with PA Section 17.9.4 (*Dispute Resolution Procedures*).

17.9.3.3 Except for its participation in the Dispute Review Board's activities as provided for in the Dispute Review Board Agreement and under this PA Section 17.9.3 (*Dispute Resolution Procedures*), neither Party shall solicit advice or consultation from any member of the Dispute Review Board, on matters dealing in any way with the Project, the conduct of the Work, or resolution of problems.

17.9.3.4 The Parties agree that, except as otherwise specifically provided for in this PA Section 17.9.3 (*Dispute Resolution Procedures*), communications between either Party and the Dispute Review Board, transcripts of any Dispute Review Board hearings, and the written recommendations of any Dispute Review Board, shall be kept confidential, and under no circumstances admissible in any administrative, alternative dispute resolution, or judicial proceeding, nor disclosed to the public. The Parties acknowledge that any disclosure to the public will be controlled by the Open Records Act, O.C.G.A. § 50-18-1 *et seq*.

17.9.3.5 Developer shall provide each Dispute Review Board member with a bi-monthly progress report ("Progress Report") and will hold bi-monthly progress meetings (each a "Progress Meeting") with respect to the Project for the purpose of keeping each Dispute Review Board member informed of Project-related activity. If agreed by the Parties, the Progress Meeting may be held as part of the agenda for the "Monthly progress status team meetings" held further to TP Table 2-1 (Required Project Meetings) and Developer's general obligation to hold specific meetings at specific frequencies under TP

Section 2.1.3 (Required Meetings), such that the Progress Meeting agenda is the first agenda item, with the members of the Dispute Review Board having been invited to attend for such first agenda item. Each Progress Report is to be provided to Dispute Review Board members at least two weeks prior to the next Progress Meeting. The purpose of the Progress Meetings will be for Developer (or the Parties upon Authority's prior written notice to Developer) to present Project updates and the Parties to answer Dispute Review Board members' questions. During the Progress Meetings, neither Party shall solicit from the Dispute Review Board members any opinion or recommendation on any Dispute, potential Dispute or any matter that, by virtue of the questions or commentary, may become a Dispute (any such opinion or recommendation may only be provided through the process set out in this PA Section 17.9.3 (*Dispute Resolution Procedures*)), and no opinion or recommendation offered by a Dispute Review Board member during a Progress Meeting may be discussed or otherwise referred to by either Party in any subsequent discussions or proceedings relating to any Dispute or potential Dispute. The Parties may, but shall not be required to, have legal counsel in attendance at the Progress Meetings, it being agreed that the Progress Meetings are not, in themselves, adversarial proceedings or negotiations.

17.9.3.6 Developer shall pay the fees and administrative costs invoiced under the Dispute Review Board Agreement, after approval by both Parties ("DRB Costs") and then Developer shall invoice Authority for fifty percent (50%) of such DRB Costs as part of the next applicable Project Payment. For avoidance of doubt, the creation of the Dispute Review Board and entry into Dispute Review Boards Agreements is required by this Project Agreement.

17.9.4 In the event either Party submits the Dispute to mediation pursuant to PA Section 17.9.2.2 (*Dispute Resolution Procedures*), the procedures set forth in this PA Section 17.9.4 (*Dispute Resolution Procedures*) shall govern. For avoidance of doubt, Developer shall schedule the mediation within 15 days after Notice of such Dispute, which scheduled mediation may occur after 30 days after the aforementioned Notice of such Dispute. Developer shall consult with Authority as to the scheduled mediation date and reasonably accommodate Authority's requests in that regard. Developer shall provide Notice to Authority of the date, time, and location of the mediation, as determined below.

17.9.4.1 The Parties shall mutually select a private mediator to formally mediate the Disputes. If the Parties cannot mutually select a private mediator, the mediator shall be selected pursuant to the mediation rules established by the American Arbitration Association or other dispute resolution organization agreed to by the Parties. Mediation shall normally be scheduled within 45 days of notification of the decision by either Party to submit the Dispute to mediation. Authority and Developer shall each pay one-half of the fees and administrative costs charged by the selected mediator. Other parties, such as GDOT and Contractors, may be invited to the mediation as may be appropriate for the mediation, and if the Contractors are Key Contractors, Developer shall cause such Key Contractor(s) to attend and participate, if so invited by or on behalf of Authority.

17.9.4.2 The Parties, to provide economies of scale, may mutually agree in writing to submit one or more Disputes, whether or not factually related, to a single mediation. In such event, time periods may be extended by mutual written agreement to facilitate preparation for the mediation.

17.9.4.3 The mediation may, at the insistence of either party, and under such reasonable constraints as may be imposed by American Arbitration Association (or such other dispute resolution organization) rules (not specific to this Project Agreement), be held virtually with Authority's prior approval.

17.9.4.4 If relevant in the mediation, the Party bringing the Dispute shall bear the burden of proving the same.

17.9.4.5 If the Dispute has not been settled within 15 days following conclusion of the scheduled mediation, or within such other period that the Parties may agree in writing, such Dispute may be submitted to litigation by either Party in accordance with PA Section 17.9.6 (*Dispute Resolution Procedures*).

17.9.5 No litigation may be filed by either Party concerning any Dispute (or the substantive issue(s) or matters(s) of the Dispute, whether or not formally a Dispute) prior to using the procedure described in PA Section 17.9.2 (*Dispute Resolution Procedures*) through PA Section 17.9.4 (*Dispute Resolution Procedures*). This procedure is a condition precedent for any Party to commence a civil action for resolution of a Dispute. Furthermore, failure of Developer to conform to the Dispute Resolution Procedures in all material respects as to any Dispute subject thereto shall constitute a failure to pursue diligently and to exhaust the administrative procedures in the DBF Documents and shall operate as a bar to the Dispute; provided, however, that the foregoing shall not bar a Dispute if the failure to meet applicable deadlines is due to conduct by or on behalf of any Authority-Related Entity.

17.9.6 All litigation, and any judicial proceeding (including those involving petitions for protective orders) between the Parties arising out of or pertaining to this Project Agreement or its breach shall be filed, heard and decided in the Superior Court of Fulton County, Georgia, which shall have exclusive jurisdiction and venue pursuant to O.C.G.A. § 50-21-1. Each Party shall bear its own attorney's fees and costs in any Dispute or litigation arising out of or pertaining to this Project Agreement, and no Party shall seek or accept an award of attorney's fees or costs.

17.9.7 Continuation of Disputed Work and Payments

17.9.7.1 At all times during Dispute Resolution Procedures, Developer shall, and shall cause all Contractors, Subcontractors, and Suppliers to, continue with the performance of the Work and their obligations, including any Disputed Work or obligations, diligently and without delay, in accordance with the DBF Documents, except, and solely to the extent enjoined by order of the court identified in PA Section 17.9.6 (*Dispute Resolution Procedures*) or otherwise approved by Authority in its sole discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the course of Dispute Resolution Procedures relating to the Disputed Work even if Developer's position in connection with the Dispute ultimately prevails.

17.9.7.2 During the course of any Dispute Resolution Procedures, the Parties shall continue to comply with all provisions of the DBF Documents, the accepted Project Management Plan, the Governmental Approvals and applicable Law.

17.9.7.3 Throughout the course of any Disputed Work, Developer shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of Disputed Work and that of undisputed Work. Developer shall provide Authority access to all Project-related Books and Records on an Open Book Basis as Authority desires to evaluate the Dispute. Any mediator shall have similar access to all such records. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such Disputed Work (or for any longer period required under any other applicable provision of the DBF Documents).

17.9.7.4 During the course of any Dispute Resolution Procedures, Authority will continue to pay to Developer when due all undisputed amounts owing under this Project Agreement, including, for the avoidance of doubt, under all Approved Project Certificates.

17.9.8 Waiver of Non-Monetary Relief

Notwithstanding anything to the contrary in the DBF Documents, and to the maximum extent permitted under applicable Law, Developer shall have no right to seek, shall not seek, and irrevocably waives and relinquishes any right to, non-monetary relief against any Authority-Related Entity not otherwise expressly set forth herein, including specifically any declaratory relief under the Dispute Resolution Procedures, with respect to the DBF Documents.

17.9.9 SAAG Consultation

The Parties acknowledge that Authority, for itself and through GDOT, may exercise certain of its rights under this PA Section 17.9 (*Dispute Resolution Procedures*) in consultation with Georgia Department of Law and GDOT's Office of Legal Services, which also may be by or through one or more SAAGs.

17.10 Developer's Right to Suspend Work

17.10.1 In the event that any of the Joint Resolution, the Intergovernmental Agreement, or the Estate for Years has been revoked, terminated, or not renewed or the MOU has been revoked or not renewed prior to the satisfaction of all of Authority's obligations hereunder or has been modified or supplemented or amended in either case in a manner that would materially impact Authority's ability to make the payments required under this Project Agreement, then the following shall apply:

17.10.1.1 Developer may provide Notice to Authority of its intention to suspend Work (the "Suspension Notice").

17.10.1.2 30 days after Authority's receipt of the Suspension Notice, Developer may suspend Work.

17.10.1.3 If the suspension of Work continues for a period of 180 consecutive days or more, Developer shall have the right to terminate this Project Agreement pursuant to the provisions of PA Section 18.4.2 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*).

17.10.2 The provisions of PA Section 17.10.1 (*Developer's Right to Suspend Work*) shall not apply if at any time after Authority's receipt of the Suspension Notice, Authority provides evidence to Developer that it has obtained a source of funds sufficient to enable Authority to make all payments due to Developer or the Lender(s) (or both) under the DBF Documents during the Term.

Article 18 TERMINATION

18.1 Termination for Convenience

18.1.1 Authority may terminate this Project Agreement, in whole, but not in part, if Authority determines, in its sole discretion, that a termination is in Authority's best interest (a "Termination for Convenience"). Termination of this Project Agreement shall not relieve Authority, Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

18.1.2 Authority may exercise Termination for Convenience by delivering to Developer a written Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.1.3 In the event of a Termination for Convenience, Developer will be entitled to compensation determined in accordance with PA Exhibit 5 (*Terms for Termination Compensation and*

Prepayment). Payment will be due and payable as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.1.4 If Authority terminates this Project Agreement on grounds or in circumstances beyond Authority's termination rights specifically set forth in this Project Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the Termination Compensation due (but not for any other purpose).

18.2 Termination for Failure to Achieve NTP1

18.2.1 If NTP1 has not been issued within 30 days after the Financial Close Date and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law by a Developer-Related Entity, Developer, as its sole remedy, shall have the right to terminate this Project Agreement, which right shall be exercised by delivery of Notice of termination to Authority.

18.2.2 In the event of a termination for failure to issue NTP1, Developer will be entitled to compensation determined in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Payment will be due and payable as provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.3 Termination for Developer Default

18.3.1 Developer Defaults Triggering Authority Termination Rights

If a cure period is specified, at expiration of the cure period (or if no cure period is specified, upon occurrence), each Developer Default (each a "Default Termination Event") shall entitle Authority, at its sole election, to terminate this Project Agreement, effective immediately upon delivery of Notice of termination to Developer. Developer agrees, acknowledges, and stipulates that any Default Termination Event would result in material and substantial harm to Authority's rights and interests under this Project Agreement and therefore constitute a material Developer Default justifying termination if not cured within the applicable cure period, if any.

18.3.2 Compensation to Developer

If Authority issues Notice of termination of this Project Agreement due to a Default Termination Event, or if Developer terminates this Project Agreement on grounds or in circumstances beyond Developer's termination rights specifically set forth in this Project Agreement, Developer will be entitled to compensation to the extent, and only to the extent, provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Payment shall be due and payable as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.3.3 Finality

If Authority issues Notice of termination of this Project Agreement due to a Default Termination Event, such determination shall be effective and final immediately upon delivery of Notice, and termination shall be effective and final as of the Early Termination Date set forth by Authority in such Notice (to be determined by Authority in its sole discretion), as provided in PA Section 18.3.1 (*Developer Defaults Triggering Authority Termination Rights*) regardless of whether Authority is correct in determining that Authority has the right to terminate for Developer Default. In the event it is determined that Authority lacked such right, then such termination shall be treated as a Termination for Convenience as provided in

PA Section 18.1.2 (*Termination for Convenience*) for the purpose of determining the Termination Compensation due.

18.4 Termination for Authority Default, Suspension of Work or Materially Delayed NTP2

18.4.1 In the event of an Authority Default under PA Section 17.5.1 (*Authority Default*) that remains uncured following Notice and expiration of the applicable cure period under PA Section 17.5.2 (*Cure Periods*), Developer may deliver to Authority a further Notice setting forth such Authority Default and warning Authority that Developer may elect to terminate this Project Agreement and if Authority does not cure such Authority Default within 60 days after the delivery of such Notice with respect to an Authority Default under PA Section 17.5.1.1 (*Authority Default*). Authority may avoid termination by effecting cure within such 60 day period. Failing such cure, Developer shall have the right to terminate this Project Agreement, effective immediately upon delivery of Notice of termination to Authority. In the event of such termination, Developer will be entitled to compensation determined in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Payment shall be due and payable as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.4.2 In the event (i) Authority orders Developer to suspend Work on all or any material portion of the Project (A) for a reason other than those set forth in PA Section 17.3.6.1 (*Suspension of Work*), or (B) as a result of a Force Majeure Event, and such suspension of Work continues for a period of 180 consecutive days or more, or (ii) Developer has suspended Work for a period of 180 consecutive days or more in accordance with PA Section 17.10 (*Developer's Right to Suspend Work*), Developer shall have the right to terminate this Project Agreement, effective immediately upon delivery of Notice of termination to Authority. In the event of such termination, Developer will be entitled to compensation determined in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Payment shall be due and payable as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.4.3 In the event Authority, due to no fault of a Developer-Related Entity or other than because the NEPA Finality Date has not occurred, does not issue NTP2 within 365 days after the anticipated issuance date set forth in PA Section 3.3 (*Contract Time, Date of Commencement and Notice to Proceed*), Developer shall have the right to terminate this Project Agreement, effective immediately upon delivery of Notice of termination to Authority. In the event of such termination, Developer will be entitled to compensation determined in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Payment shall be due and payable as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.4.4 If Developer issues notice of termination of this Project Agreement due to a material Authority Default under PA Section 17.5.1.1 (*Authority Default*), termination shall be effective and final immediately upon delivery as provided in PA Section 18.4.1 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*) regardless of whether Developer is correct in determining that it has the right to terminate for such Authority Default. In the event it is determined that Developer lacked such right, then such termination shall be treated as a termination due to material Developer Default and PA Section 18.3.2 (*Compensation to Developer*) shall govern the measure of the Termination Compensation.

18.5 Termination for Failure to Achieve Financial Close

18.5.1 If Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to any of the conditions set forth in PA Section 4.3.2.2 (*Financial Close Deadline*), then either Party shall have the right to terminate this Project Agreement in its entirety by Notice to the other Party and such termination will be effective immediately upon delivery of such Notice. Within 10

days following receipt of such Notice in accordance with this Project Agreement relating to terminations under this PA Section 18.5.1 (*Termination for Failure to Achieve Financial Close*), and so long as no Party is disputing pursuant to PA Section 17.9 (*Dispute Resolution Procedures*) whether the other Party has the right to terminate this Project Agreement, Authority will return the Financial Close Security to Developer.

18.5.2 If the increase in Project Payments resulting from an Interest Rate Adjustment is higher than the limit specified in PA Section 4.2.7.3 (*Interest Rate Adjustments*), and if Authority elects not to provide additional compensation beyond such limit, or the Parties fail to mutually agree on other actions, then either Party has the right to terminate this Project Agreement in its entirety by providing Notice to the other Party and such termination will be effective immediately upon delivery of such Notice. Within 10 days following receipt of such Notice in accordance with this Project Agreement for terminations under this PA Section 18.5.2 (*Termination for Failure to Achieve Financial Close*), and so long as no Party is disputing pursuant to PA Section 17.9 (*Dispute Resolution Procedures*) whether the other Party has the right to terminate this Project Agreement, Authority will return the Financial Close Security to Developer.

18.5.3 If any Developer Condition Precedent is not satisfied or waived in writing by Authority on or before the Financial Close Deadline, and otherwise Developer or Authority do not terminate this Project Agreement under PA Section 18.5.1 (*Termination for Failure to Achieve Financial Close*) or PA Section 18.5.2 (*Termination for Failure to Achieve Financial Close*), then Authority will have the right to:

18.5.3.1 terminate this Project Agreement in its entirety by Notice to Developer and such termination will be effective immediately upon delivery of such notice; and

18.5.3.2 in the event of such termination, draw and retain the full amount of the Financial Close Security as the sole remedy of Authority against Developer under this Project Agreement.

18.5.4 In the event of any termination under this PA Section 18.5 (*Termination for Failure to Achieve Financial Close*), Developer will be entitled to compensation, if any, determined in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

18.6 Termination Procedures and Duties

Upon expiration of the Term or any earlier termination of this Project Agreement for any reason, the provisions of this PA Section 18.6 (*Termination Procedures and Duties*) shall apply (with the exception of PA Section 18.6.4 (*Termination Procedures and Duties*) where such termination is due to an Authority Default). Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or Authority on account of termination. If Developer fails to timely comply with the provisions of this PA Section 18.6 (*Termination Procedures and Duties*), as judged by Authority in its sole discretion, then upon Notice from Authority to Developer making reference to this PA Section 18.6 (*Termination Procedures and Duties*), Developer hereby stipulates that, and shall be deemed to have, surrendered its access rights to the Project Limits and otherwise under this Project Agreement.

18.6.1 In any case where Notice of termination precedes the effective Early Termination Date:

18.6.1.1 Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the DBF Documents, and without curtailment of services, quality and performance until the Early Termination Date;

18.6.1.2 at Authority's option, it may call for Increased Oversight of the Project and Developer's compliance with the obligations under the DBF Documents, to such level as Authority reasonably sees fit to protect against curtailment of services, quality and performance; and

18.6.1.3 not later than 90 days prior to a Termination Date, or, if applicable, within three days after Developer receives or delivers a Notice of termination, Developer shall meet and confer with Authority for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project control to Authority. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date Developer receives or delivers the Notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall:

(a) be in form and substance acceptable to Authority in its good faith discretion;

(b) include and be consistent with the other provisions and procedures set forth in this PA Section 18.6 (*Termination Procedures and Duties*), all of which procedures Developer shall promptly follow, regardless of any delay in preparation or acceptance of the transition plan;

(c) include a plan to promptly deliver to Authority or its designee possession of all the property, data and documents described herein; and

(d) include an estimate of costs and expenses to be incurred by both Parties in connection with the implementation of the transition plan.

18.6.2 On the Termination Date, or as soon thereafter as is possible, Developer shall relinquish and surrender full control and possession of the Project to Authority, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Termination Turnover Requirements.

18.6.3 On the later of the Termination Date or the date Developer relinquishes full control and possession, Authority will have the exclusive right to, and shall assume responsibility, at its expense, for the Project, subject to any rights to damages that Authority has against Developer where the termination is due to a Default Termination Event.

18.6.4 Where Developer has entered into a Design-Build Contract, if as of the Termination Date, Developer has not completed construction of all or part of the Project and Utility Adjustments that are part of the Construction Work, Authority (other than in the event of a termination due to an Authority Default) may elect, by Notice to Developer and the D&C Contractor delivered within 90 days after the Termination Date, to continue in effect the Design-Build Contract or to require its termination. If Authority does not deliver Notice of such election within such time period, Authority will be deemed to elect to require termination of the Design-Build Contract. If Authority elects to continue the Design-Build Contract in effect, then Developer shall execute and deliver to Authority a written assignment, in form and substance acceptable to Authority, acting reasonably, of all Developer's right, title and interest in and to the Design-Build Contract, and Authority will assume in writing all of Developer's obligations thereunder that arise from and after the Termination Date. If Authority elects (or is deemed to elect) to require termination of the Design-Build Contract, then Developer shall:

18.6.4.1 take such steps as are necessary to terminate the Design-Build Contract, including notifying the D&C Contractor that the Design-Build Contract is being terminated and that the D&C Contractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by Authority;

18.6.4.2 promptly and safely demobilize and secure construction, staging, lay down and storage areas for the Project and Utility Adjustments included in the Construction Work in a manner satisfactory to Authority, and remove all debris and waste materials except as otherwise approved by Authority in writing;

18.6.4.3 take such other actions as are necessary or appropriate to mitigate further cost;

18.6.4.4 subject to the prior written approval of Authority, settle all outstanding liabilities and all claims arising out of the Design-Build Contract;

18.6.4.5 cause the D&C Contractor to execute and deliver to Authority a written assignment, in form and substance acceptable to Authority, acting reasonably, of all the D&C Contractor's right, title and interest in and to (a) all third party agreements and permits, except subcontracts for performance of the Design and Construction Work, provided Authority assumes in writing all of the D&C Contractor's obligations thereunder that arise after the Termination Date, and (b) all assignable warranties, claims and causes of action held by the D&C Contractor against subcontractors and other third parties in connection with the Project or the Work, to the extent the Project or the Work is adversely affected by any subcontractor or other third party breach of warranty, contract or other legal obligation; and

18.6.4.6 carry out such other directions as Authority may give for termination of Design Work and Construction Work.

18.6.5 If as of the Termination Date Developer has entered into any other contract for the design, construction, permitting, installation and equipping of the Project or for Utility Adjustments, Authority will elect, by Notice to Developer, to continue in effect such contract or to require its termination. If Authority elects to continue the contract in effect, then Developer shall execute and deliver to Authority a written assignment, in form and substance acceptable to Authority, acting reasonably, of all Developer's right, title and interest in and to the contract, and Authority will assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If Authority elects to require termination of the contract, then Developer shall take actions comparable to those set forth in PA Section 18.6.4 (*Termination Procedures and Duties*) with respect to the contract.

18.6.6 Within 30 days after Notice of termination is delivered, Developer shall provide Authority with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by Developer or any Person on behalf of or for the account of Developer) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or about the Termination Date, Developer shall transfer title and deliver to Authority or Authority's Authorized Representative, through bills of sale or other documents of title, as directed by Authority, all such materials, goods, machinery, equipment, parts, supplies and other property, provided Authority assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the Termination Date or the effective date of the transfer.

18.6.7 Developer shall take all action that may be necessary, or that Authority may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, hardware, data, documentation, equipment, parts, supplies and other property.

18.6.8 On or about the Termination Date, Developer shall execute and deliver to Authority the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to Authority, acting reasonably, assigning and transferring to Authority all of Developer's right, title and interest in and to the following:

18.6.8.1 all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans,

surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;

18.6.8.2 all samples, borings, boring logs, geotechnical data and similar data and information relating to the Project;

18.6.8.3 all books, records, reports, test reports, studies and other documents of a similar nature relating to the Work and the Project;

18.6.8.4 all data (including Project Data) and information relating to the use of the Project, including all studies, reports, and other information provided that the transfer of any Intellectual Property shall be subject to PA Section 20.4 (*Proprietary Intellectual Property*); and

18.6.8.5 all other work product and Intellectual Property used or owned by Developer or any Affiliate relating to the Work or the Project, provided that the transfer of any Intellectual Property shall be subject to PA Section 20.4 (*Proprietary Intellectual Property*).

18.6.9 On or about the Termination Date, Developer shall execute and deliver to Authority a written assignment, in form and substance acceptable to Authority, acting reasonably, of all of Developer's right, title and interest in and to any escrows or similar arrangements for the protection of Intellectual Property, Source Code or Source Code Documentation of others used for or relating to the Project or the Work.

18.6.10 On or about the Termination Date, Developer shall execute and deliver to Authority a written assignment, in form and substance acceptable to Authority, acting reasonably, of all Developer's right, title and interest in and to all warranties.

18.6.11 Developer shall otherwise assist Authority in such manner as Authority may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Project and its management to Authority, and shall, if appropriate and if requested by Authority, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of the Project.

18.6.12 For a period of four years following the Termination Date, Developer shall maintain a secure archive copy of all electronic data (including archived Project Data) transferred to Authority.

18.7 Contracts and Agreements

18.7.1 Regardless of Authority's prior actual or constructive knowledge thereof, no contract or agreement to which Developer is a party (unless Authority is also a party thereto) as of the Termination Date shall bind Authority, unless Authority elects to assume such contract or agreement in writing. Except in the case of Authority's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Developer's relinquishment to Authority of possession and control of the Project, or to any claim, legal or equitable, against Authority.

18.8 Liability After Termination; Final Release

18.8.1 No termination of this Project Agreement shall excuse either Party from any liability arising out of any default as provided in this Project Agreement that occurred prior to termination. Notwithstanding the foregoing, any termination of this Project Agreement shall automatically extinguish any claim hereunder, or at law, of Developer to payment of Compensation Amounts for adverse cost

impacts accruing after the Early Termination Date from Compensation Events that occurred prior to termination.

18.8.2 If this Project Agreement is terminated early for any reason, then Authority's payment to Developer of the amounts required hereunder (if any), including under all Approved Project Certificates and Breakage Costs, shall constitute full and final satisfaction of, and upon payment Authority and GDOT shall be forever released and discharged from, any and all claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against Authority or GDOT arising out of or relating to this Project Agreement or termination thereof, or the Project, except for future claims, causes of action, suits, or demands by third parties for specific Disputes that are asserted by Developer in accordance with PA Section 17.9 (*Dispute Resolution Procedures*) not later than the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to Authority all such releases and discharges as Authority may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release. This PA Section 18.8.2 (*Liability After Termination; Final Release*) shall not affect the obligation or liability of Authority with respect to payments due or that become due under any Approved Project Certificate or with respect to Breakage Costs, which obligations or liabilities shall survive any termination of this Project Agreement until paid or deposited in full into the Designated Account(s).

18.9 Exclusive Termination Rights

This PA Article 18 (*Termination*), together with the express provisions on termination set forth in PA Sections 17.3.1 (*Termination*), PA Section 17.6.1 (*Termination and Suspension*) and PA Section 18.1.1 (*Termination for Convenience*), contain the entire and exclusive provisions and rights of Authority and Developer regarding termination of this Project Agreement, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Law.

18.10 Access to Information

Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with Authority all data, documents and information pertaining thereto, on an Open Book Basis.

18.11 Termination by Court Ruling

18.11.1 Termination by Court Ruling means (a) issuance of a final order by a court of competent jurisdiction to the effect that this Project Agreement is void and/or unenforceable or impossible to perform in its entirety, (b) issuance of a final order by a court of competent jurisdiction upholding the binding effect on Developer or Authority of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or Authority under the DBF Documents or impossibility of exercising a fundamental right of Developer or Authority under the DBF Documents, (c) occurrence of the circumstances described in PA Section 22.13.2 (*Severability*), or (d) issuance of a final order by a court of competent jurisdiction to the effect that a material provision under the Estate for Years, Intergovernmental Agreement, Joint Resolution or any other DBF Document is void and/or unenforceable so as to deprive Developer of its ability to exercise a fundamental right granted to Developer under the DBF Documents and such inability resulting from such order cannot be otherwise remedied through a Compensation Event, Relief Event or other contractual remedy. The final court order shall be treated as the notice of termination.

18.11.2 Promptly following any Termination by Court Ruling, Authority shall deliver Notice to Developer of the effective date of the Termination by Court Ruling including Formal Communication of the Court Ruling, which shall also serve as Notice of termination of the Project Agreement.

18.11.3 Once Termination by Court Ruling becomes effective, Authority and Developer shall cooperate to implement PA Sections 18.5 (*Termination for Failure to Achieve Financial Close*), 18.6 (*Termination Procedures and Duties*), 18.7 (*Contracts and Agreements*), 18.8 (*Liability After Termination; Final Release*), and 18.9 (*Exclusive Termination Rights*) as and to the extent applicable.

18.11.4 Notwithstanding PA Section 18.11.2 (*Termination by Court Ruling*), if a Termination by Court Ruling occurs, Developer shall be entitled to compensation to the extent, and only to the extent, provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Payment shall be due and payable as and when provided in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*). Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

18.12 Disputes

Disputes arising out of the determination of compensation under this PA Article 18 (*Termination*) shall be resolved according to the Dispute Resolution Procedures.

Article 19 ASSIGNMENT AND TRANSFER

19.1 Restrictions on Assignment, Subletting and Other Transfers

19.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Developer's Interest or any portion thereof without Authority's prior written approval, except:

19.1.1.1 to, directly or indirectly and in a single or multiple steps or transactions, or between, any Lender or Lender Agent, including for any sale, assignment, conveyance, transfer, pledge, mortgage or other encumbrance as permitted by this Project Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the DBF Documents;

19.1.1.2 to any entity that is under the same management control as Developer; or

19.1.1.3 as expressly provided herein.

19.1.2 Developer shall not grant any special right of entry onto, special occupancy of, use of, or right to manage and control the Project to any other Person that is not in the ordinary course of Developer performing the Work, without Authority's prior written approval.

19.1.3 Any voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, or grant of right of entry, or grant of other special management, control, occupancy or use of the Project in violation of this provision shall be null and void *ab initio* and Authority may, by Warning Notice, declare any such attempted action to be a material Developer Default.

19.2 Standards and Procedures for Certain Authority Approvals

19.2.1 Where Authority's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control, Authority may withhold or condition its approval in its reasonable discretion.

19.2.2 Among other reasonable factors and considerations, it shall be reasonable for Authority to withhold its approval if:

19.2.2.1 Developer fails to demonstrate to Authority's reasonable satisfaction that the proposed assignee, sublessee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (for purposes of these PA Sections 19.2 (*Standards and Procedures for Certain Authority Approvals*) through 19.5 (*Change of Organization or Name*), collectively the "Transferee"), and its proposed contractors (a) have the financial resources, qualifications and experience to timely perform Developer's obligations under the DBF Documents and Principal Project Documents and (b) are in compliance with Authority's or GDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest; or

19.2.2.2 at the time of the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use requiring Authority's prior approval, or of any proposed Change of Control, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute a Developer Default, unless Authority receives from the proposed Transferee assurances of cure and performance acceptable to Authority in its good faith discretion.

19.2.3 Authority will approve or disapprove within 30 days after it receives from Developer a Formal Communication consisting of a request for approval together with (a) a reasonably detailed description of the proposed transaction, (b) such information, evidence and supporting documentation as Authority may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Transferee and its proposed contractors and (c) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as Authority may reasonably request. Authority will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to Authority requests for qualifications for concession or similar agreements for comparable projects and facilities.

19.2.4 If for any reason Authority does not act within such 30 day period, or any extension thereof by mutual agreement of the Parties, then Authority shall be deemed to have rejected the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control.

19.3 Assignment by Authority

Authority may assign all or any portion of its rights, title and interests in and to the DBF Documents, P&P Bond(s), the Warranty Bond (if placed), guaranties, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Governmental Entity (i) that succeeds to the governmental powers and authority of Authority, (ii) that has become a party to the Intergovernmental Agreement, the Estate for Years, Memorandum of Understanding (or other arrangement effecting the purposes of the Memorandum of Understanding), and Direct Agreement, whether by operation of law or otherwise, (iii) that has the sources of funding for the Project Payments that are at least as adequate and secure as Authority's at the time of the assignment, and (iv) where such assignment is not prohibited by Law, and (b) to others with the prior written consent of Developer, to be offered by Developer in its reasonable discretion, and the Lender or the Lender Agent, as applicable.

19.4 Notice and Assumption

19.4.1 Assignments and transfers of Developer's Interest permitted under this PA Article 19 (*Assignment and Transfer*) (other than pursuant to PA Section 19.1.1.1 (*Restrictions on Assignment,*

Subletting and Other Transfers)) or otherwise approved in writing by Authority will be effective only upon Authority's receipt of Notice of the assignment or transfer and a written recordable instrument executed by the Transferee, in form and substance acceptable to Authority, in which the Transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under the DBF Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer.

19.4.2 Each Transferee, including any Person who acquires Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take Developer's Interest subject to, and shall be bound by, the DBF Documents, the Project Management Plan, the Key Contracts, any Betterment Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by Authority in writing in its good faith discretion.

19.4.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and Transferee shall give Authority Notice of the assignment not less than 30 days prior to the effective date thereof.

19.5 Change of Organization or Name

19.5.1 Developer shall not change the legal form of its organization in a manner that adversely affects Authority's rights, protections and remedies under the DBF Documents without the prior written approval of Authority, which consent may be granted or withheld in Authority's sole discretion.

19.5.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with Notice of change of name and appropriate supporting documentation.

Article 20 RECORDS AND AUDITS; INTELLECTUAL PROPERTY

20.1 Maintenance and Inspection of Books and Records

20.1.1 Developer shall keep and maintain in Fulton County, Georgia, or in another location Authority approves in writing in its sole discretion, all Books and Records relating to the Project, Utility Adjustments or Work, including copies of all original documents delivered to Authority. Developer shall notify Authority where such records and documents are kept. Developer shall keep and maintain such Books and Records in accordance with applicable provisions of the DBF Documents, the Technical Provisions, and of the Project Management Plan, and in accordance with Good Industry Practice.

20.1.2 Developer shall make all Books and Records for the Project available for inspection by Authority, GDOT, and each of their respective representatives and legal counsel at Developer's principal offices in Georgia, at all times during normal business hours, without charge. Developer shall provide to Authority (and to FHWA, or otherwise to Authority's designee) copies thereof (a) as and when expressly required by the DBF Documents or (b) for those not expressly required, upon request and at no expense to Developer. Authority may conduct any such inspection upon 48 hours' prior Notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this PA Section 20.1.2 (*Maintenance and Inspection of Books and Records*) are subject to the following:

20.1.2.1 Developer reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions; and

20.1.2.2 Developer shall retain the Books and Records until expiration of the Warranty Period, at which point Developer shall deliver, and cause to be delivered, the Books and Records to Authority; provided, however, that if the DBF Documents or applicable Law (including applicable federal Laws) specify any longer time period for retention of particular records, then such time period shall control and Developer shall retain such Books and Records until expiration of such time period, whereupon Developer shall deliver, and cause to be delivered, the Books and Records to Authority. Notwithstanding the foregoing, all records that relate to Compensation Events, Compensation Event Notices, Relief Events, Relief Event Notices, and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Disputes are finally resolved. Refer to Attachment 1 to PA Exhibit 8 (*Federal Requirements*) regarding applicable federal requirements.

20.1.2.3 Developer shall provide an inventory of the Books and Records to Authority, upon request, and ultimately with the final distribution pursuant to PA Section 20.1.2.2 (*Maintenance and Inspection of Books and Records*).

20.2 Audits

20.2.1 Authority will have such rights to review and audit Developer, its Contractors and their respective Books and Records as and when Authority deems necessary for purposes of verifying compliance with the DBF Documents and applicable Law. Without limiting the foregoing, Authority will have the right to audit Developer's compliance with the Project Management Plan, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. Authority may conduct any such audit of Books and Records upon 48 hours' prior Notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

20.2.2 All Compensation Event Notices and Relief Event Notices delivered to Authority will be subject to audit at any time following receipt by Authority. The audit may be performed by employees of Authority or by an auditor under contract with Authority. Notice shall not be required before commencing any audit prior to 60 days after the expiration of the term of this Project Agreement. Thereafter, Authority will provide 20 days' notice to Developer, any Contractors or their respective agents before commencing an audit. Developer, Contractors or their agents shall provide adequate facilities, acceptable to Authority, for the audit during normal business hours. Developer, Contractors or their agents shall cooperate with the auditors. Failure of Developer, Contractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of any such notices or to permit the auditor access to such Books and Records shall constitute a waiver of the basis for relief (or compensation, or both) and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

20.2.2.1 daily time sheets and supervisor's daily reports;

20.2.2.2 union agreements;

20.2.2.3 insurance, welfare, and benefits records;

20.2.2.4 payroll registers;

20.2.2.5 earnings records;

20.2.2.6 payroll tax forms;

20.2.2.7 material invoices and requisitions;

20.2.2.8 material cost distribution work sheet;

20.2.2.9 equipment records (list of company equipment, rates, etc.);

20.2.2.10 Contractors' (including Suppliers') invoices;

20.2.2.11 Contractors' and agents' payment certificates;

20.2.2.12 canceled checks (payroll and Suppliers);

20.2.2.13 job cost report;

20.2.2.14 job payroll ledger;

20.2.2.15 general ledger;

20.2.2.16 cash disbursements journal;

20.2.2.17 all documents that relate to each and every Formal Communication together with all documents that support the amount of damages as to each claim for relief thereunder; and

20.2.2.18 work sheets used to prepare the notice establishing the cost components, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

20.2.3 Full compliance by Developer with the provisions of this PA Section 20.2 (*Audits*) is a contractual condition precedent to Developer's right to seek relief under PA Section 17.9 (*Dispute Resolution Procedures*).

20.2.4 Any rights of the FHWA to review and audit Developer, its Contractors and their respective Books and Records are set forth in Attachment 1 to PA Exhibit 8 (*Federal Requirements*).

20.2.5 Authority's right of audit includes the right to observe the business operations of Developer and its Contractors to confirm the accuracy of Books and Records.

20.2.6 The Project Management Plan shall include internal procedures to facilitate review and audit by Authority and, if applicable, FHWA.

20.2.7 Developer represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with Authority audits, and shall cause all Contractors other than Governmental Entities acting as Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with Authority audits.

20.2.8 Developer's internal and third party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan.

20.2.9 Nothing in the DBF Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor, in carrying out his or her legal authority. Developer understands and acknowledges that (a) the State auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Project Agreement or indirectly through a Contract, (b) acceptance of funds directly under this Project Agreement

or indirectly through a Contract acts as acceptance of the authority of the State auditor to conduct an audit or investigation in connection with those funds, and (c) an entity that is the subject of an audit or investigation must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit.

20.3 Open Records Act and Freedom of Information Act

20.3.1 Developer acknowledges and agrees that all Books and Records and other materials in Authority's or GDOT's possession, as well as in any Developer-Related Entity's possession or control, are subject to the provisions of the Open Records Act, subject only to certain exceptions and exemptions contained therein. Developer shall comply with the Open Records Act, to include specifically to respond to public requests for information consistent therewith.

20.3.2 Developer acknowledges and agrees that in accordance with the Open Records Act, Developer's rights relating to any potential limit on public disclosure of Project materials in Authority's or GDOT's possession: (a) apply only to trade secrets, as defined in O.C.G.A. § 10-1-761(4); (b) specifically exclude the right to limit public disclosure by GDOT or Authority of any commercial, financial, or otherwise proprietary Project information that does not constitute trade secrets; and (c) specifically exclude any right to avail itself of any other exemption to the Open Records Act.

20.3.3 If Developer believes information or materials is/are not subject to the Open Records Act or is excepted from disclosure as "trade secrets" under the Open Records Act, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "TRADE SECRET" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by an affidavit affirmatively declaring that such specific information in the information constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10 of the Georgia Code.

20.3.4 Nothing contained in this PA Section 20.3 (*Open Records Act and Freedom of Information Act*) shall modify or amend requirements and obligations imposed on Authority and GDOT by the Open Records Act or other applicable Law, and the provisions of the Open Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law.

20.3.5 If Authority or GDOT receives a request for public disclosure of materials marked "TRADE SECRET," then Authority or GDOT (as the case may be) shall endeavor to (a) notify Developer of the request to disclose materials marked "TRADE SECRET"; and (b) prior to publicly disclosing any such materials, notify Developer of any decision by Authority or GDOT (as the case may be) to publicly disclose materials marked "TRADE SECRET" and allow Developer a reasonable time to review such notice. Upon receipt of such notification from Authority or GDOT, Developer may request a meeting with Authority or GDOT, as applicable, to discuss the disclosure of such materials. Developer's rights and GDOT's obligations under the preceding two sentences shall be subject in all respects to GDOT's obligations pursuant to O.C.G.A. §50-18-71(d) to respond to any record request within a reasonable time not to exceed three Business Days. If Authority or GDOT determines in good faith that the materials identified as "TRADE SECRET" are not exempt from the Open Records Act, Authority or GDOT will release the requested information within the applicable statutory time period, unless otherwise directed by an order of a court of competent jurisdiction. Authority or GDOT will make the final determination, in their respective sole discretion, regarding whether the requested information is to be disclosed or withheld.

20.3.6 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to Authority or GDOT, Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however,

that the Attorney General of the State shall represent Authority and GDOT who will participate in the litigation in such manner as they each may deem necessary or desirable, in their respective sole discretion. Except in the case of Authority's or GDOT's voluntary intervention in litigation, and only if Authority elects not to offset the costs and fees pursuant to PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), Developer shall pay and reimburse Authority or GDOT (as the case may be) within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, Authority or GDOT incurs in connection with any litigation, proceeding or request for disclosure.

20.3.7 Developer further acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in FHWA's possession may also be subject to disclosure under federal Law, including the Freedom of Information Act. Developer's rights and obligations with respect to such disclosure shall be in accordance with such federal Law.

20.4 Proprietary Intellectual Property

20.4.1 Developer shall deliver, or cause to be delivered, to Authority copies of all Proprietary Intellectual Property owned by or licensed to Developer that it uses in providing the Work. All Proprietary Intellectual Property shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to Authority or GDOT.

20.4.2 Authority and GDOT shall have, and are hereby granted by Developer, a perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of Developer solely in connection with the Project or another Highway or other roads owned and operated by GDOT or a State or regional Governmental Entity within the State. Authority's and GDOT's respective rights to exercise the foregoing license shall commence and endure only at the following times:

20.4.2.1 from and after expiration or earlier termination of the Term, for any reason whatsoever;

20.4.2.2 during any time that Authority or GDOT is exercising any step-in rights pursuant to PA Section 17.3.2 (*Step-in Rights*), in which case Authority or GDOT may exercise such license only in connection with the Project;

20.4.2.3 during any time that a receiver is appointed for Developer, or during any time that there is pending a voluntary or involuntary proceeding in bankruptcy in which Developer is the debtor; or

20.4.2.4 during any time that Developer has been replaced.

20.4.3 Subject to the license and rights granted to Authority and GDOT pursuant to PA Section 20.4.2 (*Proprietary Intellectual Property*), Authority will not (and will ensure that GDOT does not) at any time sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose not consistent with PA Section 20.4.2 (*Proprietary Intellectual Property*).

20.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of Authority or GDOT generally or with respect to the Project.

20.4.5 Authority's right to sublicense the Proprietary Intellectual Property of Developer is limited to State or regional Governmental Entities that own or operate a Highway or other road and to the

concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of Authority, GDOT or any such State or regional Governmental Entity in connection with the Project or another Highway or other road. All such sublicenses shall be subject to PA Section 20.4.6 (*Proprietary Intellectual Property*). Nothing in this Project Agreement shall prohibit or limit either Party's use of information (a) previously known to it without obligation of confidence, (b) independently developed by it, (c) acquired by it from a third party that is not, to its knowledge, under an obligation of confidence with respect to such information, or (d) which is or becomes publicly available through no breach of this Project Agreement.

20.4.6 Subject to PA Section 20.3 (*Open Records Act and Freedom of Information Act*), Authority will (and will ensure that GDOT will):

20.4.6.1 not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of Authority or GDOT relating thereto;

20.4.6.2 enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and

20.4.6.3 include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

20.4.7 Notwithstanding any contrary provision of the DBF Documents, in no event shall Authority, GDOT or any of their respective Constituents be liable to Developer, any Affiliate of Developer, or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in PA Section 20.4.6 (*Proprietary Intellectual Property*) if such breach is not the result of gross negligence or intentional misconduct or is required under the provisions of the Open Records Act or a court order or other legal requirement. Developer hereby irrevocably waives all claims to any such damages.

20.4.8 Developer shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

20.4.9 With respect to any Proprietary Intellectual Property owned by a Person other than Developer, including any Affiliate, and other than Authority, GDOT or a Governmental Entity acting as a Contractor, Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, for Developer, Authority and GDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any Highway or other road owned and operated by Authority, GDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under PA Section 22.4.2 (*Independent Contractor*). The limitations on sale, transfer, sublicensing and disclosure by Authority and GDOT set forth in PA Sections 20.4.3 (*Proprietary Intellectual Property*) through 20.4.6 (*Proprietary Intellectual Property*) shall also apply to Authority's and GDOT's licenses in such Proprietary Intellectual Property.

20.5 Intellectual Property

20.5.1 **Owner Intellectual Property**. Except for Proprietary Intellectual Property, all Intellectual Property ("Owner Intellectual Property") have been specially ordered and commissioned by Authority, itself or through GDOT, and shall be considered "works made for hire" as such term is defined in Section 101 of Title 17 of the U.S. Code, and accordingly for which Authority owns the copyright.

20.5.2 **Obligation to Assign to Authority**. If any such work product and related materials, is/are determined by a court of competent jurisdiction, the U.S. Copyright Office, or the U.S. Patent & Trademark Office not to be a work-made-for-hire or where Authority is not the owner or author, Developer agrees to assign to Authority, or cause all Contractors to assign to Authority, if applicable, all rights, title and interest in all Intellectual Property, excluding Proprietary Intellectual Property, in such work product and related materials.

20.5.3 **Creation**. Design Documents shall become Owner Intellectual Property upon preparation. Construction Documents shall become Owner Intellectual Property upon delivery to Authority. All other Submittals and other documents prepared or obtained by Developer or any Developer-Related Entity in connection with the performance of Developer's obligations under the DBF Documents shall become Owner Intellectual Property upon Developer's or any such Developer-Related Entity's preparation or receipt thereof.

20.5.4 **Restricted License; Restricted Use**.

20.5.4.1 Authority hereby grants to Developer an irrevocable, non-exclusive, non-transferable, non-sub-licensable (without Authority's prior written consent), fully paid up license to use and implement, solely in connection with the performance of the Work and for the Term (including any period of Developer's performance of post-termination or post-expiration obligations), the Owner Intellectual Property; provided that Developer may sub-license any Owner Intellectual Property solely in connection with the performance of the Work to any Contractor party to any Contract described in PA Section 10.1.1 (*Disclosure of Contracts and Contractors*) without Authority's prior written consent; provided, further, that such sub-license shall only be for a term equal to the term of such Contract or the Term (whichever is shorter) and that such Contract will include a clause stating that such Contractor cannot sub-license such Owner Intellectual Property without the prior written consent of Developer (which consent Developer shall not give unless it obtains the prior written consent of Authority). For the avoidance of doubt, any license granted pursuant to this PA Section 20.5.4.1 (*Restricted License; Restricted Use*) is revocable upon the Termination Date. If Developer or any Developer-Related Entity creates or develops any improvements, modifications, enhancements or derivative works to or of the Owner Intellectual Property, any and all such improvements, modifications, enhancements or derivative works created or developed by any Developer-Related Entity will be deemed to be Owner Intellectual Property under the terms of this Project Agreement.

20.5.4.2 Developer may not, and Developer shall cause all Developer-Related Entities not to, use any Owner Intellectual Property except in connection with the Work or otherwise as approved by Authority in advance and in writing.

20.5.5 **Restoration**. Developer shall be responsible for any loss of or damage to the Owner Intellectual Property and any of the work-made-for-hire described above while in the possession or control of Developer or any Developer-Related Entity. Any such loss or damage shall be restored at Developer's expense.

20.5.6 **Access**. During the Term and the period of performance of any post-termination obligations, Developer shall provide full and unrestricted access to all of the work-made-for-hire described above, within 48 hours after receipt of notice from or on behalf of Authority seeking such access.

20.6 Escrowed Documents

20.6.1 **Generally**. Prior to execution of this Project Agreement, Developer has delivered to Authority the Escrowed Documents. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to this Project Agreement and concurrently with approval of each Supplemental Agreement, if appropriate, one copy of all documentary information used in preparation of the quotation, amendment or Supplemental Agreements, as applicable, shall be added to the Detailed Cost and Pricing Data within the Escrowed Documents. The Escrowed Documents will be held at the Escrow Agent's escrow location within the State until all of the following have occurred: (a) 180 days have elapsed from Final Acceptance or termination of the Work, as applicable; (b) all Disputes regarding the DBF Documents have been settled; and (c) the later of (i) the Final Acceptance Date and (ii) issuance by Authority of the Final Certificate.

20.6.2 **Availability for Review**. Upon at least two days' Notice, Developer and Authority may jointly examine, through one or more designees, all or any part of the Detailed Cost and Pricing Data during regular business hours. The Party undertaking an examination need not have or state a specific reason to examine such material. Authority shall be entitled to review all or any part of the Detailed Cost and Pricing Data in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. Authority shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, in each case, without limiting Authority's obligations under PA Section 20.3 (*Open Records Act and Freedom of Information Act*); provided, however, that copies of such documents will not be distributed to any third parties other than the attorneys and experts of Authority and any mediator or court considering a Dispute, and that all copies of such documents (other than those delivered to Dispute resolvers) will be either destroyed or returned to the depository (or to Developer if the Detailed Cost and Pricing Data have been returned to it) upon final resolution of the negotiations or Disputes.

20.6.3 **Proprietary Information**. The Detailed Cost and Pricing Data are, and shall always remain, the property of Developer and shall be considered to be in Developer's possession, subject to the right of Authority to use the Detailed Cost and Pricing Data as provided in this PA Section 20.6 (*Escrowed Documents*).

20.6.4 **Representations**. Developer represents and warrants that (i) the Detailed Cost and Pricing Data were or will be personally examined by Developer's Authorized Representative to ensure compliance with PA Section 20.6.5 (*Contents of Detailed Cost and Pricing Data*) and PA Section 20.6.6 (*Form of Detailed Cost and Pricing Data*) prior to delivery into the Escrowed Documents; (ii) the Detailed Cost and Pricing Data constitute all of the information used in the preparation of the Proposal and pricing related to Supplemental Agreements and agrees that no other Proposal and Supplemental Agreement preparation information will be considered in resolving Disputes; (iii) the Detailed Cost and Pricing Data provided in connection with quotations and Supplemental Agreements will be personally examined by Developer's Authorized Representative to ensure compliance with PA Section 20.6.5 (*Contents of Detailed Cost and Pricing Data*) and PA Section 20.6.6 (*Form of Detailed Cost and Pricing Data*) prior to delivery into the Escrowed Documents; and (iv) the information contained in the Detailed Cost and Pricing Data is not part of the DBF Documents and that nothing in the Detailed Cost and Pricing Data shall change or modify the DBF Documents.

20.6.5 **Contents of Detailed Cost and Pricing Data**.

20.6.5.1 The Detailed Cost and Pricing Data shall clearly detail how the cost and pricing components of the Proposal were determined and shall be in sufficient detail as is adequate to enable a complete understanding and interpretation of how Developer arrived at the bid DBF Contract Sum.

20.6.5.2 The Detailed Cost and Pricing Data provided in connection with quotations and Supplemental Agreements shall clearly detail how the total price and individual components of that price were determined.

20.6.5.3 The Detailed Cost and Pricing Data in each case shall detail, in Developer's usual format, but subject to PA Section 20.6.6 (*Form of Detailed Cost and Pricing Data*):

(a) crews, equipment, materials, quantities, and rates of production;

(b) estimates of costs (further divided into Developer's usual cost categories such as direct labor, repair labor, equipment ownership, rental and operation, expendable materials, permanent materials), and Contract and Subcontract costs as appropriate;

(c) plant and equipment and indirect costs;

(d) Developer's allocation of plant and equipment, indirect costs, risk contingencies, markup, and other items to each direct cost item, in each case, clearly identified; and

(e) itemized estimated costs of the P&P Bonds and the insurance premiums for each coverage required to be provided by Developer hereunder.

20.6.5.4 The Detailed Cost and Pricing Data shall include electronic media data files associated with all assumptions, detailed quantity takeoffs, rates of production and progress calculations, quotes from Contractors, Subcontractors, and Suppliers, quotes for insurance and bond premiums, memoranda, narratives, and all other information used by Developer to arrive at the bid DBF Contract Sum or price for any Supplemental Agreement.

20.6.6 Form of Detailed Cost and Pricing Data. Developer shall submit the initial Detailed Cost and Pricing Data in such format as is used by Developer in connection with its Proposal and the DBF Contract Sum. Thereafter, the Detailed Cost and Pricing Data shall submitted substantially in such format, and failing that, in the format used to determine pricing for any Supplemental Agreement.

20.6.7 Review by Authority; Supplementary Information.

20.6.7.1 Developer shall have no right to add documents to the Detailed Cost and Pricing Data except upon Authority's request.

20.6.7.2 Authority may, at any time, conduct a review of the Detailed Cost and Pricing Data to determine whether they are complete. If Authority determines that any data is missing, Developer shall provide such data within five days after the request, and at that time it will be date stamped, labeled to identify it as supplementary Escrowed Documents information, and added to the Detailed Cost and Pricing Data.

20.6.7.3 At Authority's option, which may be exercised at any time, the Detailed Cost and Pricing Data associated with any Supplemental Agreement amendment shall be reviewed, organized, and indexed, to be jointly undertaken with Developer. Authority's review shall assess the completeness and accuracy of the Detailed Cost and Pricing Data, and Authority and Developer shall jointly develop and countersign a detailed index and catalogue of the contents of the Detailed Cost and Pricing Data. If, following the review and organization, Authority determines that the Detailed Cost and Pricing Data are incomplete, Authority may require Developer to supply data to make the Detailed Cost and Pricing Data complete.

20.6.8 Subcontractor Pricing Documents. Developer shall require each Contractor and Subcontractor to submit to Developer a copy of all documentary information used in determining its Contract (or Subcontract) price (or the price for Contract (or Subcontract) Work included in any Supplemental Agreement), immediately prior to executing the Contract (or Subcontract) and each change order or amendment thereto, to be held in the same manner as the Detailed Cost and Pricing Data and that shall be accessible by Authority, Developer and either of their respective designees, on terms substantially similar to those contained herein. Each such Contract or Subcontract shall include a representation and warranty from the Contractor or Subcontractor, for the benefit of Developer and Authority, stating that its Detailed Cost and Pricing Data constitute all the documentary information used in establishing its Contract (or Subcontract) price, and agreeing to provide a sworn certification in favor of Developer and Authority together with each supplemental set of Detailed Cost and Pricing Data, stating that the information contained therein is complete, accurate, and current.

20.6.9 Intellectual Property Escrow.

20.6.9.1 Developer acknowledges and agrees that Authority shall be entitled to access such software, Source Code and Source Code Documentation, and Proprietary Intellectual Property further to this PA Section 20.6 (*Escrowed Documents*):

(a) in the case of such Proprietary Intellectual Property owned by Developer, when (i) this Project Agreement is terminated for any reason (excluding for Authority Default), (ii) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Developer occurs, (iii) Developer is dissolved or liquidated, or (iv) Developer fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property under the applicable license or relevant sublicense; or

(b) in the case of such Proprietary Intellectual Property owned by a Contractor or Subcontractor, when this Project Agreement is terminated for any reason (excluding for Authority Default) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor or Subcontractor occurs or (b) the Contractor or Subcontractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing such Proprietary Intellectual Property that is the subject of a license under PA Section 20.4.2 (*Proprietary Intellectual Property*).

20.6.9.2 Instead of delivering such software, Source Code and Source Code Documentation, and Proprietary Intellectual Property directly to Authority, Developer may elect to deposit it into the Escrowed Documents, and Authority shall have such rights of access thereto as are set forth in this PA Section 20.6 (*Escrowed Documents*).

20.6.10 Authority's rights with respect to the Escrowed Documents shall survive expiration or earlier termination of this Project Agreement regardless of the reason, until both Parties mutually agree, in their respective discretion, that the Escrowed Documents, including the software, Source Code and Source Code Documentation and Proprietary Intellectual Property is of no further use or benefit to the Project.

Article 21 FEDERAL REQUIREMENTS

21.1 Compliance with Federal Requirements

21.1.1 Developer shall comply and require its Contractors to comply with all Federal Requirements applicable to transportation projects that receive federal credit or funds, including those set forth in PA Exhibit 8 (*Federal Requirements*). In the event of any conflict between any applicable Federal

Requirements and the other requirements of the DBF Documents, the Federal Requirements shall prevail to the extent of any such conflict.

21.1.2 The Parties understand and agree that, because the Project is subject to the Federal Requirements, and because, as between Authority and Developer, Authority will be responsible to operate and maintain the Project after Final Acceptance using federal aid funds, the Project must remain eligible for federal funding participation. Further, Developer shall not, and shall not permit any other Developer-Related Entity to, take any actions or failures to act in the course of performance of the Work that would have the effect of removing the Project from the federal aid system or making the Project ineligible for the future use of federal funds. Should Authority or GDOT receive Notice that the Project will lose its eligibility for federal funding and that Authority (or GDOT) will be required to reimburse FHWA as a result of the acts or omissions of any Developer-Related Entity, Authority will provide Notice to Developer and will reasonably attempt to solicit input from Developer in connection with Authority's and GDOT's discussions with FHWA; provided, however, that if any such acts or omissions are not in accordance with the DBF Documents, then any adjustments, costs, re-Work, or other remedy to recover or preserve eligibility for federal funding shall be, and be deemed to be, within the DBF Contract Sum and not itself a basis for any Compensation Event or Relief Event.

21.2 Role of and Cooperation with FHWA

Developer acknowledges and agrees that FHWA will have certain approval rights with respect to the Project, including the right to provide certain oversight and technical services with respect to the Work. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Project and shall provide such assistance and information as may be required by Authority and/or GDOT to comply with FHWA reporting requirements.

21.3 Special Provision Regarding Waiver of Buy America Requirements

21.3.1 At Developer's request, Authority may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist pursuant to 23 C.F.R. § 635.410(c), as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021) and 2 C.F.R. § 184.7. A request for a waiver shall be treated as a Change Request under PA Section 14.2 (*Developer Changes*).

21.3.2 If the foregoing waiver of requirements sought via submission of a timely Change Request pursuant to PA Section 14.2 (*Developer Changes*) is not available or not pursued by Authority, then Developer shall comply with, and cause all Subcontractors of any tier to comply with, the applicable Buy America requirements within the foregoing statutes and regulations and submit, and cause to be submitted, promptly following Notice from Authority to Developer of such unavailability or intent not to pursue such waiver, a Certificate of Compliance in form and substance under this Attachment 9 to PA Exhibit 8 (*Other Legal Requirements*).

Article 22 MISCELLANEOUS

22.1 Taxes

22.1.1 Developer shall pay, prior to delinquency, all applicable Taxes. Developer shall have no right to a Compensation Event or any other claim under the DBF Documents, at law, or in equity, due to (a) its misinterpretation of Laws respecting Taxes, (b) incorrect assumptions regarding applicability of Taxes, (c) any representation, agreement, allocation, or statement of or by Authority in the DBF Documents with respect to or relating to Taxes, or (d) except to the extent within the definition of Qualifying Change

in Law, any change in State or a local government (or political subdivision of either) sales Taxes that might otherwise qualify as a Change in Law.

22.1.2 The Parties agree that an amount equal to the Certificate Value of each Approved Project Certificate (but not the excess of the face amount of each such Approved Project Certificate over its respective Certificate Value (the "Excess")) will be treated for income tax purposes only: (a) as received by Developer at the time it receives an Approved Project Certificate, and (b) as deemed to be advanced by Developer to Authority to be paid in cash by Authority on the payment date(s) of such Approved Project Certificate. For income tax purposes only, the Parties agree that the actual contract price under Section 460 of the Internal Revenue Code will be $1,217,495,280.00. Furthermore, for income tax purposes only, the Excess shall be treated as financing costs received separately from the contract for the provision of services incident to or necessary for the manufacture, building, installation or construction of the Project within the meaning of Treas. Reg. Sec. 1.460-1(d). As used herein, "Certificate Value" of an Approved Project Certificate means the fair market value of such Approved Project Certificate on the date such Approved Project Certificate is received by Developer, as determined in the good faith discretion of Developer.

22.2 Amendments

The DBF Documents may be amended only by a written instrument duly executed by both Parties or their respective successors or permitted assigns, except to the extent expressly provided otherwise in this Project Agreement.

22.3 Waiver

22.3.1 No waiver of any term, covenant or condition of this Project Agreement or the other DBF Documents shall be valid unless in writing and signed by the obligee Party. No right conferred on either Party under the DBF Documents shall be deemed waived, and no breach of the DBF Documents excused, unless such waiver is in writing and signed by the Party claimed to have waived such right.

22.3.2 The exercise by a Party of any right or remedy provided under this Project Agreement or the other DBF Documents shall not waive or preclude exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Project Agreement or the other DBF Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Project Agreement or the other DBF Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

22.3.3 Except as provided otherwise in the DBF Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Project Agreement or the other DBF Documents.

22.3.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the DBF Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, excluding Interpretive Engineering Decisions, if the Parties make and implement any interpretation of the DBF Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

22.3.5 Subject to PA Section 13.4.1.9 (*Determining Compensable Amounts*), the acceptance of any payment or reimbursement by a Party shall not waive any preceding or then-existing breach or

default by the other Party of any term, covenant or condition of this Project Agreement or the other DBF Documents, other than the other Party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement. Nor shall such acceptance continue, extend or affect: (a) the service of any notice, any Dispute Resolution Procedures or final judgment; (b) any time within which the other Party is required to perform any obligation; or (c) any other notice or demand.

22.4 Independent Contractor

22.4.1 Developer is an independent contractor, and nothing contained in the DBF Documents shall be construed as constituting any relationship with Authority other than that of Project developer and independent contractor under this Project Agreement.

22.4.2 Both Parties, in the performance of the DBF Documents, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. Nothing in the DBF Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between Authority and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give Authority control or joint control over Developer's financial decisions or discretionary actions concerning the Project and Work.

22.4.3 In no event shall the relationship between Authority and Developer be construed as creating any relationship whatsoever between Authority and Developer's employees or agents. Neither Developer nor any of its employees or agents is or shall be deemed to be an employee or agent of Authority. Except as otherwise specified in the DBF Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

22.5 Successors and Assigns

The DBF Documents shall be binding upon and inure to the benefit of Authority and Developer and their successors, permitted assigns and legal representatives.

22.6 Designation of Representatives; Cooperation with Representatives

22.6.1 Authority and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the DBF Documents ("Authorized Representative"). In addition, for purposes of Project administration and oversight to be performed by GDOT as provided in this Project Agreement, Authority will ensure that GDOT designates an individual or individuals who shall be authorized to make decisions and bind GDOT and upon such person(s) direction Developer may rely. PA Exhibit 12 (*Initial Designation of Authorized Representatives*) provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with PA Section 22.11 (*Notices and other Formal Communications*). For purposes of this Project Agreement, except where expressly stated to the contrary, all communications and deliveries, including Submittals, shall be through the respective Authorized Representative for each Party.

22.6.2 Developer shall cooperate with Authority and all representatives of Authority designated as described above.

22.7 Survival

Developer's and Authority's representations, covenants, warranties (including Developer's Warranties and Warranty-related obligations), the Dispute resolution provisions contained in PA Section 17.9 (*Dispute Resolution Procedures*), Authority's rights and Developer's obligations with respect to Escrowed Documents under PA Section 20.6 (*Escrowed Documents*), the indemnifications, any Developer-Related Entity's releases, Authority's obligations to pay amounts owed under an Approved Project Certificate, the express obligations of the Parties following termination, Developer's obligations to pay Authority amounts owed hereunder, and all other provisions that by their inherent character should survive expiration or earlier termination of this Project Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Project Agreement and/or the completion of the Work. The provisions of PA Section 17.9 (*Dispute Resolution Procedures*) shall continue to apply after expiration or earlier termination of this Project Agreement to all Disputes between the Parties as well as to any basis for relief asserted under any Compensation Event Notice or Relief Event Notice arising out of the DBF Documents.

22.8 Limitation on Third Party Beneficiaries

22.8.1 It is not intended by any of the provisions of the DBF Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except as provided in PA Section 22.9.2 (*No Personal Liability of Authority's or GDOT's Constituents; No Tort Liability*) and other specific provisions (such as the warranty and indemnity provisions) that identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this PA Section 22.8 (*Limitation on Third Party Beneficiaries*), the duties, obligations and responsibilities of the Parties to the DBF Documents with respect to third parties shall remain as imposed by Law. The DBF Documents shall not be construed to create a contractual relationship of any kind between Authority and a Contractor or any Person other than Developer.

22.8.2 Notwithstanding PA Section 22.8.1 (*Limitation on Third Party Beneficiaries*), GDOT shall be a third party beneficiary, and entitled to the benefits, with respect to the rights under the DBF Documents related to the following:

22.8.2.1 oversight, review, inspection, testing, monitoring, approval, and enforcement of Developer's obligations to perform the design and construction of the Project in accordance with the DBF Documents and applicable Law;

22.8.2.2 review, audit, inspection and copying of data, information, documents, Books and Records of Developer and any other Developer-Related Entity;

22.8.2.3 step-in rights upon the occurrence of a Developer Default; and

22.8.2.4 exercise of any statutory rights or obligations or other rights or obligations by Intergovernmental Agreement, in each case acting in its capacity as a body corporate and politic and an instrumentality and public corporation of the State of Georgia under O.C.G.A. § 32-2-2, including specifically those delegated by or owed to FHWA.

22.8.3 Notwithstanding PA Section 22.8.1 (*Limitation on Third Party Beneficiaries*), Lenders and Lender Agents and without limiting any obligations of the Lenders or Lender Agents under the Direct

Agreement, as well as any swap or hedge counterparties under Developer Financing Agreements, shall be a third party beneficiary, and entitled to the benefits, solely with respect to the rights, but subject to the obligations, terms, and conditions under, PA Section 5.2.4 (*Project Payments*) and nothing else.

22.9 No Personal Liability of Authority's or GDOT's Constituents; No Tort Liability

22.9.1 Authority's and GDOT's respective Constituents are acting solely as agents and representatives of such respective entities, as applicable, when carrying out the provisions of or exercising the power or authority granted to them under the DBF Documents. They shall not be liable to any Developer-Related Entity or any of their respective Constituents either personally or as officers, employees, advisors, consultants, or representatives of Authority or GDOT for actions in their ordinary course of employment or engagement.

22.9.2 The Parties agree to provide each other with Notice of any claim that such Party may receive from any third party relating in any way to the matters addressed in this Project Agreement, and shall otherwise provide notice in such form and within such period as is required by Law.

22.10 Governing Law

The DBF Documents shall be governed by and construed in accordance with the laws of the State of Georgia.

22.11 Notices and other Formal Communications

22.11.1 Formal Communications under the DBF Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

22.11.2 All Formal Communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

Legacy Infrastructure Contractors, LLC
Attention: Robert W. Thompson, Jr.
1600 Kenview Drive
Marietta, GA 30060

Telephone: (770) 422-7520
Email: bobt@cwmatthews.com

And

Legacy Infrastructure Contractors, LLC
Attention: Daniel P. Garcia
1600 Kenview Drive
Marietta, GA 30060
Telephone: (770) 422-7520
Email: Dgarcia@cwmatthews.com

with a copy to:

C.W. Matthews Contracting Co., Inc.|
Attention: Sheldon K. Fram
1600 Kenview Drive
Marietta, GA 30060
Telephone: (770) 422-7520
Email: SFram@cwmatthews.com

with a copy to:

C.W. Matthews Contracting Co., Inc.
Attention: Jeff Shropshire
1600 Kenview Drive
Marietta, GA 30060
Telephone: (770) 422-7520
Email: Jeffs@cwmatthews.com

22.11.3 All Formal Communications to Authority or GDOT shall be marked as regarding the "I-285 / I-20 West Interchange Project" and shall be delivered to the following address or as otherwise directed by Authority's Authorized Representative:

State Road and Tollway Authority
245 Peachtree Center Ave. NE, Suite 2200
Atlanta, Georgia 30303-1224
Attention: Executive Director
Telephone: (404) 893-6100
Email: jmiller@srta.ga.gov

and:

Georgia Department of Transportation
Office of the Chief Engineer
600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1004
Email: mpirkle@dot.ga.gov

In addition, copies of all Relief Event Notices and Compensation Event Notices shall also be delivered to the following person:

Georgia Department of Transportation
Office of Legal Services
600 West Peachtree Street, Suite 2300
Atlanta, Georgia 30308
Attention: Deputy General Counsel
Telephone: (404) 631-1405
Email: jivy@dot.ga.gov

In addition, copies of all Formal Communications (including Notices) regarding Disputes as well as default and termination Notices shall be delivered to the following person:

State Road and Tollway Authority
245 Peachtree Center Ave. NE, Suite 2200
Atlanta, Georgia 30303-1224
Attention: General Counsel
Telephone: (404) 393-1081
Email: mmandus@srta.ga.gov

and:

Georgia Department of Transportation
Office of Legal Services
600 West Peachtree Street, Suite 2300
Atlanta, Georgia 30308
Attention General Counsel/Director Legal Services
Telephone: (404) 631-1437
Email: asimelaro@dot.ga.gov

22.11.4 Formal Communications shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other Person making the delivery. Notwithstanding the foregoing, all Formal Communications received after 5:00 p.m. shall be deemed received on the first Business Day following delivery. For avoidance of doubt, the date of delivery of a Formal Communication initially dispatched by electronic communication will be considered to be the date of the email notification during the regular business hours of 8:00 a.m. to 4:00 p.m. to the appropriate Authority personnel. Neither Authority nor GDOT will accept facsimile communication of Formal Communications.

22.11.5 Any technical or other communications pertaining to the Work, including specifically all Submittals, shall be handled as if "Submittals" for purposes of this PA Section 22.11 (*Notices and other Formal Communications*) and conducted by Developer's Authorized Representative and technical representatives designated by Authority. All Submittals shall be submitted via the PMCS in accordance with TP Section 2.4 (Project Management Controls System) and TP Attachment 2-9 (Project Management Controls System Requirements), and the Submittal shall be deemed received on the date of the PMCS date stamp for the relevant Submittal.

22.11.6 In addition to complying with the requirements set forth in this PA Section 22.11 (*Notices and other Formal Communications*), Developer shall submit a copy of all Formal Communications to the PMCS in accordance with TP Attachment 2-9 (Project Management Controls System Requirements); provided, however, that submission into the PMCS does not abrogate, nor shall it be used in determining, actual or deemed receipt under PA Section 22.11.4 (*Notices and other Formal Communications*).

22.12 Integration of DBF Documents

Authority and Developer agree and expressly intend that, subject to PA Section 22.13 (*Severability*), this Project Agreement, and other DBF Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

22.13 Severability

22.13.1 If any clause, provision, section or part of this Project Agreement or the other DBF Documents or any other Principal Project Document (other than the Design-Build Contract) is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, that shall, to the

greatest extent legally permissible, effect the original intent of the Parties; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the DBF Documents or such other Principal Project Documents, that shall be construed and enforced as if the DBF Documents or such other Principal Project Documents did not contain such invalid or unenforceable clause, provision, section or part.

22.13.2 If after the efforts required by PA Section 22.13.1 (*Severability*), the Parties mutually agree that without the section or part of the DBF Documents or such other Principal Project Documents that the court ruled to be invalid, there is no interpretation or reformation of the DBF Documents or such other Principal Project Documents that can reasonably be adopted that will return the Parties to the benefits of their original bargain, the Parties can mutually agree to treat the court order as a Termination by Court Ruling pursuant to PA Section 18.11 (*Termination by Court Ruling*).

22.14 Headings

The captions of the sections of this Project Agreement and in the DBF Documents are for convenience only and shall not be deemed part of this Project Agreement or the DBF Documents or considered in construing this Project Agreement or the DBF Documents.

22.15 Construction and Interpretation of the DBF Documents

22.15.1 The language in all parts of the DBF Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the DBF Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the proposal preparation process, that each Party has been given the opportunity to independently review the DBF Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the DBF Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the DBF Documents, the DBF Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. Authority's final answers to the questions posed during the Proposal preparation process for this Project Agreement shall in no event be deemed part of the DBF Documents and shall not be relevant in interpreting the DBF Documents.

22.15.2 References in this instrument to this "Project Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument, and all amendments hereto and thereto, except as expressly stated otherwise. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to exhibits, articles and sections refer to same as set forth in this Project Agreement. Where a specific section is referenced, such reference shall include all subsections thereunder. Unless otherwise stated in this Project Agreement or the other DBF Documents, words that have well-known technical or construction industry meanings are used in this Project Agreement or the other DBF Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the

section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the DBF Documents, it shall be deemed to be followed by the words "without limitation". Wherever reference is made in the DBF Documents to a particular Person or Governmental Entity, it includes any successors or assigns, legal representatives, trustees, executors, and administrators (including any Person taking party by way of novation) or, with respect to Governmental Entities, any public agency succeeding to the powers and authority of such Governmental Entity. All references to time are to prevailing Eastern time. The meaning of "or" will be that of the inclusive "or," that is meaning one, some, or all of a number of possibilities. References to Laws include all consolidations, amendments, extension, or replacements, unless otherwise indicated. Reference to a right include any benefit, remedy, discretion, authority, or power associated with such right. References to any agreement, document, standards, principle, or other instrument includes a reference to the same as amended, supplemented, amended and restated, substituted, novated, or assigned, in each case, except where otherwise stated. "May," when used in the context of a power or right exercisable by Authority or GDOT (or either's designee) means the power to exercise that right or power in its sole discretion, with no obligation to any Developer-Related Entity to do so. "May," when used in all other contexts, indicates permission by Authority for Developer to do (or refrain from doing) an action. The use of the word "remedy" or its variants means that the event to be remedied must be cured or its effects overcome. If the DBF Documents require calculation of any amount payable to a Party, there must be no double counting in such calculation, such that the receiving Party would receive more than owed or payable. As used in this Project Agreement and the other DBF Documents and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa. All monetary amounts and obligations (including use of the symbol "$") set forth in the Contract Documents are expressed and payable in U.S. dollars. On plans, drawings, detail sheets or other pictorial presentations, calculated dimensions take precedence over scaled dimensions.

22.15.3 Inconsistent or conflicting provisions of the DBF Documents shall not be treated as erroneous provisions under this PA Section 22.15.3 (*Construction and Interpretation of the DBF Documents*), but instead shall be governed by PA Section 1.2 (*DBF Documents; Order of Precedence*).

22.15.4 Developer acknowledges that prior to the Effective Date it had the opportunity to identify any of the Technical Provisions that are Erroneous or create a potentially unsafe condition, and the opportunity and duty to notify Authority in writing of such fact and of the changes to the provision that Developer believed were the minimum necessary to render it correct, safe and consistent with the DBF Documents, Good Industry Practice and applicable Law.

22.15.5 Developer shall not take advantage of, or benefit from, any apparent or actual Error in the DBF Documents. Should it appear that Work or any related matter is not sufficiently detailed or explained in the DBF Documents, Developer shall request in writing such further explanations from Authority as may be necessary and agrees to abide by the explanation provided, in each case, prior to undertaking any activity (or refraining from undertaking an activity) that would otherwise increase cost or delay the Work (or that increases the risk of either or both). Developer shall promptly provide Notice to Authority of all Errors that it may discover in the DBF Documents and shall obtain specific direction from Authority in writing prior to proceeding with any Work affected thereby, it being understood that correction of Errors shall not in itself be the basis for any Relief Event or Compensation Event hereunder, or other claim at law or in equity.

22.15.6 If it is reasonable or necessary to adopt changes to the Technical Provisions after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for a Relief Event, Compensation Event or other claim at law or in equity, unless (a) Developer neither knew nor had reason to know through the exercise of reasonable care prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Developer knew of and reported to Authority the erroneous or potentially unsafe provision prior to the Effective Date and Authority did not adopt reasonable and

necessary changes. Except for a circumstance as set forth under (b) herein, if Developer commences or continues any Design Work or Construction Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Developer shall bear any additional costs and time associated with redoing the Work already performed.

22.15.7 The fact that the DBF Documents omit or misdescribe any detail of the Work that is otherwise necessary to carry out the intent of the DBF Documents (and delivery of the Project), or that are customarily performed, shall not relieve Developer from the obligation to perform such omitted or misdescribed details attendant to the Work, and Developer is obligated to perform such omitted or misdescribed Work as if fully and correctly set forth in the DBF Documents, it also being understood that such omissions, correction of misdescriptions, or performance of those aspects customarily performed in connection with the Work shall not in itself be the basis for any Relief Event or Compensation Event hereunder, other right to risk or cost sharing, if any, hereunder, or other claim at law or in equity.

22.16 Computation of Periods

If the date to perform any act or give any Formal Communication specified in the DBF Documents (including the last date for performance or provision of Notice "within" a specified time period) falls on a non-Business Day, such act or Formal Communication may be timely performed on the next succeeding day that is a Business Day; and (b) State of Georgia or federal public holidays are not "calendar days" (except in the case of assessment of Liquidated Damages, Lane Closure Deductions, Nonrefundable Deductions, or other accruing charges hereunder). Notwithstanding the foregoing, requirements contained in the DBF Documents relating to actions to be taken in the event of an emergency, Notices, Formal Communications, and other notifications regarding site conditions or Hazardous Materials, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non-Business Day.

22.17 Usury Savings

The DBF Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate that could subject the other Party to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate, if any. If, by the terms of the DBF Documents either Party at any time is obligated to pay interest on any amount due in excess of the Maximum Legal Rate, then such interest shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the DBF Documents shall, to the extent permitted by applicable Georgia Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the Maximum Legal Rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the Maximum Legal Rate, it shall promptly refund the excess to the other Party. Notwithstanding the foregoing, and except as otherwise expressly stated (and solely to the extent stated), to the maximum extent permitted under applicable Law, neither Authority nor GDOT shall owe, nor be deemed to owe, interest on any amount due Developer hereunder.

22.18 Further Assurances

Developer shall promptly execute and deliver to Authority all such instruments and other documents and assurances as are reasonably requested by Authority to further evidence the obligations of

Developer hereunder, including assurances regarding the validity of any instruments securing performance hereof.

22.19 Entire Agreement

This Project Agreement and the other DBF Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

22.20 Authority to Bind

The signatory for each of the Parties represents that s/he has been duly authorized to execute this Project Agreement on behalf of its principal Party, and has obtained all necessary or applicable approvals to make this Project Agreement, and the remainder of the DBF Documents, binding upon its principal when her/his signature is affixed and accepted by the other Party.

22.21 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this instrument by electronic (email) delivery in portable document format ("*.pdf") will be deemed to be valid delivery thereof. The Parties shall each deliver original, executed counterparts to the other no later than 30 days following the Effective Date.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Project Agreement, including the requirements of the DBF Documents, as of the date first above written.

LEGACY INFRASTRUCTURE CONTRACTORS, LLC, a Georgia limited liability company

By: _____

Name: Daniel P. Garcia
Title: Manager, Legacy Infrastructure Contractors, LLC

Attested by:

By: _____

Name: Robert W. Thompson, Jr.
Title: Manager, Legacy Infrastructure Contractors, LLC

STATE ROAD AND TOLLWAY AUTHORITY

By: _____

Name: Jannine Miller
Title: Executive Director, State Road and Tollway Authority

Attested by:

By: _____

Name: Monique Simmons
Title: Chief Financial Officer, State Road and Tollway Authority

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Project Agreement, including the requirements of the DBF Documents, as of the date first above written.

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Title: Executive Director, State Road and Tollway Authority

Attested by:

By:_____

Name: Robert W. Thompson, Jr.
Title: Manager, Legacy Infrastructure Contractors, LLC

Attested by:

By:_____

Name: Monique Simmons
Title: Chief Financial Officer, State Road and Tollway Authority

EXHIBIT 1
ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in the Project Agreement and the Technical Provisions, they have the meanings set forth below:

2D	two-dimensional
3D	three-dimensional
4D	four-dimensional
AAP	AASHTO: Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
AC	alternating current
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
AIR	after incident review
ANSI	American National Standards Institute
APE	Area of Potential Effects
APHIS	Animal and Plant Health Inspection Service
AQM	Administrative Quality Management
AQMP	Administrative Quality Management Plan
ARC	Atlanta Regional Commission
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATMS	Advanced Transportation Management System
ATSSA	American Traffic Safety Services Association
AVI	Automatic Vehicle Identification
BECR	Baseline Element Condition Report
BFI	Bridge Foundation Investigation
BMP	Best Management Practice
C.F.R. (or CFR)	(United States) Code of Federal Regulations
CADD	Computer-aided design and drafting
CAP	Compliance Action Plan
CAPWAP	Case Pile Wave Analysis Program
CAR	Corrective Action Request
CCIP	Contractor-controlled insurance program
CCS	Continuous Count Station
CCTV	Closed Circuit Television

CEPP	Comprehensive Environmental Protection Program
CERCLA	The Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601-9675)
CFRP	Carbon Fiber Reinforced Polymer
CID	community improvement districts
CLOMR	Conditional Letter of Map Revision
CM	Construction Manager
CMS	Changeable Message Sign
CODP	Control of Odors and Dust Plan
CPI	Consumer Price Index
CPM	Critical Path Method
CPPI	Contractor's Protective Professional Indemnity
CQAM	Construction Quality Assurance Manager
CQAP	Construction Quality Assurance Program
CQCM	Construction Quality Control Manager
CQM	Construction Quality Management
CQMP	Construction Quality Management Plan
CRAOE	Cultural Resources Assessment of Effects
CSJ	Control Section Job
CUF	Commercially-useful function
CWA	Clean Water Act
CWT	hundredweight
D&C	Design and Construction
DB	Design-Build
DBE	Disadvantaged Business Enterprise, as set forth in 49 C.F.R. Part 26
DBF	Design-Build-Finance
DBPM	Design-Build Project Manager
DD	Design Deviation
DE	Design Exception
DMS	Dynamic Message Signs
DNR	Georgia Department of Natural Resources
DPM	Developer Project Manager
DPS	Developer-Provided Specifications
DPDA	Developer Proposed/Developer Acquired
DPSA	Developer Proposed/State Acquired
DQAM	Design Quality Assurance Manager

DQMP	Design Quality Management Plan
DRB	Dispute Review Board
DV	Design Variance
EA	Environmental Assessment
EAOER	Ecological Assessment of Effects Report
ECB	Electrical Communication Boxes
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
ECT	Environmental Commitments Table
EJ	Environmental Justice
EOR	Engineer(s) of Record
EPD	Georgia Department of Natural Resources, Environmental Protection Division
EPIC	Environmental Permits Issues and Commitments
EPS	Expanded polystyrene
EPTP	Environmental Protection Training Plan
ESA	Endangered Species Act of 1973, 16 U.S.C. §§ 1531 *et seq.*, as amended from time to time, or Environmentally Sensitive Area, or Environmental Site Assessment, in each case as context may require
ESB	Environmental Survey Boundary
ESPCP	Erosion, Sedimentation, and Pollution Control Plan
ESS	Environmental Sensor Stations
ETC	estimate to complete
EUC	Emergency Utility Coordinator
EURI	Emergency Utility Response Information
EURP	Emergency Utility Response Plan
FAA	Federal Aviation Administration
FAPG	Federal-Aid Policy Guide
FAQ	Frequently Asked Questions
FAR	Federal Acquisition Regulations
FCI	Financing Costs - Interim
FCON	Field Concrete Technician
FCR	Financing Costs - Revised
FDC	Field Design Changes
FDOT	Florida Department of Transportation
FDU	Fiber Distribution Unit

FEMA	Federal Emergency Management Agency
FHWA	U.S. Federal Highway Administration
FIB	Florida-I Beam
FIS	Flood Insurance Studies
FMV	Full market value
FONSI	Finding of No Significant Impact
FS	Federal Standard
FTE	full-time equivalent
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 *et seq.*, as amended from time to time
GaEPD	Georgia Environmental Protection Division
GDOT	Georgia Department of Transportation
GDOT BDM	GDOT Bridge and Structures Design Manual
GDOT UAM	GDOT Utility Accommodation Manual
GEOS	GaEPD Online System
GEPA	Georgia Environmental Policy Act, as amended from time to time.
GIS	Geographical Information System
GUFPA	Georgia Utility Facility Protection Act
GUPS	Georgia Utility Permitting System
HCR	Highway Conditions Report
HEC	Hydraulic Engineering Circular
HERO	Highway Emergency Response Operator
HGL	hydraulic grade line
HMMP	Hazardous Materials Management Plan
HVAC	heating, ventilating, and air conditioning
HWd	headwater depth
IA	Independent assurance
IAQA	Independent Administrative Quality Assurance
ICD	Interface Control Document
ICQA	Independent Construction Quality Assurance
ID	Identification
IDQA	Independent Design Quality Assurance
IFRS	International Financial Reporting Standard(s)
IGA	Intergovernmental Agreement
IH	Interstate Highway
IIJA	Infrastructure Investment and Jobs Act

IP	Internet Protocol
IQF	Independent Quality Firm
IRI	International Roughness Index
ISO	International Organization for Standardization
ITP	Instruction to Proposers
ITS	Intelligent Transportation System
LCS	Lane Control System
LED	light-emitting diode
LEP	limited English proficient
LOMR	Letter of Map Revision
LOS	Level of Service
LRFD	Load and Resistance Design Factor
MARTA	Metropolitan Atlanta Rapid Transit Authority
MASH	Manual for Assessing Safety Hardware
MDS	Microwave Detection System
MMIP	Major Mobility Investment Program
MMP	Maintenance Management Plan
MOA	Memorandum of Agreement
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSDS	Materials Safety Data Sheets
MSE	Mechanically Stabilized Earth
MTS	manual transfer switch
MUTCD	Manual of Traffic Control Devices
NAD	North American Datum
NAICS	North American Industry Classification System
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report
NDC	Notice of Design Changes
NEC	National Electrical Code
NEPA	National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, as amended from time to time

NF	Neighborhood Friendly
NFIP	National Flood Insurance Program
NIA	Noise Impact Assessment
NOI	Notice of Intent
NOT	Notices of Termination
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NRSRO	Nationally recognized statistical rating organization
NTCIP	National Transportation Communications for ITS Protocol
NTP	Notice to Proceed
O.C.G.A.	Official Code of Georgia Annotated
OE/AAA	FAA Obstruction Evaluation / Airport Airspace Analysis
OHWM	ordinary high-water mark
OJT	On-the-job training
OPPI	Owner's Protective Professional Indemnity
OSAH	Georgia Office of State Administrative Hearings
OSHA	Occupational Safety and Health Administration
OSP	outside plant
OTS	Over-the-shoulder
OV	GDOT's Owner Verification
OVF	Owner Verification Firm
OVT	Owner Verification Tests
OVTIP	Owner Verification Testing and Inspection Plan
P.I.	Project Identification
PA	Project Agreement (or "Programmatic Agreement", as context may require). for purposes of Section, Article, and Exhibit references in this Project Agreement, "PA" means "Project Agreement"
PACES	Pavement Condition Evaluation System
PAR	Corrective/Preventative Action Report
PC	points of curvature
PCC	points of compound curvature
PCE	Project Chief Engineer
PCMS	Portable Changeable Message Sign
PCSR	Post-Construction Stormwater Report

PDA	pile driving analyzer
PDF	Portable document format
PDM	Precedence Diagram Method
PDOH	Public Detour Open House
PI	Public information or points of intersection
PICP	Public Information and Communications Plan
PIO	Public information office
PIR	public information requests
PLS (or RPLS)	Registered Professional Land Surveyor
PM	Project Manager
PMCS	Project Management Control System
PML	Probable maximum loss
PMP	Project Management Plan
PPE	personal protective equipment
PPG	GDOT's Plan Presentation Guide
PRC	points of reverse curvature
PS	Project Standard
PSC	Prestressed Concrete
PT	points of tangency
PUA	Possession and Use Agreement
QAM	Quality Assurance Manager
QI	Quality Instance
QMP	Quality Management Plan
QPC	Quality Program Committee
QPL	Qualified Products List
RCDG	Reinforced Concrete Deck Girder
RCRA	Resource Conversation and Recovery Act (42 U.S.C. §§ 6901 *et seq*.), as amended
REC	Recognized Environmental Condition
RFC	Released for Construction
RFI	Request for Information
RFP	Request for Proposals
RIDs	Reference Information Documents
RLM	Residual Life Methodology
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RPM	raised pavement markings

RQD	rock quality designation
RTF	Related Transportation Facilities
RTT	Roadway Testing Technician
RWIS	road weather information system
SAAG	Special Assistant to the Attorney General
SDPP	Special Deposit and Possession Procedure
SDS	Safety Data Sheets
SH	State Highway
SHPO	State Historic Preservation Officer
SIFMA	Securities Industry and Financial Markets Association
SIR	Self-insured retention
SOFR	Secured Overnight Financing Rate
SOP	Standard Operating Procedure
SOQ	Statement of Qualifications
SOV	Schedule of Values or Single Occupancy Vehicle, as context may require.
SRTA	State Road and Tollway Authority
SSPC	Society for Protective Coatings
SSTR	Single Slope Traffic Railing
STI	Sampling, Testing, & Inspection
SUE	Subsurface Utility Engineering
SWPPP	Storm Water Pollution Prevention Plan
TCLP	Toxicity Characteristic Leaching Procedure
TCM	Traffic Control Manager
TIM	Traffic Incident Management
TIR	Traffic Interruption Request
TMC	Traffic Management Center
TMC SI	Traffic Management Center System Integrator
TMP	Transportation Management Plan
TNM	Traffic Noise Model
TP	Technical Provision(s)
TRIP	Towing Recovery and Incentive Program
TSS	total suspended solids
TTCP	Temporary Traffic Control Plan
U.S. DOT	United States Department of Transportation

U.S. GAAP	U.S. Generally Accepted Accounting Principles
UAM	GDOT Utility Accommodation Policy and Standards (or "GDOT Utility Accommodation Manual" hereunder)
UAP	Utility Adjustment Plan
UAPP	Utility Adjustment Preliminary Plans
UAS	Unmanned Aircraft System
UCC	Uniform Commercial Code
UCS	User Classification Subsystem
UDC	Utility Design Coordinator
UDF	user defined fields
UIA	Utility Impact Analysis
UM	Utility Manager
UMP	Utility Management Plan
UPC	Utilities Protection Center
UPS	uninterruptable power supply
US	United States Highway
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
USR	Utility Status Report
UST	Underground Storage Tank
UTM	Universal Transverse Mercator
VDS	Video Detection System
VES	Video Exception Sub-system
WBS	Work Breakdown Structure
WECS	Worksite Erosion Control Supervisor
WFI	Wall Foundation Investigations
WOTUS	Waters of the United States
WTCS	Worksite Traffic Control Supervisor
WUCS	Worksite Utility Coordination Supervisor

"**Abandonment**" means that Developer abandons all or a material part of the Project, which abandonment shall have occurred if either (a)(i) Developer does not commence to perform the Work in a material way, as determined in Authority's good faith discretion, or (ii) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project or a material part thereof is performed for a continuous period of more than 30 days, (b) Developer or any Contractor demonstrates through statements, acts, or omissions an intent not to continue (for any reason other than a Compensation Event or Relief Event) to design and construct any or all of the Project, (c) Developer or any Contractor demonstrates through statements, acts, or omissions a right or an entitlement to suspend or terminate all or any part of the Work (i) that it does not have under this Project Agreement, (ii) during the pendency of, and without final determination under, any Dispute Resolution Procedures, or (iii) not in good faith.

"**Accelerated Bridge Construction**" means the set of elements, systems, technologies, and construction techniques contemplated in AASHTO "LRFD Guide Specifications for Accelerated Bridge Construction".

"**Accident Investigation Site**" means an area providing a place to pull off the travel lanes beyond the normal width shoulder.

"**Acquisition Services**" means all Work related to the acquisition of the State Proposed/State Acquired Right of Way, State Proposed/Developer Acquired Right of Way, Developer Proposed/Developer Acquired Right of Way, and Developer Proposed/State Acquired Right of Way, management of relocation payment assistance, demolition, and property management to be performed by Developer in accordance with TP Section 6 (Right of Way) and includes the Pre-Acquisition Services, Parcel Acquisition Services and Post-Acquisition Services.

"**Acquisition Services Workflows**" means the workflows set forth in TP Attachment 6-1 (Acquisition Services Workflows).

"**Acts**" has the meaning set forth in Appendix A to Attachment 1 to PA Exhibit 8 (*Federal Requirements*).

"**Adjust**" means to perform a Utility Adjustment.

"**Adjustment**" means a Utility Adjustment.

"**Adjustment for Change in Financial Plan**" has the meaning set forth in PA Section 4.2.8.3 (*Change in Financial Plan*).

"**Adjustment Standards**" means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the DBF Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to PA Section 7.4.15 (*Conditions to Commencement of Utility Adjustments*).

"**Administrative Quality Management Plan**" means the administrative quality management plan provided by Developer in accordance with TP Section 3 (Developer Quality Program).

"**Administrative Review Package**" means the administrative review package described in TP Section 6.4.4 (Administrative Review Request).

"**Administrative Work**" means all Work that is neither Design Work nor Construction Work, including by way of example only invoicing, quality-, compliance-, and document control-related Work, in each case for which Developer charges Authority as part of the Work.

"**Affidavit of Property Interest**" means the DOT 8413M Property Interest Affidavit for Utility Facilities Located Off of Rights-of-Way (Revised June 12, 2019) produced by GDOT, as updated from time to time.

"**Affiliate**" means:

(a) any Developer Member;

(b) any Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its shareholders, members, partners or joint venture members; and

(c) any Person for which **10**% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any Developer Member or (iii) any Affiliate of Developer under clause (b) of this definition.

For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies (or both) of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

"**Allocated Developer Financing Amount**" has the meaning set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Alternative Financing Solution**" has the meaning set forth in PA Section 4.2.7.4 *(Interest Rate Adjustments).*

"**Alternative Technical Concept**" means an alternative technical concept proposed by Developer or any unsuccessful proposer pursuant to the terms set forth in the RFP.

"**Appraiser**" has the meaning set forth in TP Section 6.3.5.1 (Appraisal Services).

"**Approved Project Certificate**" has the meaning set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**ATC Supplement**" has the meaning set forth in PA Section 1.2.6 (*DBF Documents; Order of Precedence*).

"**Authority**" means the State Road and Tollway Authority, as set forth in the opening, and any entity succeeding to the powers, authorities and responsibilities of Authority invoked by or under the DBF Documents.

"**Authority Act**" has the meaning in Recital A.

"**Authority Boring Data**" means the Authority's boring and core sample data disclosed to the Developer and attached as TP Attachment 8-5 (Preliminary Borings).

"**Authority-Caused Delay**" means any of the following events, solely to the extent not concurrent or overlapping with any delay attributable to Developer, or the risks (and costs) for which this Project Agreement expressly allocates to Developer, or the risks (or costs, or both risks and costs) for which this

Project Agreement expressly does not allocate to Authority, and with respect to any Compensation Event caused by such event, solely to the extent that, after taking into account any available Float, the cumulative effect of any such delays as set forth below have resulted in a delay to the then-current Critical Path (as of the date of the event):

(a) failure of Authority to issue NTP1 as provided pursuant to PA Section 3.3.1 (*Contract Time, Date of Commencement, and Notice to Proceed*) and/or failure to issue NTP2 as provided pursuant to PA Section 3.3.3 (*Notice to Proceed 2*);

(b) issuance of a Directive Letter that requires Developer to perform additional Work;

(c) failure of Authority or GDOT to obtain (but not to maintain) the Provided Environmental Approvals from GDOT within the time periods set forth in TP Section 5.3.3 (Provided Environmental Approvals), subject to PA Section 6.2.1 (*Governmental Approvals*) (refer to PA Section 6.2.11 (*Provided Environmental Approval Re-evaluation*) relating to maintaining Provided Environmental Approvals);

(d) failure of Authority or GDOT to provide:

(i) with respect to any Discretionary Submittal for which a response period is specified in the Submittal Requirements Database, a response to such Discretionary Submittal within the time period determined in accordance with PA Section 6.3.2 (*Time Periods*) (and the Submittal Requirements Database), subject to Developer complying with its obligation to notify Authority of its failure to timely respond to a Discretionary Submittal submitted pursuant to PA Section 6.3.3 (*Discretionary Submittal*); and

(ii) with respect to any Non-Discretionary Submittal, a response to such Non-Discretionary Submittal within the time period determined in accordance with PA Section 6.3.2 (*Time Periods*), subject to Developer complying with its obligation to notify Authority of its failure to timely respond to a Nondiscretionary Submittal submitted pursuant to PA Section 6.3.4 (*Non-Discretionary Submittal*).

(e) failure of Authority or GDOT to provide Developer with access to the Existing Right of Way and the State Proposed/State Acquired Right of Way, by the date specified in PA Exhibit 4 (*Parcel Acquisition Table*) and Developer Proposed/State Acquired Right of Way (by the date identified for acquisition); provided, however, that if a set aside motion is filed pursuant to O.C.G.A. § 32-3-11 with respect to a Parcel, then Developer's deferred right to access to such Parcel until the motion is resolved is not an "Authority-Caused Delay" under this clause (e) unless such set aside motion (i) actually delays Developer's access to such Parcel beyond the date access is contemplated by the Critical Path, and (ii) is filed solely in relation to an alleged act or omission of the Authority or GDOT that is not due to any wrongful act or omission of Developer;

(f) the occurrence of an Authority Release(s) of Hazardous Materials;

(g) a Special Event, if Authority either does not provide or provides Notice to Developer less than 30 days prior to the event;

(h) Authority's material failure to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Authority under the DBF Documents and which failure materially and adversely affects a material part of Developer's Interest, excluding any Authority Change or exercise of any right by Authority under the DBF Documents, at Law, or as required by Law; provided, however, that Authority has received Notice of such failure and Authority was afforded 30 days after receipt of such Notice to cure such failure

or, if cure cannot with diligence be completed within such 30 days, Authority has commenced meaningful steps to cure promptly and continues to diligently effect cure (not to exceed 180 days);

(i) any determination pursuant to the Dispute Resolution Procedures that a comment labeled, or deemed labeled, by Authority as a Compliance Comment should have been labeled as a Preference Comment; or

(j) any other event that the DBF Documents expressly state shall be treated as an Authority-Caused Delay.

Any proper suspension of Work pursuant to PA Section 17.3.6 (*Suspension of Work*) shall not be considered an Authority-Caused Delay.

"**Authority Change**" means:

(a) any change in the scope of the Work or terms and conditions of the Technical Provisions (including, subject to PA Section 14.7 (*Project Standards Changes*), any Project Standards Change) that Authority has directed Developer to perform, or the Parties agree that Developer will perform, through a Supplemental Agreement as described in PA Section 14.1 (*Authority Changes*) or a Directive Letter pursuant to PA Section 14.3 (*Directive Letters*); and

(b) any other event that the DBF Documents expressly state shall be treated as an Authority Change.

"**Authority Conditions Precedent**" means the Financial Close Conditions Precedent directly attributable to Authority, which includes the Financial Close Conditions Precedent set forth in PA Section 4.3.3.1 (*Conditions to Financial Close*).

"**Authority Default**" has the meaning set forth in PA Section 17.5.1 (*Authority Default*).

"**Authority Payment Funds**" has the meaning set forth in PA Section 5.4.1 (*Authority Monetary Obligations and Overall Authority Limitation of Liability*).

"**Authority Recoverable Costs**" means:

(a) the costs of any assistance, action, activity or Work undertaken by GDOT or Authority which Developer is liable for or is obligated to reimburse GDOT or Authority, as the case may be, under the terms of the DBF Documents, including the charges of third party experts, consultants, and contractors, and reasonably allocated wages, salaries, compensation, benefits and overhead of Authority or GDOT staff and employees, performing such action, activity or work; plus

(b) third-party costs Authority or GDOT incurs to publicly procure any such third party experts, consultants, attorneys, and contractors; plus

(c) reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Georgia Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with investigating and defending claims by and resolving disputes with third party contractors; plus

(d) any expense or cost for which Authority is to be reimbursed by Developer pursuant to the express terms of the Project Agreement or other DBF Documents; plus

(e) interest on all the foregoing sums at the Default Interest Rate from the date due under the applicable terms of the DBF Documents and continuing until paid.

"**Authority-Related Entities**" means (a) Authority, (b) GDOT, (c) any other Persons for whom Authority may be legally or contractually responsible, and (d) the Constituents of any of the foregoing; provided, however, that no Developer-Related Entity, acting under or relating to the Work, shall be considered an Authority-Related Entity.

"**Authority Release(s) of Hazardous Materials**" means, except as provided below, a Hazardous Materials Release directly by Authority, GDOT, the State, the State Transportation Board, Authority's board of directors, and their respective directors, employees, commissioners, and office holders (public individuals only) and their respective agents and contractors (excluding Developer and any Developer-Related Entity). Authority Release(s) of Hazardous Materials excludes, however, (a) any Hazardous Materials so introduced that are in or part of construction materials and equipment incorporated into the Project and (b) any Hazardous Materials identified in the Phase 1 Hazardous Materials Investigation or otherwise in the Reference Information Documents.

"**Authorized Representative**" has the meaning set forth in PA Section 22.6.1 (*Designation of Representatives; Cooperation with Representatives*), and shall be applicable person(s) and/or party(ies) authorized to act on behalf of each of Authority, Developer, and GDOT, respectively, as initially set forth pursuant to PA Exhibit 12 (*Initial Designation of Authorized Representatives*). All notices, deliveries, responses, approvals, and other communications among Authority, Developer and/or GDOT shall be directed to the respective Authorized Representative for each of the aforementioned, unless expressly provided to the contrary in the Project Agreement.

"**Bank Financing Rate**" means the Benchmark Interest Rate(s) submitted in the Proposal with respect to any bank financing used in the Preliminary Financial Model.

"**Base Element Condition Report**" has the meaning set forth in TP Section 19.3.1.2 (Baseline Element Condition Report).

"**Baseline Inspections**" means an inspection undertaken in accordance with TP Section 19.3.1.1 (Baseline Inspections) to determine the condition of each applicable portion of the Work.

"**Baseline Project Schedule**" means the logic-based Critical Path Method schedule for all Work from commencement of the Work leading up to and including each Milestone Deadline, to be prepared by Developer consistent with and reflecting the Proposal Schedule and Milestone Schedule, as and when such Baseline Project Schedule has been accepted by Authority, all as more particularly described in TP Section 2 (Project Management). The "Baseline Project Schedule" may refer to the NTP1 Baseline Project Schedule, the NTP2 Baseline Project Schedule, the NTP3 Baseline Project Schedule, or a Revised Baseline Project Schedule, as and when any of the foregoing is the then-current Baseline Project Schedule. For avoidance of doubt, Project Schedule Updates are not a Baseline Project Schedule.

"**Baseline Schedule of Values**" means a detailed line item monetary valuation for all parts of the Work, which lists all SOV Line Items in the format and to the detail as described in TP Section 2.3.4 (SOV and Price Loading) for the relevant development stage. The sum total of all line items must equal the DBF Contract Sum. The SOV is the Proposal SOV, NTP1 Baseline SOV, NTP2 Baseline SOV, NTP3 Baseline SOV, and Revised Baseline SOV, each as corresponds with the then-current Baseline Project Schedule.

"**Basis of D&C**" means the basis of D&C as set forth in TP Attachment 2-2 (Basis of D&C Requirements).

"**Benchmark Interest Rate**" means the publicly-documented interest rates of each maturity included in the following indices:

(a) the SOFR as provided by Bloomberg;

(b) the U.S. Spot Treasury Yield Curve;

(c) the Municipal Market Data (MMD) Benchmark, supplied by Refinitiv;

(d) the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index); and

(e) such other indices as may have been nominated by Developer and approved by Authority, and included in Developer's Financial Plan and Preliminary Financial Model prior to the Financial Close Date.

"**Benchmark Investment Rate**" means the investment rate calculated based on the Linear Interpolation of two applicable interest rates from the U.S. Treasury par yield curve related solely to the investment of an account funded with debt proceeds; except upon the end date of the Benchmark Investment Rate Protection Period, when the Benchmark Investment Rate shall become the rate associated with a guaranteed investment contract or similar investment agreement established following a demonstrably competitive process solicitation.

"**Benchmark Investment Rate Protection Period**" means the period between the Interest Rate Protection Start Date and the earlier of the Financial Closing Date or the date on which the rates associated with the guaranteed investment contract or similar investment agreement are locked.

"**Best Management Practices**" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control in Georgia" published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"**Best Value Proposer**" means the final "Best Value Proposer" selected in accordance with (and as defined under) the RFP, which is or is affiliated with Developer.

"**Betterment**" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the design or construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including (i) an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility, (ii) expansion of an existing Utility, and (iii) all Incidental Utility Adjustment Work associated with such Betterment. Notwithstanding the foregoing, the following are not considered Betterments:

(a) any upgrading which is required for accommodation of the Project;

(b) replacement devices or materials that are of equivalent standards although not identical;

(c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) any upgrading required by applicable Law;

(e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) any upgrading required by the Utility Owner's applicable Adjustment Standards; and

(g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

A New Interest shall be considered a Betterment, except if reinstallation of a Utility in the New Interest (i) is necessary in order to meet the requirements of the DBF Documents, or (ii) is called for by Developer in the interest of overall economy for the Project.

"**Betterment Agreement**" means an agreement between Developer and a Utility Owner for performance of a Betterment that meets the requirements specified in PA Section 7.4.7 (*Betterments*).

"**Bond Financing Rate**" means the Benchmark Interest Rate(s) submitted in the Proposal with respect to any bonds used in the Preliminary Financial Model.

"**Bond Issuer**" means any public entity or corporation eligible under the Law to issue the Bonds (other than the Developer).

"**Bond Pricing Date**" means, with respect to any Bonds included in the Financial Plan, the earlier of the signing of the bond purchase agreement for the Bonds or the final agreement of terms relating to the bonds between Developer and the bond purchaser.

"**Bonds**" means (i) bonds, notes, or other evidence of indebtedness issued or incurred by the Bond Issuer to finance the Project (including to finance the purchase of Approved Project Certificates), or (ii) bonds, notes or other evidence of indebtedness issued directly by the Developer.

"**Books and Records**" means any and all documents, books, records, papers, letters/correspondence, maps, plans, tapes, photographs, exhibits, computer- or other electronic-based, -stored, or -generated information, or other information or materials, whether prepared and maintained or received, of any Developer-Related Entity or Affiliate relating to the Project, including (a) all design and construction documents, and all operations and maintenance documents (including Submittals, Contracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders), (b) all budgets, certificates, claims, correspondence, data (including test data and other Project Data), data fields, documents, analyses (including expert analyses), facts, files, investigations, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, vehicular traffic information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by any Developer-Related Entity or any of its or their Contractors in connection with the Project, (c) the Financial Model, Revised Financial Model, Financial Close Financial Model, Financial Model Formulas, and any Financial Model data, updates, or other revisions, (d) any other sketches, charts, calculations, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, and other documents, information, materials, or other work product created or collected under the terms of, or otherwise under the DBF Documents, (e) any other "Books and Records", "Public Record" or words of similar effect as specifically required or identified under applicable Law or Governmental Approval, and (f) any of the foregoing that disclose or embody Intellectual Property.

"**Breakage Benefits**" means any commercially reasonable prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate

hedging arrangements (or other derivative facilities), that Developer (or any Lender or the Bond Issuer or any swap or other hedge counterparty) receives or will receive under any Developer Financing Agreement as a result of (a) the payment of all or any portion of the principal amount of Developer Financing prior to its scheduled payment date, (b) the cancellation of any committed Developer Financing for the purchase or financing of Approved Project Certificates, (c) early termination of any swap arrangements in connection with permitted Developer Financing or (d) termination of any Developer Financing Agreement as a result of termination , excluding, however, any amounts included in the principal amount of any Refinancing; provided that if Breakage Benefits and Breakage Costs are generated by the same event, such amounts shall be considered Breakage Benefits under the DBF Documents only to the extent such amounts, without double counting, either (x) directly reduce the amount of Breakage Costs that would be payable to a specific Lender, the Bond Issuer or swap or other hedge counterparty, as applicable, or (y) otherwise reduce Developer's total net obligations under the Developer Financing Agreements.

"**Breakage Costs**" means any commercially reasonable prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate hedging arrangements (or other derivative facilities), that Developer (or any Lender or the Bond Issuer or any swap or other hedge counterparty) must pay under any Developer Financing Agreement as a result of (a) the payment of all or any portion of the principal amount of Developer Financing prior to its scheduled payment date, (b) the cancellation of any committed Developer Financing for the purchase or financing of Approved Project Certificates, (c) early termination of any swap arrangements in connection with permitted Developer Financing or (d) termination of any Developer Financing Agreement as a result of termination, excluding, however, any amounts included in the principal amount of any Refinancing.

"**Bridges Not Easily Raised**" has the meaning set forth in TP Section 13.3.1.1 (Vertical Clearances).

"**Business Day**" means any day that is not a Saturday, a Sunday, a State of Georgia public holiday or a federal public holiday.

"**Calculation Date**" has the meaning set forth in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*), Section A.

"**Capital Expenditure**" means any expenditure which is treated as a capital expenditure in accordance with GAAP or equivalent auditing standards utilized and generally accepted. "**Certificate Discount Rate(s)**" means the cost of financing associated with each outstanding Approved Project Certificate anticipated in the Financial Model and evidenced by Developer Financing Agreements. For Approved Project Certificates that do not have a Lender associated with them, the discount rate(s) shall equal the cost of financing for comparable outstanding Approved Project Certificates that are associated with a Lender, or if there are none, the discount rate shall equal 2.5%.

"**Certificate Value**" has the meaning set forth in PA Section 22.1.2 (*Taxes*).

"**Chair**" has the meaning set forth in PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board DRB Review Procedures*), Section 1.1(g) (*Dispute Review Board Appointment*).

"**Change in Law**" means, in either case, when legally binding on Developer:

(a) the adoption of any Law of (1) the State (or political subdivision) or (2) a local government (or political subdivision) where a duly enacted statute of the General Assembly either (A) expressly makes such local government or political subdivision Law applicable to Authority or GDOT or (B) expressly grants the power and authority to such local government or political subdivision to promulgate a Law that is to be applicable to Authority or GDOT (to the extent of such express statutory authority), in either case,

after the Setting Date, provided such new Law is materially inconsistent with the Laws of the State (or political subdivision) or such local government (or political subdivision and applicable to Authority or GDOT) in effect on the Setting Date;

(b) any change, modification, amendment, or alteration to, repeal or revocation (in whole or in part) of any Law of (1) the State (or political subdivision) or (2) a local government (or political subdivision) meeting the additional criteria set forth in clause (a)(2)(A) or (a)(2)(B) of this definition), after the Setting Date, in each case that is materially inconsistent with the Laws of the State (or political subdivision) or such local government (or political subdivision and applicable to Authority or GDOT) in effect on the Setting Date;

(c) (i) the adoption of any federal Law that is to be applicable to Authority or GDOT (to the extent of such express statutory authority) after the Setting Date, or (ii) any change, modification, amendment, or alteration to, repeal or revocation (in whole or in part) of any federal Law after the Setting Date that is materially inconsistent with the federal Laws applicable to Authority or GDOT and in effect on the Setting Date; or

(d) any change, modification, amendment, or alteration to, repeal or revocation (in whole or in part) of any Law that otherwise would not meet clause (a), clause (b), or clause (c) of this definition that directly results from official guidance published by the Centers for Disease Control and Prevention;

excluding, however,

(i) any new or changed Law of the State or a local government (or political subdivision of either) that also constitutes or causes (A) a change in or new Adjustment Standards or (B) any Project Standards Change;

(ii) any new or changed Law of the State or a local government (or political subdivision of either) pending, passed or adopted but not yet effective as of the Setting Date;

(iii) except to the extent within the definition of Qualifying Change in Law, any new or changed Laws of the State or a local government (or political subdivision of either) that constitutes or causes a change in, or new, sales Tax assessed against any Developer-Related Entity or any of their Constituents; and

(iv) any change in the State tax Laws of general application except the adoption after the Setting Date of any Law not otherwise excluded that results in the levy of the State ad valorem property taxes on Developer's Interest.

"**Change of Control**" means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A change in the power to direct or control or cause the direction or control of the management of a Developer Member may constitute a Change of Control of Developer if such Developer Member possesses the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) a change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) a change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a Developer Member, (but not if Developer Member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(c) an upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(d) a transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Developer;

(e) the exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, Authority has received copies of such agreements; or

(f) the provisions of Security Documents and any security interest or other grant therein, in strict compliance with PA Section 4.5 (*Limitations and Requirements for Developer Financing and Developer Financing Agreements*), or the exercise of Lender or Lender Agent remedies thereunder, or enforcement thereof, including foreclosure.

For purposes of this definition, a Person shall be deemed to own shares or membership interests in another Person if such person own the legal, beneficial, and equitable interest in their relevant shares or membership interest of the other Person.

"**Change Request**" means a written request from Developer seeking to change the character, quantity, quality, description, scope or location of any part of the Work, or to modify or deviate from the DBF Documents.

"**Claimant**" means any Person that would be entitled to protection of payment surety bond under O.C.G.A. § 13-10-63, including any P&P Bonds and the Warranty Bond.

"**Code**" has the meaning set forth in Recital C.

"**Commercially Useful Function**" has the meaning set forth in PA Exhibit 14 (*DBE Requirements*), Section 3.7 (*Commercially Useful Function*).

"**Commissioner**" means the Commissioner of GDOT appointed by the State Transportation Board and any successor thereto having substantially similar powers and authority.

"**Comparable Highway Projects**" means projects for the design and construction administered by the Department with a contract value over $200,000,000.

"**Compensation Amount**" means the amount of compensation to be paid to Developer for a Compensation Event as set forth and subject to the limitations in PA Article 13 (*Relief Events; Compensation Events*).

"**Compensation Event**" means the occurrence of any of the following events, subject to any limitations, claims submissions requirements, and other conditions set forth in the Project Agreement, occurring during the Construction Period, and that (i) is beyond the reasonable control of Developer; (ii) actually, demonstrably, materially and adversely affects performance of Developer's obligations (other than payment obligations) in accordance with the DBF Documents; and (iii) is not attributable to the negligence, reckless or willful misconduct, act or omission or breach or violation of applicable Law, Governmental Approval, or contract (including any DBF Document) by a Developer-Related Entity, provided that, in each case, such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer or any Developer-Related Entity:

(a) Qualifying Change in Law (excluding a Pandemic Event);

(b) uncovering of Work that was not Nonconforming Work under Section 2.4.5.3 (*Right to Uncover*) of PA Exhibit 20 (*Nonconforming Work*) (in which case any compensation to which Developer may be entitled shall be limited to Developer's actual, documented uncover costs and expenses, without mark-up pursuant to PA Exhibit 20 (*Nonconforming Work*));

(c) Authority-Caused Delay, other than with respect to Authority's failure to provide response to Developer Submittals as provided under clause (d)(i) of the definition of "Authority-Caused Delay";

(d) Authority Change;

(e) (i) discovery at, near or on the Existing Right of Way or (in each case, after acquired) the State Proposed/State Acquired Right of Way, State Proposed/Developer Acquired Right of Way, or Developer Proposed/State Acquired Right of Way, as applicable, of (A) any Pre-existing Hazardous Materials not otherwise constituting a Developer Release of Hazardous Materials, or (B) any archaeological, paleontological or cultural resources, in any such case not known to Developer prior to the Setting Date or that would not have become known to Developer by undertaking a Reasonable Investigation; or (ii) discovery at or on Parcels of Developer Proposed/Developer Acquired Right of Way (in each case, after acquired) of any Pre-existing Hazardous Materials not known to Developer prior to the effective date of the Parcel's acquisition or that would not have become known to Developer by undertaking a Reasonable Investigation, provided that, if applicable, where such condition was identified in the RIDs, Developer shall account for same in the Baseline Project Schedule and impacts shall be limited to such conditions not identified therein (whether in type or quantity);

(f) issuance by a court in a legal proceeding of any preliminary or permanent injunction or temporary restraining order (or other similar order, legal restraint, or prohibition) that prohibits prosecution of any material portion of the Work, except if arising out of, related to, caused by, resulting from, or based on the wrongful act or wrongful omission of any Developer-Related Entity;

(g) failure to obtain, or maintain once issued, or delay in obtaining beyond the timelines specified in the Technical Provisions, a Governmental Approval from any Governmental Entity, except if such failure or delay results from failure by any Developer-Related Entity to locate or design the Project or carry out the Work in accordance with the NEPA Approval or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Developer Proposed/Developer Acquired Right of Way);

(h) GDOT's (i) lack of good and sufficient title to any parcel in the Existing Right of Way, (after acquired) the State Proposed/State Acquired Right of Way, or (after acquired) the Developer Proposed/State Acquired Right of Way by GDOT, to the extent it materially interferes with or materially

and adversely affects performance of Work, or (ii) the existence at any time following issuance of the NTP3 of any title reservation, condition, easement or encumbrance on any parcel in the Existing Right of Way or (after acquired) the State Proposed/State Acquired Right of Way, of record or not of record, to the extent it materially interferes with or materially and adversely affects performance of Work, except any title reservations, conditions, easements or encumbrances (A) concerning Utilities or (B) caused, permitted or suffered by a Developer-Related Entity;

(i) additional insurance premium costs as set forth in PA Section 16.1.2.11 (*Adjustments in Coverage Amounts*);

(j) discovery at, near or on the Existing Right of Way, (after acquired) State Proposed/State Acquire Right of Way, or (after acquired) the Developer Proposed/State Acquired Right of Way of any Unexpected Endangered Species, excluding any such presence of species known to Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

(k) any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval as compared to the NEPA Basic Configuration, except to the extent the change in design concept (i) had already been incorporated into Developer's design schematics assumed in connection with the DBF Contract Sum or (ii) results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval;

(l) suspension or termination of a NEPA Approval, except to the extent that such suspension or termination results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval, excluding Necessary Basic Configuration Changes, or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Developer Proposed/Developer Acquired Right of Way);

(m) discovery of an Unidentified Utility Facility within the relevant time periods under, and subject to the terms and conditions of, PA Section 7.4.13 (*Unidentified Utility Adjustments*);

(n) except where specifically permitted hereunder, suspensions of the Work ordered by Authority that do not arise out of, relate to, or result from any act or omission of any Developer-Related Entity that is not required or permitted under the DBF Documents;

(o) any (i) Necessary Basic Configuration Changes (subject to the terms and conditions of PA Section 14.7 (*Specific Change-Related Matters*)) or (ii) an erroneously excluded Parcel under PA Section 2.7.1.2(a) (*Developer Proposed/State Acquired Right of Way*);

(p) *ultra vires* enforcement of any inapplicable local law (or political subdivision thereof) by or on behalf of the local Governmental Entity;

(q) [Reserved;]

(r) Latent Defects to the extent affected or impacted by the Work and as and to the extent materially and adversely affecting the completion of Work on those Parcels identified in clauses (a) and (b) of PA Section 7.13.2 (*Existing Improvements and Latent Defects*);

(s) suspension of Work by Developer under PA Section 17.10.1 (*Developer's Right to Suspend Work*) for the shorter of the period of time until (i) Authority provides evidence to Developer under PA

Section 17.10.2 (*Developer's Right to Suspend Work*) that Authority has obtained a source of funds sufficient to enable Authority to make all payments due to Developer under the DBF Documents during the Term, or (ii) Authority determines, in its sole discretion, that any material impact of the events pursuant which Developer is authorized to suspend Work pursuant to PA Section 17.10.1 (*Developer's Right to Suspend Work*) has been substantially cured.

(t) a Utility Owner failure to cooperate, to the extent, under the terms, and subject to the conditions, of PA Section 7.4.9.9 (*Failure of Utility Owners to Cooperate*).

(u) The discovery of a material error in the Authority Boring Data in accordance with PA Section 7.12.13 (*Discovery of Unexpected Subsurface Conditions and Errors in Authority Boring Data*).

"**Compensation Event Determination**" has the meaning set forth in PA Section 13.2 (*Relief Event and Compensation Event Determinations*).

"**Compensation Event Notice**" means a Notice submitted by Developer in accordance with PA Section 13.1 (*Notices*).

"**Compensation Event Package**" has the meaning set forth in PA Section 13.1.4 (*Compensation Event Packages and Relief Event Packages*).

"**Compliance Comment**" means a comment or rejection of a Non-Discretionary Submittal or R&C Submittal, as applicable, where: (a) the Work that is the subject of the Non-Discretionary Submittal or R&C Submittal, as applicable, fails to comply with any applicable covenant, condition, requirement, term, or provision of the DBF Documents, after taking into account the resolution of any point of interpretation of this Project Agreement in accordance with PA Section 1.2 (*DBF Documents; Order of Precedence*) or PA Section 1.7 (*Interpretive Engineering Decisions*) (or both); (b) the Work that is the subject of the Non-Discretionary Submittal or R&C Submittal, as applicable, is not to a standard at least equal to or better than the requirements of Good Industry Practice; or (c) Developer has not provided all content or information required with respect to the Non-Discretionary Submittal or R&C Submittal, as applicable.

"**Comprehensive Environmental Protection Plan**" means the comprehensive environmental protection plan provided by Developer in accordance with TP Section 5 (Environmental).

"**Conceptual Project Local Residents Limits**" means the area within the boundaries of the purple shaded area (tier 1) and the area within the boundaries of the blue shaded area (tier 2) shown on the Project Local Resident Limits Drawings in TP Attachment 2-12A (Project Local Resident Limits Drawings).

"**Concurrent Delay**" means delay to any element of the Work that (a) is caused by any circumstance or event (other than a Relief Event determined in accordance with PA Article 13 (*Relief Events; Compensation Events*) that occurs before or contemporaneous with the commencement of the claimed Relief Event or Compensation Event; and (b) extends or changes the Critical Path.

"**Condemnation Package**" means the condemnation package described in TP Section 6.4.7.1 (Condemnation Request).

"**Conditional Letter of Map Revision**" means the revision described in TP Section 12.3.4 (FEMA Requirements).

"**Conditions to Assistance**" has the meaning set forth in PA Section 7.4.9.5 (*Failure of Utility Owners to Cooperate*).

"**Conflict**" means the conflict described in TP Section 7.3.1 (When Utility Adjustment is Required).

"**Constituents**" means, with respect to any entity or group of entities, any or all of its members, managers, officers, directors, share/stockholders, commissioners and officeholders (public Persons only), partners, employees, agents, representatives, consultants, attorneys, contractors, successors, and permitted assigns. Express or contextual references to Authority's Constituents exclude GDOT.

"**Construction Detail**" means a drawing detailing GDOT required dimensions, specifications, construction methods, or requirements for a specific portion of the Project. TP Attachment 1-4 (Project Standards) identifies which Construction Details shall be considered Project Standards for this Project.

"**Construction Documents**" means all working drawings, erection and installation work plans, fabrication plans, manufacturer's literature, material and hardware descriptions, specifications, construction quality-related reports, construction quality assurance reports, and samples (materials, display, other) specified, necessary, or desirable for construction of the Project, including all such drawings, etc., pertaining to all Utility Adjustments, regardless as to whether included in the Construction Work or self-performed by or on behalf of Utility Owners (it being understood that the equivalent of "Design Documents" with respect to such Utility Adjustments are not "Construction Documents").

"**Construction Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who has primary responsibility for day-to-day construction operations, including Quality Control, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Construction Period**" means the period commencing at issuance of NTP3 and ending upon the Final Acceptance Date.

"**Construction Phase**" means a portion of the Construction Work defined by geometric zones, areas or segments within logical termini that enables staged progression and sequencing of construction pursuant to Developer's approach to perform the Work.

"**Construction Phasing and Staging Plan**" means the plan provided by Developer in accordance with TP Attachment 2-2 (Basis of D&C Requirements) that depicts the phasing and staging of the Construction Work.

"**Construction Quality Assurance Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who is responsible for quality assurance of Project construction, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Construction Quality Assurance Program**" means the program described in TP Attachment 3-1 (Construction Quality Assurance Program) as approved by FHWA.

"**Construction Quality Management Plan**" means the construction quality management plan provided by Developer in accordance with TP Section 3 (Developer Quality Program).

"**Construction Standard**" means a drawing detailing GDOT required dimensions, specifications, construction methods, or requirements for a particular part of the Work or portion of the Project. TP Attachment 1-4 (Project Standards) identifies which Construction Standards are Project Standards.

"**Construction Work**" means all portions of the Work (excluding associated Administrative Work) necessary to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver, or equip the Project and/or the Utility Adjustments. Construction Work includes

Maintenance During Construction, all work and activities after Substantial Completion required to achieve Final Acceptance, including completion of all FA Punch List items and FA Landscaping Work, all other landscaping and aesthetic treatments as well as the development of the Construction Documents and performance of construction Quality Management and Independent Construction Quality Assurance. Construction Work does not include Design Work.

"**Contract**" means any agreement, and any supplement or amendment thereto, by either (a) Developer with any other Person or Contractor, or (b) any Contractor with any Person or Subcontractor, to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Subcontractor and its lower tier sub-subcontractor or supplier. The term "Contract" excludes any agreements in respect to Utility Adjustment Work and any agreement with Authority or GDOT.

"**Contract Time**" means the time period provided for Developer's completion of the Work as provided in PA Section 3.3.1 (*Contract Time, Date of Commencement, and Notice to Proceed*).

"**Contractor**" means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any services, materials, equipment, hardware or supplies for any part of the Project and/or the Utility Adjustments included in the Construction Work, on behalf of Developer, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The term "Contractor" excludes Authority and GDOT and any Utility Owner self-performing Utility Adjustment Work. The D&C Contractor and Lead Engineer each are "Contractors".

"**Control Point Inspection**" means the inspection described in TP Section 3.4.4 (Control Point Inspections).

"**Corrective/Preventative Action Report**" means Developer's plan for taking corrective action with respect to systemic Nonconforming Work as described in TP Section 3.5.11 (Corrective/Preventative Action Report).

"**Counter Offer**" means the counter offer described in TP Section 6.4.3.3 (Offers and Counter Offers).

"**Critical Path**" means the sequence of activities that must be completed on schedule for the entire Project to be completed on time in accordance with the Milestone Deadlines. This is the longest duration path (or "chain"), in terms of time, of logically connected activities of D&C Work on the Baseline Project Schedule (as such schedule is statused and updated in accordance with TP Section 2.3.5 (Time Impact Analysis)) ending with the relevant Milestone Deadline in respect thereof (ultimately, the Final Acceptance Date), corrected for any improper logic, improper activity durations, and errors.

"**Critical Path Method**" means a scheduling method that utilizes the Precedence Diagram Method to calculate each activity's early dates, late dates, float values and establishes the critical path through the activity network.

"**D&C Amount**" means the "D&C Amount" identified on the Schedule of Values, it being the intent of the Parties that such amount reflects the DBF Contract Sum less the Developer Financing Amount and less any Adjustment for Change in Financial Plan.

"**D&C Closeout Plan**" means the plan prepared by Developer in accordance with the requirements of TP Section 2.2.1.20 (D&C Closeout Plan).

"**D&C Contractor**" means C.W. Matthews Contracting Co., Inc. The "D&C Contractor" is also any Contractor with which Developer enters into a new Design-Build Contract in accordance with the terms of this Project Agreement.

"**D&C Period**" means the period commencing at issuance of NTP1 and ending upon the Final Acceptance Date.

"**D&C Work**" means the Design Work and the Construction Work.

"**Day**" or "**day**" means calendar day unless otherwise expressly specified otherwise.

"**DBE Commitment**" has the meaning set forth in PA Section 10.9.2.1 (*DBE Goals, Commitments*).

"**DBE Contract**" means a Contract with a DBE Contractor.

"**DBE Contractor**" means a Contractor that is a DBE.

"**DBE Goal**" has the meaning set forth in PA Section 10.9.2.1 (*DBE Goals, Commitments*).

"**DBE Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) and Section 1.5 (*DBE Manager*) of the DBE Requirements as the DBE Manager.

"**DBE Participation Report**" has the meaning set forth in PA Section 10.9.2 (*DBE Goals, Commitments*).

"**DBE Performance Plan**" means Developer's plan for meeting the DBE Goal, as updated in accordance with PA Exhibit 14 (*DBE Requirements*), Section 1.1 (*DBE Overview*) of the DBE Requirements.

"**DBE Recovery Plan**" has the meaning set forth in PA Section 10.9.2.5 (*DBE Goals, Commitments*).

"**DBE Requirements**" means PA Exhibit 14 (*DBE Requirements*).

"**DBF Contract Sum**" means the Preliminary DBF Contract Sum to be paid to Developer on account of the fully and properly performed Work as set forth in the Project Agreement, as adjusted (a) initially, on the Financial Close Date pursuant to the Interest Rate Adjustment pursuant to PA Section 4.2.7 (*Interest Rate Adjustments*) and Adjustment for Change in Financial Plan pursuant to PA Section 4.2.8 (*Change in Financial Plan*), if applicable, and (b) thereafter, pursuant to Supplemental Agreements (including to reflect adjustments for Compensation Events and Material Indexation Adjustments as provided in the Project Agreement), Refinancings and prepayments, and Breakage Costs (less Breakage Benefits), and all other obligations to be performed for, or on behalf of, Developer under the Project Agreement, including all of Developer's profit, fees, financing costs and interest expense for Developer Financing, all costs of Work and services, materials, equipment, supplies, general conditions costs, overhead and administrative expenses, professional fees and advisor, consultant and subconsultant costs, acquisition and other costs associated with acquisition of any real property interests (excluding Temporary Interests), insurance and surety bond premiums, sales taxes, assessments, tariffs, permit, license and registration fees, and all other related costs and expenses, in each case as full and complete compensation for the Work.

"**DBF Documents**" means those documents as set forth in PA Section 1.2 (*DBF Documents; Order of Precedence*) and all such other agreements entered into by Authority and Developer or any Developer-Related Entity, or otherwise executed by Developer or a Developer-Related Entity and delivered to Authority, with respect to or in connection with the Project Agreement, including Supplemental Agreements, or any guaranty.

"**Deductions**" means, in the context of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), each of the Monthly Nonrefundable Deductions and Monthly Lane Closure Deductions as well as any Liquidated Damages assessed in the Project Certificate Period. In all other instances, and depending upon context, "Deductions" means Liquidated Damages, Lane Closure Deductions, and Nonrefundable Deductions individually or collectively.

"**Default Interest Rate**" means the interest rate Authority receives from time to time on its deposits into a State Depository (i.e., generally, in the case of interest owed to Developer, the rate of interest Authority could earn on the amount owed based upon the investment of such amount in the State Depository).

"**Default Termination Event**" means each of the Developer Defaults listed in PA Section 18.3.1 (*Developer Defaults Triggering Authority Termination Rights*) upon expiration of the applicable cure period for such Developer Default (or if no cure period is specified, upon occurrence).

"**Defect**" means any Work that (i) does not conform with the DBF Documents, or (ii) otherwise is a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any portion of the Work that would cause or have the potential to cause one or more of the following:

(a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;

(b) a structural deterioration of the affected part of the Work or portion of the Project;

(c) damage to a third party or a third party's property or equipment;

(d) damage to the Environment; or

(e) failure of a part of the Work or portion of the Project to meet a performance requirement.

For avoidance of doubt, a Maintenance Defect is not a "Defect."

"**Design-Build Contract**" means, if applicable, that certain agreement between Developer and the D&C Contractor of even date herewith for the design and construction of the Project and/or the Utility Adjustments included in the Design Work and/or the Construction Work.

"**Design-Build Project Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who is responsible for management of the design and construction of the Project, with primary responsibility for Project permitting and progression of the Work in accordance with the Baseline Project Schedule, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel). For avoidance of doubt, the Design-Build Project Manager is not the "project manager" under the Intergovernmental Agreement referred to in Recital F.

"**Design Deviation**" means a documented decision to design a portion of the Project to design criteria that do not meet minimum suggested or permissive values or ranges as established by either FHWA,

Authority or GDOT but which have not been identified as either a controlling criteria by FHWA or a Project Standard. Design Deviations shall be documented in the Record Design Documents.

"**Design Documents**" means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, Shop Drawings, erection and shoring drawings, calculations, electronic files, records, and other submissions necessary for, or related to, the design of the Project and to the Utility Adjustments (including Utility Adjust Plans and Utility Adjustment Preliminary Plans), regardless as to whether included in the Design Work and/or the Construction Work. The Design Documents include each of the Preliminary Design Documents, Final Design Documents, Released for Construction Design Documents, Shop Drawings and Record Design Documents.

"**Design Exception**" means a documented decision to design a portion of the Project or a segment of the roadway to design criteria that do not meet minimum values or ranges established for the Project as set by the 10 controlling criteria as defined by "AASHTO – A Policy on Geometric Design of Highway and Streets. Design Exceptions require approval from both Authority and FHWA.

"**Design Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who is responsible for the management of the design team and preparation of Design Documents and other responsibilities, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Design Quality Assurance Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who is responsible for the quality assurance of the overall Project design, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Design Quality Management Plan**" means the design quality management plan provided by Developer in accordance with TP Section 3 (Developer Quality Program).

"**Design Variance**" means a documented decision to design a portion of the Project or a segment of the roadway to design criteria that do not meet minimum values or ranges established for the Project as denoted by Authority as a standard above and beyond those established by FHWA. Design Variances require approval from Authority.

"**Design Work**" means all Work of design, redesign, engineering or architecture for the Project (excluding associated Administrative Work); acquisition of the State Proposed/Developer Acquired ROW or Developer Proposed/Developer Acquired Right of Way; and design activities relating to Utility Adjustment Work. "Design Work" includes development of the Design Documents and performance of the design Quality Management and Independent Design Quality Assurance. "Design Work" includes subsurface utility investigations and geotechnical investigations incidental to Design Work.

"**Designated Account(s)**" means the following:

(a) for the deposit of amounts due under Approved Project Certificates and Breakage Costs, when the Direct Agreement is in place, the term "Designated Account(s)" shall have the definition given to such term in the Direct Agreement; and

(b) for deposit of other Project Payments (and, when the Direct Agreement is not in place, payments under Approved Project Certificates and Breakage Costs), the account(s) to be designated by Developer at Financial Close.

"**Detailed Compensation Event Notice**" has the meaning set forth in PA Section 13.1.3.2 (*Detailed Compensation Event Notices*).

"**Detailed Cost and Pricing Data**" means all documents and materials used by Developer, as Best Value Proposer, to prepare its Proposal and to bid the DBF Contract Sum. The "Detailed Cost and Pricing Data" includes all writings, working papers, computer printouts, charts, and all data compilations which contain or reflect information, data, formulas, unit and materials prices, other cost and fee information, and calculations and includes specifically all materials quantity assumptions, schedules, equipment or machinery use or rental rates, transportation charges, overhead rates, labor rates, management or supervisory labor costs, efficiency or productivity factors, arithmetic extensions, binding or other quotations from consultants, subconsultants, subcontractors, and material suppliers (including costs, rates, assumptions, and adjustments with respect to changes arising out of Supplemental Agreements under the Project Agreement, if any), property damage, liability, and other non-statutory insurance premiums, and all costing assumptions for human resources (e.g., salary and benefits), and otherwise all information and materials required under PA Section 20.6.5 (*Contents of Detailed Cost and Pricing Data*) and Section 20.6.6 (*Form of Detailed Cost and Pricing Data*).

"**Detailed Relief Event Notice**" has the meaning set forth in PA Section 13.1.2.2 (*Detailed Relief Event Notices*).

"**Detailed Unexpected Subsurface Condition Proposal**" has the meaning set forth in PA Section 7.12.3 (*Discovery of Unexpected Subsurface Conditions*).

"**Developer**" means the party identified as such in the opening paragraph, together with its successors and permitted assigns.

"**Developer Change**" means a change pursuant to PA Section 14.2 (*Developer Change*).

"**Developer Conditions Precedent**" means the Financial Close Conditions Precedent directly attributable to Developer, which includes the Financial Close Conditions Precedent set forth in PA Section 4.3.3.1 (*Conditions to Financial Close*) directly attributable Developer.

"**Developer Default**" has the meaning set forth in PA Section 17.1.1 (*Developer Default*).

"**Developer Financing**" means bona fide indebtedness (including surety bonds, guaranties and credit support and subordinated indebtedness and all such obligations arising under such indebtedness) or other financings, asset sales, or other transfers related to the Project for, related to, or with respect to indebtedness issued, funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or other financing, or received upon any such sale or transfer, or for the value of goods or services rendered or received, the payment or repayment of which has specified payment dates, and in all cases pursuant to Developer Financing Agreements.

"**Developer Financing Agreements**" means any and all documents, security instruments, notes and agreements, including all Security Documents in respect thereof and in connection therewith, which provide for sufficient available funds to Developer for purposes of satisfying the Developer Financing Obligation, all of which shall be subject to Authority's review and approval, and which may include:

(a) any loan agreement, funding agreement, receivables purchase agreement, accounts receivable purchase agreement, receivables sales agreement, account maintenance or control agreement, premium letter, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, guaranteed investment contract, agreement from any shareholder, member, partner or joint venture member in favor of any Lender, hedging agreement, interest rate swap agreement, guaranty,

indemnity agreement, agreement between or among Developer, the Bond Issuer, the Trust or the Trustee, and any other Lender, Lender Agent or swap or other hedge counterparty, or other agreement by, with or in favor of the Bond Issuer, the Trust or the Trustee, and any other Lender, Lender Agent or swap or other hedge counterparty pertaining to Developer Financing (including any Refinancing, if applicable);

(b) any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness for Developer Financing (including any Refinancing, if applicable); and

(c) any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments, provided that Authority's approval shall not be required with respect to any such amendment, supplement, or variation that could not reasonably be expected to have a material adverse effect on the ability of Developer to satisfy Developer Financing Obligation utilizing Developer Financing Agreements.

The initial list of Developer Financing Agreements will be set forth at Financial Close on Schedule A (*Developer Financing Agreements*) to the Direct Agreement and incorporated by reference in PA Exhibit 22 (*Initial List of Developer Financing Agreements, Security Documents*).

"**Developer Financing Amount**" means the amount so identified on the Schedule of Values, as may be adjusted under the DBF Documents, it being the intention of the Parties that such amount reflects the interest costs (current and capitalized), discount and financing fees in relation to Developer Financing (less any applicable interest income earned on the proceeds of such Developer Financing), all being exclusive of any penalties, late charges, or default interest on account of any Developer defaults under such obligations.

"**Developer Financing Costs**" means the interest (current and capitalized), discount and financing fees in relation to Developer Financing, and fees and costs of arranging Developer Financing for Authority's payment of amounts under a Supplemental Agreement through the issuance of Approved Project Certificates, to the extent specifically provided by PA Section 14.6 (*Payment of Supplemental Agreements*) all being exclusive of any penalties, late charges, or default interest on account of any Developer defaults under such obligations.

"**Developer Financing Obligation**" means Developer's obligation to provide funds to finance the costs of the Work.

"**Developer Financing Rate**" means the Bank Financing Rate or the Bond Financing Rate, as applicable.

"**Developer-Led Environmental Approvals**" means all Environmental Approvals other than the Provided Environmental Approvals.

"**Developer Liability Cap**" has the meaning set forth in PA Section 7.16.1 (*Developer's Limitation of Liability*).

"**Developer Member**" means any shareholder, member, partner or joint venture or consortium member of Developer or a Person with a material financial obligation owing to Developer for equity or shareholder loan contributions.

"**Developer Noise Barrier Change**" means a Developer Change in relation to a change to the Noise Barrier Baseline Requirements, as further described in PA Section 14.7.3.2 (*Developer-Proposed Noise Barrier-Related Changes*) and TP Section 5.4.2 (Developer Noise Barrier Location Changes).

"**Developer Noise Barrier Change Memorandum**" means a memorandum with respect to a change to the Noise Barrier Baseline Requirements, submitted by Developer prior to proposing a Developer Change in accordance with TP Section 5.4.2 (Developer Noise Barrier Location Changes) and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

"**Developer Organization Description**" means the plan provided by Developer as part of the Project Management Plan Submittal that identifies the organization structure that Developer will use to execute the Project, identifying chain of command, management, and execution to deliver the Work.

"**Developer Project Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who leads Developer's team, serves as the single point of contact for all contract administration and correspondence between Developer and Authority, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel). For avoidance of doubt, the Developer Project Manager is not the "project manager" under the Intergovernmental Agreement referred to in Recital F.

"**Developer Proposed/Developer Acquired Right of Way**" means those Parcels or portions of property proposed by Developer in addition to the State Proposed Right of Way to be used for the Project or in connection with the construction thereof, all as expressly designated as "Developer Proposed/Developer Acquired Right of Way" within the ROW Acquisition Plan. Developer Proposed/Developer Acquired Right of Way shall not include any Temporary Interests.

"**Developer Proposed/State Acquired Right of Way**" means those Parcels or portions of property identified by Developer in addition to the State Proposed Right of Way and Developer Proposed/Developer Acquired Right of Way to be used for Project or in connection with the construction thereof, for which Authority is obligated to provide access to Developer and/or acquire a leasehold estate pursuant to an estate for years. Developer Proposed/State Acquired Right of Way shall not include any Temporary Interests. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Developer Proposed/State Acquired Right of Way and specifically excludes any Developer Proposed/Developer Acquired Right of Way, State Proposed/State Acquired Right of Way, and State Proposed/Developer Acquired Right of Way.

"**Developer-Provided Specifications**" has the meaning set forth in TP Section 1.5 (Project Standards).

"**Developer Quality Program**" means the quality program to be developed, implemented and continually improved by Developer in accordance with TP Section 3 (Developer Quality Program).

"**Developer-Related Entities**" means (a) Developer, (b) Developer Members, (c) the D&C Contractor and all other Contractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Developer may be legally or contractually responsible, and (f) the Constituents of any of the foregoing; provided, however, that no Authority-Related Entity, acting under or relating to the Work, shall be considered a Developer-Related Entity.

"**Developer Related Expenses**" means all costs and expenses incurred by Developer related to ongoing financing related fees and expenses, excluding any amounts included in the Allocated Developer Financing Amount.

"**Developer Release(s) of Hazardous Materials**" means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the actions, omissions, negligence, reckless or willful misconduct, violation of Law and other illegal activities (or inaction), violation of contract, criminal conduct, bad faith, intentional misconduct (which excludes intentional Developer Default), arbitrary or capricious acts, fraud, or violation or breach of any Governmental Approval or contract by any Developer-

Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the DBF Documents or any applicable Law or Governmental Approval.

"**Developer's Design**" means, at any given time, and depending upon context, (a) the aggregate of accepted Design Document Submittals, (b) the design concepts set forth in such aggregate of accepted Design Document Submittals, or (c) the action of developing Developer's Project design.

"**Developer's Interest**" means all right, title, and interest of Developer in, to, under or derived from the DBF Documents.

"**Developer's Schematic Plan of Project**" has the meaning set forth in TP Attachment 2-2 (Basis of D&C Requirements).

"**Direct Agreement**" means that certain Direct Agreement entered into between Developer, the Lender Agent (or Lender, as the case may be), and Authority, in the form of the Direct Agreement attached as PA Exhibit 3 (*Form of Direct Agreement*), or any replacement thereof.

"**Directive Letter**" means the letter described in PA Section 14.3 (*Directive Letters*).

"**Disadvantaged Business Enterprise**" has the meaning set forth 49 C.F.R. Part 23 and further described in Attachment 6 to PA Exhibit 8 (*Federal Requirements*), or those "disadvantaged business enterprise" firms identified by the Georgia Department of Transportation's Unified Certification Program at the time of the Proposal Due Date, as context may require.

"**Discipline Group**" has the meaning set forth in TP Section 2.8.3 (Coordination and Discipline Groups).

"**Discretionary Submittal**" means any Submittal that is expressed to be subject to acceptance by Authority in its sole discretion, as identified in the Submittal Requirements Database.

"**Discriminatory Change in Law"** means a Change in Law that is principally directed at, and the effect of which is principally borne, by one or any combination of the following:

(a) the Project;

(b) the Developer or any Key Contractor, or

(c) developers of Comparable Highway Projects.

"**Dispute**" means any dispute, disagreement or controversy between Authority and Developer concerning their respective rights and obligations under the DBF Documents, including concerning any alleged breach or failure to perform and remedies.

"**Dispute Resolution Procedures**" means the procedures for resolving Disputes set forth in PA Section 17.9 (*Dispute Resolution Procedures*).

"**Dispute Review Board**" means the Dispute review board established to aid in the resolution of Technical Disputes pursuant to PA Section 17.9.3 (*Dispute Resolution Procedures*).

"**Dispute Review Board Agreement**" means the agreement in the form attached to this Project Agreement as PA Exhibit 23 (*DRB Review Procedures*).

"**DPSA Candidate Permanent Work**" has the meaning set forth in PA Section 2.7.1.1 (*Developer Proposed/State Acquired Right of Way*).

"**Drainage System**" means the existing and proposed riverine bridges, stormwater conveyances (open-channel and closed-conduit), inlets, stormwater management, detention/retention ponds, soil erosion measures, pavement and subgrade drainage, culverts, stream and wetland restoration, bridge deck drainage and any other stormwater drainage components described in the GDOT – Drainage Design for Highways Manual.

"**DRB Costs**" has the meaning set forth in PA Section 17.9.3.6 (*Dispute Resolution Procedures*).

"**DRB Review**" has the meaning set forth in PA Section 17.9.2.1 (*Dispute Resolution Procedures*).

"**Early Termination Date**" means the effective date of termination for any reason prior to the Final Acceptance Deadline, as specified in the relevant provisions of PA Article 19 (*Assignment and Transfer*).

"**Effective Date**" means the date set forth in the Preamble.

"**Eligible Existing Improvement**" means an Existing Improvement that is a bridge, structure, or wall itself (and nothing else).

"**Emergency**" means an unforeseen event affecting the Project whether directly or indirectly which (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of Users or the traveling public; (c) is recognized by the Georgia Department of Public Safety as an emergency; or (d) is recognized or declared by the Governor of the State, FEMA, the U.S. Department of Homeland Security or other Governmental Entity with authority and having jurisdiction over the Project or Authority or GDOT to declare an emergency.

"**Emergency Utility Coordinator**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Emergency Utility Coordinator.

"**Emergency Utility Response Plan**" means the plan described in TP Section 7.2.9 (Emergency Utility Response Plan).

"**Encroachment Applicant**" has the meaning set forth in PA Section 6.6.2 (*Encroachment Permits*).

"**Encroachment Permit**" means any encroachment permit issued by GDOT with respect to any area within Project Limits in accordance with GDOT "Regulations for Driveway and Encroachment Control," manual (Revision 5.0), dated July 3, 2019, produced by GDOT and as updated from time to time.

"**Encroachment Permit Holders**" means any Person holding an Encroachment Permit from time to time.

"**Engagement**" means the number of qualified Project Local Resident resumes received from an applicable Workforce Entity that are advanced into an interview stage.

"**Engineer of Record**" means an individual, or individuals, properly registered as an engineer, responsible for preparing the Released for Construction Design Documents, all specifications, certification

of all Shop Drawings and the Record Design Documents with respect to respective engineering disciplines for the Project.

"**Environment**" means air, soils, submerged lands (or "wetlands"), surface waters, groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems (including ecosystems), and cultural, historic, archaeological and paleontological resources.

"**Environmental Approvals**" means all Governmental Approvals arising from or required by any Environmental Law in connection with development, design, financing, or construction of the Project, including approvals and permits required under NEPA and GEPA. Environmental Approvals include all Provided Environmental Approvals and Developer-Led Environmental Approvals.

"**Environmental Assessment**" means the Finding of No Significant Impact issued on February 14, 2024.

"**Environmental Commitment**" (also "Environmental Permits, Issues and Commitments") means the environmental commitments Developer is required to perform as set forth in TP Attachment 5-3 (Environmental Commitments).

"**Environmental Compliance Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Environmental Law**" means any Law applicable to the Project or the Work requiring consideration of environmental impacts or addressing, regulating, relating to, or imposing liability, actions or standards of conduct that pertains to (1) the Environment, Hazardous Materials, pollution, contamination of any type whatsoever, health, or safety, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, pollution, contamination of any type whatsoever, health, and safety, or (2) otherwise the protection of public health, public welfare, public safety, in any case, set forth in any Laws, or other criteria and guidelines promulgated pursuant to such Laws, or Governmental Approvals applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

(b) air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) protection of nonhuman life (including wildlife, Threatened or Endangered Species, sensitive species), wetlands, water courses and water bodies, historical, archaeological, and paleontological resources, and natural resources;

(e) the operation and closure of underground storage tanks;

(f) the safety of employees and other persons; and

(g) notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

(ii) The Georgia Environmental Policy Act (O.C.G.A. §§ 12-16-1 to 12-16-8), as amended;

(iii) CERCLA, as amended;

(iv) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);

(v) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;

(vi) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(vii) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

(viii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as amended;

(ix) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

(x) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended, and the Hazardous Materials Transportation Uniform Safety Act of 1990;

(xi) The Oil Pollution Act (33 U.S.C. §§ 2701 et. seq.), as amended;

(xii) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;

(xiii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;

(xiv) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(xv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as amended;

(xvi) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

(xvii) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;

(xviii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xix) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;

(xx) The Bald Eagle and Golden Eagle Protection Act (16 U.S.C. §§ 688 *et seq.*), as amended;

(xxi) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*), as amended;

(xxii) The Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.*), as amended;

(xxiii) Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c), as amended;

(xxiv) Georgia Water Quality Act (O.C.G.A. § 12-5-20), as amended;

(xxv) Georgia Erosion and Sedimentation Act (O.C.G.A. § 12-7-1), as amended;

(xxvi) Best Management Practices (O.C.G.A. § 12-7-6(b)(15)), as amended;

(xxvii) Georgia Underground Storage Act (O.C.G.A. § 12-13-1), as amended;

(xxviii) GEPA, as amended; and

(xxix) State species-related laws, including the Georgia Endangered Wildlife Act (O.C.G.A. §§ 27-3-130 to 27-3-133) and the Georgia Wildflower Preservation Act (O.C.G.A. § 12-6-170 *et seq*.), each as amended.

"**Environmental Site Assessment**" means the environmental site assessment Developer is required to perform in accordance with TP Section 8.3.3.6 (Environmental Site Assessment).

"**Environmentally Sensitive Areas**" mean the areas identified in the NEPA Approval and TP Attachment 5-5 (Environmental Resource Exhibit).

"**Error**" means an error, omission, inconsistency, inaccuracy, deficiency, or other defect that is not a Defect.

"**Escrow Agent**" means NCC Group Software Resilience (NA) LLC, at 6111 Live Oak Parkway, Norcross, Georgia 30093, or such other escrow agent as may be identified by Authority to Developer, or any of their successors and permitted assigns.

"**Escrowed Documents**" means the documents delivered by Developer, as Best Value Proposer, pursuant to ITP Section 6.2.3. The "Escrow Documents" consist in (a) an executed Escrow Agreement, in the form of Form CC-1 to the ITP, (b) an executed Escrow Affidavit, in the form of Form CC-2 to the ITP, (c) the Detailed Cost and Pricing Data, as supplemented from time to time, and (d) if triggered by one or more of the events described in PA Section 20.6.9 (*Intellectual Property Escrow*), software, Source Code and Source Code Documentation, and Proprietary Intellectual Property.

"**Estate for Years**" has the meaning set forth in Recital C.

"**Excess**" has the meaning set forth in PA Section 22.1.2 (*Taxes*).

"**Excess Interest Rate Adjustment**" has the meaning set forth in PA Section 4.2.7.3 (*Interest Rate Adjustments*).

"**Excused Closure**" has the meaning given in PA Exhibit 13 (*Lane Closure Deductions*).

"**Exempt Refinancing**" means:

(a) any Refinancing that was fully and specifically identified and taken into account in the Financial Model at Financial Close and in the calculation of DBF Contract Sum and the schedule in Attachment 2 (*Project Payment Schedule*) to PA Exhibit 7 (*DBF Contract Sum and Payment Terms*);

(b) (i) amendments, modifications, supplements or consents to Developer Financing Agreements, or (ii) the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that, in the case of clause (b)(i) or clause (b)(ii) of this definition, does not provide a financial benefit to Developer;

(c) any of the following acts by a Lender: (i) the syndication in the ordinary course of business of any of such Lender's rights and interests in Developer Financing Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to Developer Financing Agreements in favor of any other Lender or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either Developer Financing Agreements or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender or any investor;

(d) periodic resetting and remarketing of tax exempt or taxable bonds that bear interest at a variable or floating rate; and

(e) any financing incurred by the Developer to provide for Authority's payment of amounts owed to Developer pursuant to a Supplemental Agreement to be made through Authority's issuance of Approved Project Certificates as contemplated in PA Section 14.6 (*Payment of Supplemental Agreements*).

"**Existing Improvements**" means the existing highway, bridge, and related improvements as of the date of issuance of the RFP within the Existing Right of Way.

"**Existing Interest**" means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

"**Existing Right of Way**" means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures described and identified in the "Existing Right of Way Lines" in TP Attachment 6-3 (State Proposed ROW Plans) in or to which Authority has an interest pursuant to, and for the purposes of implementing the Project under, the Estate for Years or any other property right or interest. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Existing Right of Way.

"**Existing Utility Property Interest**" means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

"**FA Landscaping Work**" means the Landscaping Work that remains to be completed prior to Final Acceptance as set forth in the D&C Closeout Plan and agreed with Authority prior to Substantial Completion in accordance with PA Section 7.6 (*Substantial Completion, Punch List, Final Acceptance*).

"**FA Punch List**" means a "punch list" of Construction Work that remains to be completed following Substantial Completion as a condition to Final Acceptance, prepared by Developer and included in the D&C Closeout Plan and agreed with Authority prior to Substantial Completion in accordance with PA Section 7.6 (*Substantial Completion, Punch List, Final Acceptance*). The FA Punch List shall only include any incomplete Construction Work that, due to its nature and the activities required to correct and complete the work, will not require any Lane Closures and will not have any material or adverse effect on the normal, uninterrupted and safe use of the Project. The FA Punch List shall include the FA Landscaping Work. For purposes of this definition, a "punch list" is an itemized list of minor items of Construction Work that remains to be completed, where the nature of any such incomplete Work, and the correction and completion of same, will neither impede traffic nor otherwise have a material or adverse effect on the normal and safe use and operation of the Project. "Minor" is as determined by GDOT in its sole discretion.

"**FCI Schedule**" has the meaning set forth in PA Section 4.2.8.2 (*Change in Financial Plan*).

"**FCR Schedule**" has the meaning set forth in PA Section 4.2.8.3 (*Change in Financial Plan*).

"**Federal Requirements**" means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in PA Exhibit 8 (*Federal Requirements*).

"**Field Design Change**" has the meaning set forth in TP Section 4 (Design Documents).

"**Final Acceptance**" means the occurrence of all the events and satisfaction of all the criteria and conditions for completion of the Project as set forth in PA Section 7.6.3 (*Final Acceptance*), as and when confirmed by Authority's issuance of a certificate of Final Acceptance in accordance with the procedures and within the time frame established in PA Section 7.6.3 (*Final Acceptance*).

"**Final Acceptance Date**" means the date upon which Authority certifies that Developer has satisfied all conditions of and for Final Acceptance.

"**Final Acceptance Deadline**" means the deadline for achieving Final Acceptance, as set forth in the Milestone Schedule, as such deadline may be extended as and to the extent provided in the Project Agreement. The initial Final Acceptance Deadline is the date identified as such in the Proposal.

"**Final Acceptance Long Stop Date**" means 12:01 a.m. on the date that is 180 days after the Final Acceptance Deadline, as such date may be extended from time to time under this Project Agreement.

"**Final Certificate**" means the final Project Certificate to be certified by Authority under the terms.

"**Final Design Documents**" means the Design Documents described in TP Section 4.3.2 (Final Design Documents).

"**Final Parcel File**" means the files described in TP Section 6.5.4 (Final Parcel File).

"**Financial Close**" means the (a) satisfaction of all (or waiver or waiver by Authority of any one, but satisfaction of the balance**)** of the conditions precedent to Financial Close set forth in PA Section 4.3 (*Financial Close*) and (b) delivery to Authority of the fully-executed Developer Financing Agreements providing for committed financing of Developer Financing Obligations and satisfaction of all conditions under Developer Financing Agreements to initial disbursement to Developer (or utilization by Developer of proceeds) so as to render effective the Lenders' commitments, as required pursuant to, and fully compliant with, the terms and conditions of PA Article 4 (*Financing*).

"**Financial Close Amount**" means the amount so identified on the Schedule of Values, as may be adjusted under the DBF Documents, it being the intention of the Parties that such amount reflects the documented, actual, reasonable Lender fees and external costs incurred by Developer in connection with the closing of Developer Financing at Financial Close.

"**Financial Close Conditions Precedent**" has the meaning set forth in PA Section 4.3.3.1 (*Conditions to Financial Close*).

"**Financial Close Date**" means the date on which Financial Close occurs.

"**Financial Close DBF Contract Sum**" has the meaning set forth in PA Section 4.2.7.5 (*Interest Rate Adjustments*) and PA Section 4.2.8.3 (*Change in Financial Plan*), depending upon whether adjustments are required to the DBF Contract Sum under PA Section 4.2 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*).

"**Financial Close Deadline**" means the date that is 180 days after the Proposal Due Date, as such date may be extended pursuant to PA Section 4.3.2 (*Financial Close Deadline*).

"**Financial Close Financial Model**" means the Preliminary Financial Model as updated in accordance with PA Section 4.2.7.5 (*Interest Rate Adjustments*) and PA Section 4.2.8.4 (*Change in Financial Plan*), depending upon whether adjustments are required to the DBF Contract Sum under PA Section 4.2 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*).

"**Financial Close Security**" means one or more surety bonds or letters of credit (or a combination thereof) in the aggregate amount of $20,000,000 and each in substantially the same form (as applicable) set forth in Forms D-3 or D-4 to the ITP, with such revisions acceptable to Authority (for itself or through GDOT), as applicable and, (a) in the case of a surety bond, issued by a properly licensed and U.S. Treasury listed surety(ies) that have not less than A or better and Class VIII by A.M. Best and Company's Insurance Reports Key Rating Guide, and listed on Treasury Department Circular 570, and be on the list of companies approved by the State for at least three of the last five years from the date of the proposed surety bond issuance; and (b) in the case of a letter of credit, issued by a bank having long-term, unsecured debt ratings of not less than "A" or "A2", as applicable, issued by at least two nationally recognized rating agencies.

"**Financial Lead**" means the individual person, approved by short-listing and included in Developer's Proposal, who is primarily responsible for structuring and implementing the Financial Plan.

"**Financial Model**" means the Preliminary Financial Model, as may be updated in accordance with PA Article 4 (*Financing*), including for Financial Close.

"**Financial Model Formulas**" means the mathematical formulas that Developer, as or through the Best Value Proposer, has used as part of the Financial Model to calculate the DBF Contract Sum, as may be changed pursuant to PA Section 4.7 (*Financial Model Updates*).

"**Financial Plan**" means Developer's plan for financing the Project, which was as was set forth in Developer's Proposal, and is attached as Part A to PA Exhibit 6 (*Project Financial Plan*).

"**Fiscal Year**" means the 12 month fiscal year used by Authority for budgeting purposes, which begins July 1 and ends June 30 of the succeeding calendar year.

"**Float**" means the amount of time that any given activity or logically connected sequence of activities shown on the Baseline Project Schedule, as the case may be, may be delayed before it will affect completion of any Work as required to achieve any Milestone Deadline. "Float" generally means the calculated difference between early completion times and late completion times for activities shown on the Baseline Project Schedule, including any float contained within an activity.

"**Force Majeure Event**" means the occurrence of any of the following events, subject to any limitations, claims submissions requirements, and other conditions set forth in the Project Agreement, occurring during the Construction Period, and that (i) is beyond the reasonable control of Developer; (ii) directly delays the Critical Path; (iii) otherwise actually, demonstrably, materially and adversely affects performance of Developer's obligations (other than payment obligations) in accordance with the DBF Documents; and (iv) is not attributable to the negligence, reckless or willful misconduct, act or omission or breach or violation of applicable Law, Governmental Approval, or contract (including any DBF Document) by a Developer-Related Entity, provided that, in each case, such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer or any Developer-Related Entity:

(a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State;

(b) any act of terrorism or sabotage that causes direct physical damage to the Project;

(c) nuclear explosion or contamination that causes direct physical damage to the Project;

(d) riot and civil commotion on or in the immediate vicinity of the Project that has a direct adverse impact on Developer's ability to perform the Work;

(e) fire, explosion, flood, earthquake, hurricane, windstorm, or tornado, in each case that causes direct physical damage to the Project; or

(f) national or statewide (i.e., State of Georgia) strike that has a direct adverse impact on Developer's ability to obtain materials, equipment or labor for the Project and, in each case not specific to any Developer-Related Entity or that cannot be resolved by any Developer-Related Entity.

"**FMV Offer**" means the fair market value offer, based on the accepted Appraisal, which is made by Developer to a Parcel Owner during the Parcel Acquisition Services.

"**Formal Communication**" means any Notice or any other written notice, request, demand, instruction, certificate, consent, explanation, agreement, approval, notification, correspondence, order, work product, or other written or electronic communication or end product given, submitted, or delivered under the DBF Documents by, or on behalf of, a Party to another Party or its Constituent(s), in each case that is not a Submittal. Except with respect to "Notices", "Formal Communications" exclude email communications, except when followed by a "hard copy" of the substance of the communication.

"**Fracture Critical Member**" has the meaning set forth in FHWA Memorandum "Clarification of Requirements for Fracture Critical Members" dated June 20, 2012.

"**Fragnet**" shall mean the sequence of new activities, which include newly-titled activity revisions, and their logic predecessor and successor relationships that are proposed to be added to the existing Baseline Project Schedule to demonstrate and quantify the impacts to the Critical Path Method calculations.

"**Freedom of Information Act**" means the Freedom of Information Act, 5 U.S.C. §552, as amended.

"**Full-Time**" means the full amount of time necessary for the proper performance of assigned responsibilities on the Site. A full-time commitment to the Project means (i) having no work responsibilities assigned by Developer, any Contractor or any Affiliate of Developer or a Contractor with respect to any project other than the Project, and (ii) dedicating not less than the greater of forty (40) hours per week or such greater amount of time as is needed for the Work, at those times, dates and durations as may be required.

"**Full-Time On-Call**" means Full-Time, but not necessarily on the Site, and if off-Site accessible to GDOT 24-hours per day, seven days per week and available to be on-Site within 45 minutes of notification by GDOT.

"**Funding Availability Date**" means for FY 2025 to FY 2033, inclusive, the 15th day of August in each year (or the following Business Day).

"**Gain**" has the meaning set forth in PA Section 4.2.8.3 (*Change in Financial Plan*).

"**GDOT**" means the Georgia Department of Transportation, as set forth in the recitals, and any entity succeeding to the powers, authorities and responsibilities of GDOT invoked by or under the DBF Documents.

"**GDOT Financial Information**" has the meaning set forth in Section D.10 of Exhibit D to the ITP.

"**GDOT Financing Documents**" has the meaning set forth in Section D.5.1(c) of Exhibit D to the ITP.

"**GDOT Noise Policy**" means Highway Noise Abatement Policy for Federal-Aid Projects (dated March 14, 2020), as updated from time to time.

"**GDOT On-The-Job Training Program Manual**" means the on-the-job training program manual described in TP Attachment 1-4 (Project Standards).

"**GDOT Pre-Qualification Application**" means the GDOT Pre-Qualification Application (Right of Way Services for Georgia Department of Transportation Projects) as updated from time to time and available at the Setting Date at http://www.dot.ga.gov/PartnerSmart/Documents/ROW/RWApp.pdf.

"**GDOT ROW Manual**" means External Right of Way manual (Revised May 2015), produced by GDOT and as updated from time to time.

"**GDOT Standard Barrier**" means the construction standards and details #4941A, 4941B, 4949B, 4949C, 4949D set forth in TP Attachment 1-4 (Project Standards) and the barriers set forth in TP Attachment 11-4 (Special Details – Parapet and Barriers).

"**GDOT Standard Specifications**" means the 2021 GDOT Standard Specifications – Construction of Transportation Systems, as may be amended from time to time as further described in TP Attachment 1-4 (Project Standards).

"**GDOT Utility Accommodation Manual**" means the Utility Accommodation Policy and Standards Manual 2016 (Revised 12.01.18) produced by GDOT and as updated from time to time.

"**General Change in Law"** means a Change in Law that is not a Discriminatory Change in Law.

"**General Purpose Lanes**" means the lanes within and adjacent to the Project Limits for through traffic available to Users without vehicle or occupancy restrictions or charge for use, including lanes designated as General Purpose Lanes on TP Section 1.4 (Mandatory Configuration Elements).

"**Georgia Utility Permitting System**" means the GDOT-only utility permitting system for GUPS Permits.

"**Geotechnical Engineering Report**" means a report prepared by Developer in accordance with TP Section 8.3 (Investigation and Reporting Requirements) detailing the subsurface conditions of portions of the Project Limits and Project-specific requirements for the design and construction of the Project.

"**Good Industry Practice**" means the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, or other contractor (i) performing high quality work such as the Work, (ii) that seeks in good faith to comply with its contractual obligations (i.e., with respect to the Project, complying with the DBF Documents) and all applicable Laws and Governmental Approvals, (iii) that (A) with respect to design or engineering matters, uses the skill, care, diligence, and professional standards ordinarily used by similarly-situated design or engineering professionals, or (B) with respect to construction matters, uses the skill, care, diligence, and professional standards used by similarly-situated professional construction companies, and in either case, seeking to comply with professional standards in their respective

disciplines that are accepted as the standards of the industry in the State, (iv) that seeks to perform such high quality work in a manner commensurate with standards of safety, performance, dependability, efficiency, and economy as would other skilled and experienced designers, engineers, constructors, or other contractors, as applicable, engaged in the same type of undertaking (A) in the United States, (B) under similar circumstances and conditions (including environmental conditions), and (C) as are generally considered prudent practices in the exercise of reasonable judgment and in light of facts then-known when a relevant decision was made or action was taken. Good Industry Practice is not intended to be the optimum practices, methods, etc., to the exclusion of all others, but rather a spectrum of possible, but reasonable, practices, methods, etc., having due regard for, among other things, contractual and legal obligations as well as manufacturers' requirements and warranties.

"**Governmental Approval**" means any registration, permit, license, consent, concession, grant, franchise, authorization (statutory or otherwise), waiver, variance, permission or other approval, mitigation agreement, special provision, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Entities (including GDOT and Authority, acting in its regulatory capacity and not as a party to this Project Agreement), including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work. Governmental Approvals include all Environmental Approvals.

"**Governmental Entity**" means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Authority and GDOT (in either case, acting in its capacity as contract counterparty or agent, but not in its regulatory capacity), in each case, exercising executive, legislative, judicial, regulatory, administrative, or taxing functions.

"**Green Book**" means the AASHTO A Policy on Geometric Design of Highways and Streets.

"**Guarantor**" means any Person that is the obligor under any guaranty in favor of Authority and GDOT required under the Project Agreement.

"**Guaranty**" or "**guaranty**" means any and each guaranty of any or all of the obligations of Developer, to include the guaranty, that GDOT required Developer to provide as a condition to its Proposal, in the form provided in PA Exhibit 26, or in such other form as Authority has approved, in its sole discretion, and subject to PA Section 16.4 (*Guaranties*).

"**GUPS Permit**" means a utility encroachment permit issued by GDOT to a Utility Owner with respect to any area within the Project Limits.

"**Hazardous Materials**" means any element, chemical, compound, product, waste, material or substance, whether solid, liquid or gaseous, of any nature whatsoever, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions that may create any unsafe or hazardous condition or pose any threat to health (including human health), safety, or the indoor or outdoor Environment. "Hazardous Materials" includes the following:

(a) hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic (including reproductivity toxic), ignitable, corrosive, reactive, carcinogenic properties, substances or related materials, including properties, substances or materials defined, listed, classified, included in, or otherwise regulated under or pursuant to any Environmental Law as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any

other term or expression intended to define, list, classify, or include in any concept substances by reason of properties harmful to health, safety or the indoor or outdoor Environment (including harmful properties of "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

(b) any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(d) any flammable substances or explosives, including unexploded ordnance;

(e) any radioactive materials;

(f) any polychlorinated biphenyls (PCBs), asbestos or asbestos-containing materials

(g) any other hazardous building materials in structures and/or other improvements on or in the Site or in subsurface artifacts;

(h) any lead, cadmium, or lead-based paint, or any other heavy metal-based paint or material;

(i) any radon or radon gas;

(j) any methane gas or similar gaseous materials, and any natural gas, synthetic gas, or mixtures thereof;

(k) any urea formaldehyde foam insulation;

(l) electrical equipment and components which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(m) pesticides, herbicides, or fungicides;

(n) mold (and other mycotoxins, fungi) or fecal material;

(o) any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct, or fraction of any of the foregoing;

(p) per- and polyfluoroalkyl substances, and per- and poly fluorinated substances or compounds;

(q) silica;

(r) any metal listed in or regulated by or pursuant to RCRA;

(s) "Hazardous Waste" as defined in 40 C.F.R. Part 261 (to the extent not already included within this definition of "Hazardous Materials");

(t) "hazardous waste", "hazardous constituent", "designated hazardous waste," and "solid waste", each as defined under O.C.G.A. § 12-8-62;

(u) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the Project or to the indoor or outdoor Environment;

(v) soil, or surface water or ground water, contaminated with Hazardous Materials as defined above; and

(w) any element, chemical, compound, product, waste, material or substance, whether solid, liquid or gaseous, which may give rise to liability under any Environmental Law or common law theory based upon negligence, trespass, intentional tort, nuisance, or strict liability, or under any reported decisions of any State or federal court of law (having jurisdiction over the Project).

"**Hazardous Materials Management**" means procedures, practices and activities, exercised in accordance with Good Industry Practice, to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, disturbed, released, caused by or occurring in connection with the Project or the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, characterization, handling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, collection, containment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is most technically appropriate, effective, and cost-efficient and authorized under applicable Law. "Hazardous Materials Management" does not include first response to Hazardous Releases of Materials (for the duration of such first response) on the roadway portions of the Project by GDOT's "Towing and Recovery Incentive Program" (or "TRIP"), as and when TRIP resources respond, nor those responsibilities expressly and specifically reserved to Authority under TP Section 19 (Maintenance).

"**Hazardous Materials Management Plan**" means Developer's plan for Hazardous Materials Management for Hazardous Materials during the Term, as provided by Developer in accordance with TP Section 5 (Environmental).

"**Hazardous Materials Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Hazardous Materials Manager.

"**Hazardous Materials Release**" means any spill, leak, emission, release, discharge, injection, escape, leaching, pouring, pumping, emptying, dumping, or disposal of Hazardous Materials into the soil, air, water, surface, groundwater, submerged lands or Environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

"**Highway**" means a travel way for vehicular traffic that is included in the State or federal highway system.

"**Highway Service Systems**" means Authority's, GDOT's or a Governmental Entity's lighting and electrical systems, traffic control systems (including streetlights and other lighting systems (including for the Project), traffic signals, ramp metering systems, flashing beacon systems), communications systems and irrigation systems serving street or highway purposes (including ITS and Intelligent Vehicle Highway System facilities).

"**Hour**" means a period of 60 minutes in a day, the first such period (calculated with reference to a 24 hour clock) commencing at 00:00 hours on that day, and each further period commencing on the hour.

"**IAQA/IDQA/ICQA Minimum Price (D&C)**" has the meaning set forth in PA Section 6.3.10.4 (*Independent Quality Assurance*).

"**Immigration Act**" has the meaning set forth in PA Section 10.6.4 (*Certain Certifications; Compliance with Certain Laws*).

"**Incident**" means any unplanned event during the course of construction.

"**Incident Commander**" has the meaning set forth in TP Section 19.5.1 (Operational Support Responsibilities).

"**Incidental Utility Adjustment Work**" means all of the following as necessary for the construction of the Project:

(a) Temporary Utility Adjustments;

(b) Utility Adjustments of Service Lines;

(c) Protections in Place;

(d) the Utility Adjustment of Utility appurtenances (e.g., manholes, valve boxes, vaults) for line and grade upon completion of roadway Work;

(e) all other Work necessary to remove any Utilities (whether or not in use as of the Effective Date) in situations in which leaving the Utilities in place is not feasible or permitted, or for facilities that Developer proposes be removed to accommodate or permit construction of the Project, regardless as to whether replacements for such Utilities are being installed in other locations;

(f) Work identified or implied as "Incidental Utility Adjustment Work" under a MUAA or MUAAA; and

(g) all Work necessary to abandon in place any Utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

"**Increased Oversight**" has the meaning set forth in PA Section 17.3.8.1 (*Increased Oversight, Testing, and Inspection*).

"**Indemnified Parties**" means Authority, GDOT, the State, the State Transportation Board, Authority's board of directors, and their respective agencies, departments, divisions, and other Constituents. "Indemnified Party" shall mean any of the aforementioned.

"**Independent Administrative Quality Assurance**" means the independent administrative quality assurance scope of the Work described in TP Section 3.2.2 (Independent Administrative Quality Assurance) and associated TP attachments.

"**Independent Construction Quality Assurance**" means the independent construction quality assurance scope of the Work described in TP Section 3.4.2 (Independent Construction Quality Assurance) and associated TP attachments.

"**Independent Design Quality Assurance**" means the independent design quality assurance described in TP Section 3.3.2 (Independent Design Quality Assurance).

"**Independent Quality Assurance**" means the independent quality assurance to be performed by one or more Independent Quality Firms in accordance with PA Section 6.3.10 (*Independent Quality Assurance*) and TP Section 3.1.5 (Independent Quality Assurance).

"**Independent Quality Firm**" means an entity that is (a) retained by Developer but independent of Developer's design, engineering, or construction organization, (b) not an Affiliate of Developer, any joint venture or consortium member of Developer, or of any other entity within Developer's organization, and (c) is engaged to perform Independent Quality Assurance in accordance with PA Section 6.3.10 (*Independent Quality Assurance*).

"**Initial Compensation Event Notice**" has the meaning set forth in PA Section 13.1.3.1 (*Initial Compensation Event Notices*).

"**Initial Relief Event Notice**" has the meaning set forth in PA Section 13.1.2.1 (*Initial Relief Event Notices*).

"**Institutional Lender**" means:

(a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, and development of projects;

(b) any (i) savings bank, savings and loan association, commercial bank, investment bank, trust company (whether acting individually or in a fiduciary capacity) or insurer organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurer or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America or any state thereof, (iii) pension fund, hedge fund, foundation or university or college endowment fund, (iv) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (v) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (vi) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within two years of its making (provided, that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and Federal courts in the State in any actions);

(c) any "qualified institutional buyer" under Rule 144(a) of the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;

(d) (i) any Bond Issuer and (ii) any other financial institution or entity designated by Developer and approved by Authority (provided that such institution or entity, in its activity under the Project Agreement, is acceptable under then current guidelines and practices of Authority);

(e) the holders of debt issued by the Bond Issuer or the trustee or agent for such holders, so long as the trustee or agent for such holders of debt is itself an Institutional Lender; or

(f) any trust or similar institution (a "Trust") that is an affiliate of or under the control of, or has a trustee that is, an entity described in clause (b)(i) of this definition;

provided, however, that each such entity (other than entities described in clause (b), clause (c), clause (d) and clause (f) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as the case may be, of not less than $500,000,000, which shall include, in the case of an investment or advisory firm or fund, assets controlled

by or under management and provided further, however, that each such entity is not currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department.

"**Instructions to Proposers**" means the instructions to proposers included in the RFP, containing directions for the preparation and submittal of information by the proposers in response to the RFP.

"**Insurance Policies**" means any or all of the insurance policies Developer is required to carry or cause to be carried pursuant to PA Section 16.1 (*Insurance*), PA Section 7.17 (*Railroad-Highway* Matters), and PA Exhibit 17 (*Insurance Coverage Requirements*), as may be applicable.

"**Intellectual Property**" means all current and future legal and/or equitable rights and interests in know-how (including trade secrets and confidential business information that have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, plant varieties, database rights, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, other proprietary information, all analogous rights in other jurisdictions and applications (drafted or pending) of or for any of the foregoing, subsisting in or relating to the Work, the Project, Project design data or other Project data (including testing data, traffic data and Project Data). Intellectual Property includes software used in connection with the Project (including software used for management of traffic on the Project), and Source Code and Source Code Documentation, the Financial Model Formulas (and associated modeling data and trade secret information contained in the Financial Plan, as well as other proprietary pricing information). Intellectual Property is distinguished from Submittals and Formal Communications and all such materials generated from the physical construction and from the equipment itself, all data, sketches, charts, calculations, drawings, layouts, plans, depictions, specifications, manuals, electronic files, artwork, records, reports, analyses, studies, correspondence, and other documents and materials created or collected under the terms of, or otherwise under the DBF Documents, and other work product and other related materials that disclose Intellectual Property.

"**Intelligent Transportation System**" means the intelligent transportation system for the Project meeting the requirements, and as further defined in, TP Section 17 (Intelligent Transportation Systems).

"**Interest Rate Adjustment(s)**" means the financial impact of the actual change, if any, in the Developer Financing Rate with respect to any financing over the duration of the Interest Rate Protection Period.

"**Interest Rate Protection Period**" means the period between the Interest Rate Protection Start Date and the earliest of (a) the Financial Close Date or the date at which any bank financing is hedged by Developer (or its Lenders) with respect to the Bank Financing Rate applicable to such bank financing; (b) the Bond Pricing Date with respect to the Bond Financing Rate applicable to any bond financing; and (c) the Financial Close Deadline.

"**Interest Rate Protection Start Date**" means the date that is 10 Business Days prior to the Proposal Due Date.

"**Interest Rate Submittal**" means the submittal in which Developer recorded its selected Benchmark Interest Rate(s) and the Benchmark Investment Rate on Form X of the RFP and uploaded to the Proposer Document Management System for the Project on the Interest Rate Protection Start Date in connection with Developer's Proposal.

"**Intergovernmental Agreement**" has the meaning in Recital F.

"**Interim Utility As-Builts**" means the interim Utility As-Builts described in TP Section 7.4.5.3 (Interim Utility As-Builts).

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended and the U.S. Treasury Regulations promulgated thereunder.

"**Interpretive Engineering Decision**" has the meaning set forth in PA Section 1.7 (*Interpretive Engineering Decisions*).

"**IQF Contract**" means any agreement between the Developer and an Independent Quality Firm for Independent Quality Assurance services.

"**ITS Batch**" means the batch of ITS Sites included by Developer and accepted by GDOT in accordance with TP Section 17.4 (Site Acceptance).

"**ITS Batch Acceptance**" has the meaning set forth in TP Section 17.2.5 (ITS Infrastructure Implementation Plan Requirements).

"**ITS Site Acceptance**" is described in Section 3 (Testing and Acceptance Plan and ITS Site Acceptance) of TP Attachment 17-4 (ITS Acceptance Requirements).

"**ITS Sites**" has the meaning set forth in TP Section 17.2.5 (ITS Infrastructure Implementation Plan Requirements).

"**Joint Resolution**" has the meaning set forth in Recital G.

"**Key Contract**" means any one of the following Contracts for Work that Developer or Developer's Contractor's causes to be performed:

(a) all prime construction Contracts, including (as applicable) the Design-Build Contract;

(b) all project or program management services, architectural design, or engineering Contracts (including the Contract with the Lead Engineer);

(c) [Reserved.]; and

(d) all other Contracts with a single Contractor or Subcontractor which individually or in the aggregate total in excess of $35,000,000; and the term "Key Contracts" shall mean all such Contracts in the aggregate or more than one of such Contracts.

"**Key Contractor**" means any Contractor or Subcontractor, as the case may be, under any Key Contract.

"**Key Personnel**" means those individuals appointed by Developer and approved by Authority from time to time to fill the "Key Personnel" positions listed in TP Attachment 2-1 (Key Personnel and Required Personnel). The specific individuals appointed by Developer and approved by Authority to initially fill certain of the Key Personnel positions are identified in PA Exhibit 2 (*Proposal Commitments*). "Key Personnel" include those persons who replace such initial individuals in accordance with PA Section 10.4.1 (*Key Personnel*).

"**Landscaping Work**" means planting and establishing vegetative ground cover and all other landscaping work in accordance with the requirements of the Technical Provisions.

"**Lane Closure**" means the occurrence, for any duration of time, where all or part of any travel or traffic lane, shoulder, ramp, direct connector, or cross street within the Project Limits, or where access to or use of the same is blocked, closed, shifted, detoured or restricted, or where the width of the same is less than the minimum requirements.

"**Lane Closure Deduction**" means the deduction from amounts payable by Authority to Developer for each Lane Closure (or fraction thereof) as set forth in PA Exhibit 13 (*Lane Closure Deductions*).

"**Latent Defect**" means any defect, imperfection, error, omission, deficiency, or other condition, inherently lying within an Eligible Existing Improvement, in each case whether by design, construction, installation that affects the condition, use, functionality or operation of an Eligible Existing Improvement, that:

(i) is not disclosed by or on behalf of the Authority, properly inferable, or readily discoverable by Reasonable Investigation or, following the Setting Date, by a reasonable or customary inspection, in keeping with Good Industry Practice in connection with Work associated with the Eligible Existing Improvement,

(ii) is caused by design or construction errors based on codes, standards, and specifications in effect at the time of the original design and construction of the Eligible Existing Improvement,

(iii) negatively impacts the use of the Eligible Existing Improvement from that intended at the time of the original design and construction,

(iv) is within a portion of the Eligible Existing Improvement that is essential to the operation or safety of the Project,

(v) could only have been discovered by intrusive testing or dismantling of some or all of the Eligible Existing Improvement,

and, in each case would cause or have the potential to cause one or more of the following:

a. a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;

b. a structural deterioration of the affected part of the Eligible Existing Improvements that are connected to any portion of the Project;

c. damage to a third party or a third party's property or equipment; or

d. damage to the Environment.

"**Law**" or "**Laws**" means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding any Dispute), (c) any binding judicial or administrative order or decree (other than regarding any Dispute), or (d) any written directive or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by Authority and GDOT within the scope of its administration of the DBF Documents or in the normal course of its adoption of new or revised technical standards pursuant to PA Section 7.2.6 (*Performance, Design and Construction Standards; Deviations; Permitted Design Exceptions*)), in each case which is applicable to the Project or the Work or any party to this Project Agreement or affiliated Person, whether taking effect before or after the Effective Date, including Environmental Laws. "Law" includes any federal or State

emergency declaration, travel restriction, or other order, decree, directive, or requirement, in each case, having the force of law regarding public conduct in response to COVID-19 or any other epidemic or pandemic. "Laws", however, excludes Governmental Approvals.

"**Lead Construction Contractor**" means the entity with primary responsibility for the construction of the Project.

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

"**Lender**" means each Institutional Lender and each other person, party or entity acceptable to Authority, and their respective successors, assigns, participating parties, trustees and agents that (directly or indirectly) (i) is providing loans, funding or advances, or (ii) has purchased or committed to purchase an Approved Project Certificate pursuant to Developer Financing Agreements. The term "Lender" shall include one or more intermediate special purpose entities utilized by or for the benefit of a Lender, and any Institutional Lender providing debt financing to any such intermediate special purpose entity, in each case in connection with the Developer Financing.

"**Lender Agent**" means the Institutional Lender listed or otherwise designated to act as collateral agent, trustee or agent on behalf of or at the direction of the other Lenders in Developer Financing Agreements or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document (such intercreditor agreement or other document itself intended by the Parties to be among the "Security Documents"). In the event of any Developer Financing issued and held by or extended by a single Lender, Lender Agent means such Lender unless another Institutional Lender is acting as trustee or collateral agent or in a similar capacity for such Lender.

"**Lien**" means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

"**Linear Interpolation**" shall be calculated as follows.

$$Y = Y_0 + (Y_1 - Y_0) * \left(\frac{X - X_0}{X_1 - X_0}\right)$$

Where:

X	=	Weighted average life of invested debt proceeds (e.g., associated with a guaranteed investment contract) as calculated in the Financial Model;
X_0	=	Tenor lower band;
X_1	=	Tenor higher band;
Y	=	Benchmark Investment Rate;
Y_0	=	Value for tenor lower band; and

Y_1 = Value for tenor higher band.

"**Liquidated Damages**" means such liquidated damages as may accrue and be due and payable by Developer to Authority as set forth under PA Section 17.4 (*Liquidated Damages; Lane Closure Deductions; Nonrefundable Deductions*) and PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

"**Load and Resistance Factor Design**" means the governing structural design code for bridges and other highway structures in the United States as set forth in the AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals and AASHTO LRFD Bridge Design Specifications.

"**Loss**" or "**Losses**" means, whether asserted, suffered, or incurred, any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision)), fee, charge, judgment, penalty, fine or Third Party Claims, in each case whether actual, prospective, or contingent, and whether or not then-currently ascertainable. Losses include injury to or death of persons, damage or loss of property, loss of or damage to valuable papers and records, and harm or damage to natural resources.

"**Maintenance Defect**" means the list of items as shown in TP Attachment 19-1 (Maintenance Defect Definition and Remedy Table).

"**Maintenance Defect Remedy Period**" means the period available to Developer to provide temporary (safety-related) and permanent repairs to a Maintenance Defect and is the period within which Developer shall provide hazard mitigation, permanent remedy or permanent repair of a Maintenance Defect.

"**Maintenance During Construction**" means all work and activities (excluding associated Administrative Work) related to the management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project during the Construction Period (or commencing at such earlier date as may be agreed by the Parties or directed by Authority), all as more fully set forth in TP Section 19 (Maintenance).

"**Maintenance Management Plan**" means the maintenance management plan set forth in TP Section 19 (Maintenance).

"**Major Culvert**" has the meaning set forth in TP Section 12.3.9.1 (Drainage Report for Hydraulic Structures (Riverine Bridges and Major Culverts)).

"**Management Plans**" means all of the management plans identified in TP Section 2.2.1 (PMP Component Plans).

"**Manual of Instructions for Prequalification of Prospective Bidders**" means the Manual of Instructions for Prequalification of Prospective Bidders (Version 2) dated June 8, 2020, produced by GDOT and as updated from time to time.

"**Maximum Available Public Funds Remaining**" means, for any period, the unused and remaining available portion of the Maximum Available Public Funds Schedule. Such amount is calculated as the difference between such Maximum Available Public Funds Schedule available as of the date of such

payment of Approved Project Certificate less the sum of any and all prior Approved Project Certificates paid to Developer from the Maximum Available Public Funds Schedule.

"**Maximum Available Public Funds Schedule**" means the schedule as set forth as Column B of Attachment 2 (*Project Payment Schedule*) of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), which sets forth the amounts available to be paid by Authority against the Approved Project Certificate, as such schedule may be adjusted in accordance with the Project Agreement.

"**Maximum Interest Rate Adjustment**" has the meaning set forth in PA Section 4.2.7.3 (*Interest Rate Adjustments*).

"**Maximum Legal Rate**" means the maximum non-usurious interest rate permitted by Georgia Law.

"**Memorandum of Understanding**" or "**MOU**" has the meaning set forth in Recital H.

"**Milestone**" means each of the critical milestones for commencement and/or completion of the Work set forth in the Milestone Schedule.

"**Milestone Deadline**" means the deadline for completion or commencement, as applicable, of each respective Milestone, as set forth in PA Exhibit 9 (*Milestone Schedule*), as further adjusted pursuant to any Supplemental Agreement.

"**Milestone Schedule**" means the schedule of deadlines set forth in PA Exhibit 9 (*Milestone Schedule*), as may be adjusted upon approval of the Baseline Project Schedule as set forth in PA Section 3.3 (*Contract Time, Date of Commencement and Notice to Proceed*) and as may be further adjusted pursuant to any Supplemental Agreement, including on account of any Relief Events.

"**Minimum Qualifications (Key Personnel)**" means for each Key Personnel, the "minimum qualifications" set forth for that Key Personnel in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Minimum Qualifications (Required Personnel)**" means for each Required Personnel, the "minimum qualifications" set forth for that Required Personnel in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Model Audit Report**" means the audit report with respect to the Preliminary Financial Model delivered with the Proposal.

"**Model Auditor**" means the nationally-recognized financial model audit firm that audited the Preliminary Financial Model pursuant to Section D.7.6 of Exhibit D to the ITP.

"**Month**" means a calendar month.

"**Monthly Acquisition Services Status Report**" is the report described in TP Section 6.2.5 (Monthly Acquisition Services Status Report).

"**Monthly DBE Participation Report**" has the meaning set forth in Section 2.2 of PA Exhibit 14 (*DBE Requirements*).

"**Monthly Lane Closure Deduction**" has the meaning set forth in Section A(11) of PA Exhibit 13 (*Lane Closure Deductions*).

"**Monthly Nonrefundable Deduction**" means the amount calculated in accordance with Section 2.4.2(a) (*Deduction Amount*) of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**MOU Fiscal Year**" means the fiscal year specified in the Memorandum of Understanding.

"**MS4 Permit**" means the Municipal Separate Storm Sewer System Permit, or GDOT's General NPDES Stormwater Permit No. GAR 041000, depending on the context.

"**National Contingency Plan**" means the "National Oil and Hazardous Substances Pollution Contingency Plan" described in 40 C.F.R. Part 300, as amended from time to time.

"**NCR System**" means the system provided by Developer to identify, communicate, document, report and track (as required) all instances of Nonconforming Work and to document actions taken to address such Nonconforming Work, as further described in TP Section 3.5 (Nonconforming Work).

"**NCR1**" shall be as described in TP Section 3.5.6 (Nonconforming Work Classification).

"**NCR2**" has the meaning set forth in TP Section 3.5.6 (Nonconforming Work Classification).

"**Necessary Basic Configuration Change**" means a change in (a) the NEPA Basic Configuration or (b) the "Mandatory Configuration Elements" listed in TP Section 1.4 (Mandatory Configuration Elements) that, in either case, is necessary to meet the requirements of the DBF Documents as a result of an Error in the NEPA Basic Configuration or such "Mandatory Configuration Elements" and, further to PA Section 6.2.11 (*Provided Environmental Approval Re-evaluation*), a re-evaluation, amendment, or supplement of a Provided Environmental Approval is required. For purposes of this definition, a change is "necessary" only if the Error renders Developer unable to meet the requirements of the DBF Documents without a material change to either or both the NEPA Basic Configuration or such "Mandatory Configuration Elements".

"**NEPA Approval**" means the Environmental Assessment, as may be modified by any supplements and re-evaluations pertaining to the Project.

"**NEPA Basic Configuration**" means the schematic design, established disturbance limits to support assumed construction means and methods and other studies, schematics or information on which the NEPA Approval was based.

"**NEPA Finality Date**" means the date NEPA Approval becomes final and non-appealable and the federal statute of limitations for commencing legal action to challenge the validity of any NEPA Approval has expired.

"**NEPA Specialist**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the NEPA Specialist.

"**New Interest**" means any permanent right, title or interest in real property outside of the Project Limits (e.g., a fee or an easement) that is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

"**Noise Addendum**" means the addendum to a noise impact assessment prepared in accordance with, which validates the results of the noise impact assessment and documents changes from the NEPA Basic Configuration.

"**Noise Barriers**" means noise barriers for the Project in accordance with the requirements set forth in TP Section 22 (Noise Barriers).

"**Noise Barrier Baseline Requirements**" means the requirements set forth in TP Table 5-5 (Noise Barrier Baseline Requirements).

"**Noise Specialist**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Noise Specialist.

"**Nonconformance Report**" means a report initiated and maintained by Developer within the NCR System (also subject to initiation and modification by Authority, documenting the status, proposed remedial action and disposition of each instance of Nonconforming Work, as further described in TP Section 3.5 (Nonconforming Work).

"**Nonconforming Work**" means any D&C Work that:

(a) otherwise does not conform to the requirements of the DBF Documents;

(b) is not constructed in accordance with the Released for Construction Design Documents or the Construction Documents;

(c) is not conducted in accordance with the Project Management Plan; or

(d) does not conform to the requirements of Governmental Approvals or applicable Laws.

"**Nonconforming Work Remedy**" means action taken by Developer to bring, rebuild, rework, upgrade, enhance, repair, rectify or otherwise improve Nonconforming Work such that it would then meet the requirements of this Project Agreement.

"**Non-Discretionary Submittal**" means any submittal:

(a) that is expressed to be subject to acceptance by Authority, but which is not a Discretionary Submittal, as identified in the Submittal Requirements Database; or

(b) that is determined by Authority (in its sole discretion) to be a Non-Discretionary Submittal in accordance with TP Section 2.8.2 (Discretionary Submittals, Non-Discretionary Submittals, and R&C Submittals).

"**Nonrefundable Deductions**" means those incidents and occurrences listed in Section 1.5 of PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

"**Notice**" means all Formal Communications (a) titled "Notice" or "Notice of …" as prescribed under the DBF Documents, (b) required to be communicated as a "Notice" or "notice" under the DBF Documents, (c) given or received in connection with Developer Financing or any Developer Financing Agreement or the Direct Agreement, or (d) given or received in connection with any Dispute Resolution Procedure or other legal or quasi-legal proceeding with respect to the Project.

"**Notice of Design Change**" has the meaning set forth in TP Section 4 (Design Documents).

"**Notice of Termination for Convenience**" means Notice issued by Authority to Developer terminating the Project Agreement in whole or in part for convenience.

"**Notice of Utility Failure to Cooperate**" has the meaning set forth in PA Section 7.4.9.2 (*Failure of Utility Owners to Cooperate*).

"**Notice to Proceed**" means a Notice issued by Authority to Developer authorizing Developer to proceed with the portion of the Work as being designated as subject to such notice to proceed in the then-applicable Baseline Project Schedule, including NTP1, NTP2, and NTP3.

"**NRD Notice**" means a Notice that Authority delivers to Developer pursuant to the table within Section 1.5 of PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*) and PA Section 17.4.5.5 (*Nonrefundable Deductions Assessment Process*).

"**NTP1**" means a Notice issued by Authority to Developer authorizing Developer to proceed with the portion of the Work described in PA Section 3.3.2 (*Notice to Proceed 1*).

"**NTP1 Baseline Project Schedule**" means the Baseline Project Schedule provided by Developer no later than five days after issuance of NTP1, prepared in accordance with TP Section 2.3.2.1 (NTP1 Baseline Project Schedule), which schedule is consistent with the Proposal Schedule and the Milestone Schedule.

"**NTP1 Baseline SOV**" means the SOV provided by Developer to Authority in accordance with TP Attachment 2-7 (SOV and Price-Loading Requirements) prior to, and as a condition to, issuance of NTP1.

"**NTP1 Conditions Deadline**" means the outside date set forth in the Milestone Schedule (or the Baseline Project Schedule as such outside date is adjusted thereby) by which Developer is obligated under the Project Agreement to satisfy all conditions to issuance of NTP1, as such deadline may be extended from time to time.

"**NTP2**" means a Notice issued by Authority to Developer authorizing Developer to proceed with the portion of the Work described in PA Section 3.3.3 (*Notice to Proceed 2*).

"**NTP2 Baseline Project Schedule**" means the Baseline Project Schedule provided by Developer prior to NTP2, prepared in accordance with TP Section 2.3.2.2 (NTP2 Baseline Project Schedule), which schedule is consistent with the Proposal Schedule, NTP1 Baseline Project Schedule, and the Milestone Schedule, each as may be adjusted pursuant to this Project Agreement.

"**NTP2 Baseline Schedule of Values**" means the SOV provided by Developer to Authority in accordance with TP Attachment 2-7 (SOV and Price-Loading Requirements) prior to, and as a condition to, issuance of NTP2.

"**NTP2 Conditions Deadline**" means the outside date set forth in the Milestone Schedule (or the Baseline Project Schedule as such outside date is adjusted thereby) by which Developer is obligated under the Project Agreement to satisfy all conditions to issuance of NTP2, as such deadline may be extended from time to time.

"**NTP3**" means a Notice issued by Authority to Developer pursuant to PA Section 3.3.4 (*Notice to Proceed 3*) authorizing Developer to proceed with the remaining Work and other activities pertaining to the Project.

"**NTP3 Baseline Project Schedule**" means the Baseline Project Schedule provided by Developer prior to NTP3, prepared in accordance with TP Section 2.3.2.3 (NTP3 Baseline Project Schedule), which

schedule is consistent with the Proposal Schedule, the NTP1 Baseline Project Schedule, the NTP2 Baseline Project Schedule, and the Milestone Schedule, each as may be adjusted pursuant to this Project Agreement.

"**NTP3 Baseline Schedule of Values**" means the SOV provided by Developer to Authority in accordance with TP Attachment 2-7 (SOV and Price-Loading Requirements) prior to, and as a condition to, issuance of NTP3.

"**NTP3 Conditions Deadline**" means the outside date set forth in the Milestone Schedule (or the Baseline Project Schedule as such outside date is adjusted thereby) by which Developer is obligated under the Project Agreement to satisfy all conditions to issuance of NTP3, as such deadline may be extended from time to time.

"**OJT Goal**" has the meaning set forth in Section 2.1 (*OJT Goal and Requirements*) of PA Exhibit 15 (*OJT Requirements*).

"**OJT Plan**" means the plan defined in Section 1(a) (*OJT Plan - Objectives*) PA Exhibit 15 (*OJT Requirements*).

"**OJT Progress Report**" has the meaning set forth in Section 5(d) (*Documentation of Efforts and Reporting*) of PA Exhibit 15 (*OJT Requirements*).

"**OJT Requirements**" means PA Exhibit 15 (*OJT Requirements*).

"**Onboarding**" means the hiring of Project Local Resident(s) that are supported by the workforce program.

"**Open Book Basis**" means allowing Authority or GDOT (or both) to review all underlying assumptions, information, documents and data associated with the issue in question, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, gross commercial revenues, insurance rates, insurance proceeds, credits and refunds, letter of credit fees, overhead, profit, and other items reasonably required by Authority or GDOT to satisfy itself as to the reasonableness and accuracy of any amount.

"**Open Records Act**" means the Georgia Open Records Act, O.C.G.A. §§ 50-18-70 *et seq.*, and O.C.G.A. § 32-2-80, as each may amended from time to time.

"**Option Agreement**" has the meaning set forth in PA Section 2.5.7 (*State Proposed/Developer Acquired Right of Way*).

"**Over Allocated Financing Charges**" has the meaning set forth in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

"**Over-the-Shoulder**" means the "over-the-shoulder" review (as such principle is generally used in the design and construction industries) conducted by GDOT and Authority in accordance with PA Section 6.3.8.4 (*Oversight by GDOT for FHWA and Federal Compliance*).

"**Owner Intellectual Property**" has the meaning set forth in PA Section 20.5.1 (*Owner Intellectual Property*).

"**Owner Verification Tests**" means the program described in TP Attachment 3-1 (Construction Quality Assurance Program), Section 3.4 (Owner Verification), which are generally material tests

performed in accordance with the applicable GDOT test method to verify the accuracy of the tests performed by Developer and pursuant to the Quality Management Plan to ensure that only materials of specified quality or better are accepted and incorporated into the Project.

"**P&P Bonds**" means the performance and payment surety bonds, each meeting the requirements of PA Section 16.2.1 (*P&P Bonds*).

"**P&P Obligor**" means the Person identified as the obligor or account party in the P&P Bonds, as applicable.

"**Pandemic Event**" means the occurrence of an epidemic or pandemic in the State or directly affecting the State (including the continuation of the COVID-19 pandemic after the Setting Date), where:

(a) such occurrence is the subject of a Change in Law, including any federal or State emergency declaration, travel restriction, or other order, decree, directive, or requirement regarding public conduct in response to such epidemic or pandemic; and

(b) such Change in Law prohibits the performance of a substantial part of the Construction Work on the Project Limits, or travel to or from the Project Limits.

"**Parcel**" means an individual parcel of property and, with respect to:

(a) State Proposed/State Acquired Right of Way and State Proposed/Developer Acquired Right of Way, the parcels identified in PA Exhibit 4 (*Parcel Acquisition Table*);

(b) Developer Proposed/Developer Acquired Right of Way, the parcels identified as such by Developer in its ROW Acquisition Plan; and

(c) Developer Proposed/State Acquired Right of Way, the parcels identified as such by Developer in its ROW Acquisition Plan or at such later date due to an Authority Change.

"**Parcel Acquisition Services**" means the services Developer is required to perform and other requirements Developer is required to meet with respect to the acquisition of a Parcel, as set forth in TP Section 6.5 (Parcel Acquisition Services).

"**Parcel Acquisition Table**" means the table provided by Developer in accordance with TP Section 6.2.5 (Parcel Acquisition Table).

"**Parcel Availability Date**" means:

(a) with respect to each Parcel of State Proposed/State Acquired Right of Way, the date specified as the "Parcel Availability Date (State Acquired)" in PA Exhibit 4 (*Parcel Acquisition Table*) for each Parcel;

(b) with respect to a Parcel of Developer Proposed/State Acquired Right of Way, the date determined under PA Section 2.7.5 (*Developer Proposed/State Acquired Right of Way*); or

(c) with respect to a Parcel of Developer Proposed/Developer Acquired Right of Way, the date determined under PA Section 2.6.9.2 (*Developer Proposed/*Developer *Acquired Right of Way*).

"**Parcel Displacee**" means with respect to each Parcel, a Parcel Owner, lessee, licensee, occupant or other person with compensable interest in the Parcel.

"**Parcel Group**" means the "Parcel Groups" identified in PA Exhibit 4 (*Parcel Acquisition Table*) and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

"**Parcel Group Access Date**" means for each Parcel Group, the date determined in accordance with PA Section 2.9 (*Access to Certain Parcels within the Project Limits*).

"**Parcel Owner**" means with respect to each Parcel, the owner of record of title or holder of any other real property interest with respect to such Parcel.

"**Part-Time**" means the full amount of time necessary for the proper performance of assigned responsibilities on the Site where such required time commitment is less than Full-Time. A part-time commitment requires availability at such times, dates and durations per week as may be required for the Work. A part-time commitment does not preclude having work responsibilities assigned by Developer, any Contractor or any Affiliate of Developer or a Contractor with respect to a project other than the Project.

"**Party**" or "**party**" means Developer or Authority, as the context may require, and "**Parties**" or "**parties**" means Developer and Authority, collectively. "Parties" or "parties" exclude third parties or references based upon context to third parties.

"**Pavement Limits**" means that portion of the Project Limits within which pavement Work (not pavement-related Design Work) is conducted.

"**Permanent Works**" means all the permanent, furnished, and installed Construction Work and all parts and materials thereof, as the context may require.

"**Permitted Design Exceptions**" means design exceptions identified in TP Section 11.3.10 (Allowable Design Exceptions, Variances, and Deviations) and TP Attachment 11-5 (Design Exceptions and Variances) that are required to implement the schematic of design in the NEPA Approval.

"**Permitted Design Variances**" means design variances identified in TP Section 11.3.10 (Allowable Design Exceptions, Variances, and Deviations) and TP Attachment 11-5 (Design Exceptions and Variances) that are required to implement the schematic of design in the NEPA Approval.

"**Persistent Breach**" means any breach of this Project Agreement that (i) continues for more than 30 consecutive days, or (ii) occurs more than three times in any rolling six-month period, measured to the day after Authority gave a Warning Notice, except for (a) any breach for which a Nonrefundable Deduction could have been assessed, or (b) a breach that arises as a direct result of the occurrence of a Compensation Event or a Relief Event.

"**Person**" means any individual (i.e., natural person), estate, corporation, joint venture, limited liability company, company, voluntary association or other association, partnership, trust, unincorporated organization, Governmental Entity, Authority or GDOT.

"**Personal Injury Loss**" means any Loss in relation to personal injury or death of any Constituent of Authority or any Authority-Related Entity.

"**Phase 1 Hazardous Materials Investigation**" means a Project-specific "Phase I Environmental Site Assessment Report" in accordance with GDOT Policy 5525-1-Environmental Site Assessment Procedure, included in the Reference Information Documents.

"**Plans**" means (only where capitalized) plans, profiles, cross-sections, contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

"**PMCS Coordinator**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the PMCS Coordinator.

"**PML Study**" has the meaning set forth in PA Exhibit 17 (*Insurance Coverage Requirements*).

"**PMP Executive Summary**" means the executive summary to the PMP provided by Developer in accordance with TP Section 2.2.1.1 (PMP Executive Summary).

"**Post-Acquisition Services**" means the services Developer is required to perform and other requirements Developer is required to meet with respect to the acquisition of a Parcel, as set forth in TP Section 6.6 (Post-Acquisition Services).

"**Post-Construction Stormwater Report**" means the report prepared by Developer in accordance with TP Section 12.3.8.2 (Municipal Separate Storm Sewer System (MS4)).

"**Post-Let Utility Certification**" means the certification obtained under TP Section 7 (Utility Adjustments).

"**Precedence Diagram Method**" means a method of constructing a schedule network diagram that uses boxes, referred to as nodes, to represent activities consisting of durations and connects them with arrows that show the dependencies for use in forward pass and backward pass schedule network calculations to establish each activity's early dates and late dates, respectively.

"**Pre-Acquisition Services**" means the services Developer is required to perform and other requirements Developer is required to meet with respect to the acquisition of a Parcel, as set forth in TP Section 6.4 (Pre-Acquisition Services).

"**Pre-existing Hazardous Materials**" means Hazardous Materials that are in, on or under (a) the Existing Right of Way and the State Proposed/State Acquired Right of Way as of the date Authority or GDOT makes available to Developer the relevant parcel, (b) the State Proposed/Developer Acquired Right of Way as of the date the affected parcels are acquired by Developer, or (c) the Developer Proposed/Developer Acquired Right of Way, in each case, as of the date the affected Parcels are acquired by Developer. Pre-existing Hazardous Materials do not include any Hazardous Materials located in, on or under any Temporary Interests. Except for purposes of PA Section 7.7.4.2 (*Generator; Arranger*) (solely as relates to the agreement of the Parties regarding identification of the sole generator and arranger, and nothing else), Pre-existing Hazardous Materials exclude any such conditions known to Developer prior to the Setting Date, identified in the Reference Information Documents, or that would become known to Developer prior to the Setting Date by undertaking Reasonable Investigation. For purposes of determining whether Hazardous Materials were in, on or under the Site, as of the dates specified in the first sentence of this definition, Developer shall have the burden of proof to demonstrate it was not a Developer Release of Hazardous Materials. For the purpose of this definition, "makes available" means: (x) the Effective Date, except for parcels not yet acquired as of the Effective Date; (y) as to State Proposed Right of Way not yet acquired as of the Effective Date, the date Developer first receives the right to take and maintain possession of the parcel for all purposes for the remainder of the Term in accordance with the DBF Documents, including commencement of construction, as the result of Developer's, Authority's or GDOT's having secured title or right of possession by contract or title instrument or by a special commissioners' award through the eminent domain process or otherwise; and (z) as to Developer Proposed/Developer Acquired Right of Way, the date real property rights in the affected parcels are acquired by Developer.

"**Preference Comment**" means any comment made by Authority and which is not a Compliance Comment.

"**Preliminary DBF Contract Sum**" means $1,248,980,537, as so stated in Section 1.1 of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Preliminary Design Documents**" means the Design Documents described in TP Section 4.3.1 (Preliminary Design Documents).

"**Preliminary Financial Model**" means the financial model submitted by Developer in its Proposal and accepted by Authority, as may be updated in accordance with PA Article 4 (*Financing*).

"**Principal Project Documents**" means the Security Documents and the Design-Build Contract.

"**Procurement Work Product**" means "Work Product", as defined in the ITP, as well as Owner Intellectual Property.

"**Professional Engineer**" means a person who is duly licensed and registered by the Georgia State Board of Registration for Professional Engineers and Land Surveyors to engage in the practice of engineering in the State of Georgia.

"**Professional Land Surveyor**" means a person who is duly licensed and registered by the Georgia State Board of Registration for Professional Engineers and Land Surveyors to engage in the practice of land surveying in the State of Georgia.

"**Progress Meeting**" has the meaning set forth in PA Section 17.9.3.5 (*Dispute Resolution Procedures*).

"**Progress Report**" has the meaning set forth in PA Section 17.9.3.5 (*Dispute Resolution Procedures*).

"**Project Agreement**" means this certain Design, Build, and Finance Agreement executed by Authority and Developer, including any and all exhibits, attachments, riders, and amendments thereto.

"**Project Certificate**" means the request for payment on account of the Work all in accordance with the terms and conditions set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Project Certificate Amount**" has the meaning set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Project Certificate Cover Sheet**" means the document conforming in all material respects with the template set forth in Attachment 1 (*Form of Project Certificate*) to PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Project Certificate Period**" has the meaning set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Project Certificate Review Meeting**" has the meaning set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

"**Project Certificate Support Package**" means the documents required to be delivered by Developer to Authority in accordance with TP Section 2.1.4 (Project Certificate Support Package).

"**Project Chief Engineer**" means the individual person, approved by short-listing and included in Developer's Proposal, who is responsible for the supervision and quality of all design work and design processes, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Project Data**" means all data, calculations, electronic files, records, reports, analyses, maps, computations, logs, and all other work product and other materials created, displayed, or collected under the terms of the DBF Documents, whether from Owner Intellectual Property or Proprietary Intellectual Property. "Project Data" as a product is distinguished from the Intellectual Property that produced it.

"**Project Inspection Checklist**" has the meaning set forth in PA Section 2.5.5 (*State Proposed/Developer Acquired Right of Way*).

"**Project Limits**" means:

(a) the Existing Right of Way;

(b) when acquired, the State Proposed/State Acquired Right of Way;

(c) when acquired, the State Proposed/Developer Acquired Right of Way;

(d) when acquired, Developer Proposed/Developer Acquired Right of Way;

(e) Pavement Limits;

(f) the Property; and

(g) when acquired, Developer Proposed/State Acquired Right of Way (if any).

For avoidance of doubt, it is the intention of the Parties that, upon completion of the Project, the Project Limits include all of the Property, as may be amended pursuant to any re-evaluation of a NEPA Approval.

"**Project Local Residents**" means area residents in the following order of priority:

(a) area residents residing in the tier 1 area identified in the Project Local Resident Limits Drawings; and

(b) area residents residing in the tier 2 area identified in the Project Local Resident Limits Drawings.

"Project Local Resident Limits" means the limits of the area within which Project Local Residents reside, as shown in the conceptual Project Local Resident Limits Drawings contained in TP Attachment 2-12A (Project Local Resident Limits Drawings), and updated by Developer and submitted as part of the Workforce Development Plan accordance with TP Attachment 2-12, Section 3 (Project Local Resident Limits).

"**Project Local Resident Limits Drawings**" means the drawings prepared by the Developer in accordance with TP Attachment 2-12, Section 3 (Project Local Resident Limits).

"**Project Management Controls System**" has the meaning set forth in TP Section 2.4 (Project Management Controls System).

"**Project Management Plan**" means the document described in TP Section 2.2 (Project Management Plan).

"**Project Office**" means the office established by Developer in accordance with TP Section 1.6 (Offices) and TP Attachment 1-5 (Project Office Facilities and Equipment).

"**Project Office Supplies Plan**" means the Submittal described in TP Section 5.1 (Requirements for Office Supplies) of TP Attachment 1-5 (GDOT Office Facilities and Equipment).

"**Project Payments**" means payments of (a) the DBF Contract Sum, as may be adjusted pursuant to the Project Agreement (including specifically amounts owed, and right to payment under, an Approved Project Certificate), (b) Breakage Costs, or (c) other amounts to be paid by Authority to Developer under this Project Agreement.

"**Project Schedule**" means the Proposal Schedule, NTP2 Baseline Project Schedule, NTP3 Baseline Project Schedule, Revised Baseline Project Schedule, as well as the Project Schedule Updates.

"**Project Schedule Narrative**" means a separate typewritten report submitted with each Project Schedule.

"**Project Schedule Update**" means a Submittal provided by Developer after the Baseline Project Schedule is accepted that shows actual progress information through a given update interval and forecasts Developer's remaining plan to complete the Work.

"**Project Schedule Workplan**" means the plan provided by Developer in accordance with TP Section 2.2.1.19 (Project Schedule Workplan) that describes the approach to developing and maintaining the Project Schedule.

"**Project Scheduler**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Project Scheduler.

"**Project Standards**" means those standards, manuals, and guidelines, policies, details, specifications (including the Standard Specifications (defined term)), and special provisions (including the Special Provisions (defined term)) set forth in TP Attachment 1-4 (Project Standards) in the form most recently published and in effect on the Setting Date, as such Project Standards may be changed, added to or replaced pursuant to the DBF Documents. For avoidance of doubt, (a) Railroad Standards are Project Standards, and (b) Adjustment Standards are not "Project Standards."

"**Project Standards Change**" means any addition, alteration, or other change to the Project Standards, excluding any additions, alterations, or other changes that are required pursuant to a Change in Law or relate to Railroad Standards.

"**Property**" has the meaning set forth in PA Section 2.2.1 (*Right of Way; Property Ownership*) (which generally is only such property as identified in the NEPA Approval).

"**Property Damage Loss**" means any Loss in relation to damage to property owned by or in the possession of Authority or any Authority-Related Entity.

"**Proposal**" has the meaning set forth in Recital K.

"**Proposal Commitments**" means those portions of the Proposal set forth in PA Exhibit 2 (*Proposal Commitments*).

"**Proposal Due Date**" means June 12, 2024, the deadline for submission of the Proposal to GDOT.

"**Proposal Schedule**" means the high level, logic based, critical path schedule representing Developer's plan to complete performance of the Work beginning on the date of NTP1 to Final Acceptance of the Work, submitted with the Proposal, and consistent in all respects with the Milestone Schedule, as the "Proposal Schedule" is set forth on PA Exhibit 10 (*Proposal Schedule; Proposal SOV*).

"**Proposal SOV**" means the Baseline Schedule of Values submitted with the Proposal, as the "Proposal SOV" is set forth on PA Exhibit 10 (*Proposal Schedule; Proposal SOV*).

"**Proprietary Intellectual Property**" means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent or copyright Laws.

"**Protection in Place**" means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

"**Provided Environmental Approvals**" means the Governmental Approvals listed in TP Section 5.3.3 (Provided Environmental Approvals).

"**Public Contribution Account**" means the account created by Authority in connection with the joint undertaking of the Project with GDOT, as memorialized under the initial MOU.

"**Public Funds Amount**" means the public funds available from GDOT to Authority pursuant to the MOU.

"**Public Information and Communications Plan**" means the public information and communications plan described in TP Attachment 2-3 (Public Information and Communications).

"**Qualified Products List**" has the meaning set forth in TP Section 1.9 (Construction Material).

"**Qualifying Change in Law"** means:

(a) a Discriminatory Change in Law; and

(b) a General Change in Law which requires a Capital Expenditure that qualifies for reimbursement pursuant to PA Section 13.4.1 (*Determining Compensable Amounts*), provided however, that a General Change in Law respecting State or local sales tax of general application shall only be treated as a Qualifying Change in Law to the extent it is applicable to transactions made in the course of performing the D&C Work and results in a total effective sales and use tax rate in the following jurisdictions in excess of the following percentage amounts, as set out in the Georgia Sales and Use Tax Rate Chart published by the DOR:

Code and Jurisdiction	Total effective sales and use tax rate (State and local combined)[1]

[1] **Note:** The percentages in this table shall be the total effective sales and use tax rate as at the Setting Date plus 1%. These figures will be confirmed in the Final Draft.

030_ Cobb	7%
060A Fulton (Atlanta)	9.9%
803 Fulton (Cent. Yards)	9.9%
801 Fulton (College Park)	9.75%
802 Fulton (East Point)	9.75%
800 Fulton (Hapeville)	9.75%
060 Unincorporated Fulton County	8.75%

"**Quality Assurance**" means quality assurance to be performed by Developer and the Independent Quality Firms in accordance with TP Section 3 (Developer Quality Program).

"**Quality Assurance Manager**" means the individual person, approved by short-listing and included in Developer's Proposal, who is responsible for performance of the quality assurance aspects of overall Project design and construction, as further described in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Quality Control**" means quality control to be performed by Developer and the Independent Quality Firms in accordance with TP Section 3 (Developer Quality Program).

"**Quality Management**" means the administrative Quality Management, design Quality Management, and construction Quality Management to be carried out by Developer in accordance with TP Section 3 (Developer Quality Program), including the management and integration of Independent Quality Assurance into Developer Quality Program.

"**Quality Management Plan**" means the set of GDOT-approved plans for quality management and control of the Project and Work, as set forth in TP Section 3.1.7 (Quality Management Plan).

"**R&C Submittal**" means any Submittal:

(a) that is expressed to be subject to the review or comment of Authority, as identified in the Submittal Requirements Database; or

(b) that is determined by Authority (in its sole discretion) to be a R&C Submittal in accordance with TP Section 2.8.2 (Discretionary Submittals, Non-Discretionary Submittals, and R&C Submittals).

For avoidance of doubt, a R&C Submittal is neither a Discretionary Submittal nor a Non-Discretionary Submittal.

"**Railroad**" means the companies identified in TP Section 14.1 (General Requirements) and any other company organized to construct, maintain, and operate railroads that will be physically impacted by the Project, to include the owning company and the operating company (within a relevant corridor).

"**Railroad Agreements**" means any agreements, permits, approvals and/or licenses between the Developer and a Railroad, as referenced in TP Section 14.3 (Railroad Agreements).

"**Railroad Construction Agreement**" has the meaning set forth in TP Section 14.4 (Railroad Construction Agreement).

"**Railroad Crossing Location**" means the Railroad's location at railroad inventory number 928901P, railroad milepost ANO-0860.35.

"**Railroad Manual**" means the Railroad's public projects manual and other applicable Railroad requirements as described in TP Attachment 14-2 (Railroad Manual).

"**Railroad PE Agreement**" has the meaning set forth in TP Section 14.3.1.1 (Preliminary Engineering Agreement).

"**Railroad RoE Agreement**" has the meaning set forth in TP Section 14.3.1.2 (Right of Entry Agreement).

"**Railroad ROW**" means all real property interests owned or controlled by a Railroad affected by the Railroad Work.

"**Railroad Standards**" means those Project Standards that relate to Railroad Work and any standards provided by a Railroad, as such Railroad Standards may be changed, added to or replaced. For avoidance of doubt, executed Railroad Agreements are Railroad Standards.

"**Railroad Work**" means all efforts and costs necessary to: (a) complete any Work required under or otherwise necessitated by a Railroad Agreement, or as otherwise necessary to satisfy Developer's obligations under TP Section 14 (Railroad); (b) comply with the Railroad Agreement(s); (c) complete all Work impacting the Railroad; and (d) negotiate and enter into any Railroad Agreement to which Developer is a party. Any Railroad Work furnished or performed by or on behalf of the Railroad pursuant to a Railroad Agreement is "Railroad Work" and thus part of the Work.

"**Rating Agency**" means any of Moody's Investors Service, Inc., S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, Fitch, Inc., Kroll Bond Rating Agency, LLC and DBRS Morningstar.

"**Reasonable Investigation**" means the following activities by appropriate, qualified professionals prior to the Setting Date (and, as pertains to Utilities, in accordance with the Utility Owner interaction process set forth in TP Section 7 (Utility Adjustments), as was required under the ITP):

(a) (i) visit and visual inspection of (A) the Existing Right of Way and (B) to the extent not included therein, the Property, and (C) Eligible Existing Improvements identified, or otherwise as could reasonably be expected to be affected by, or implicated in, the scope of the Work, and (ii) visual inspection of adjacent locations, except areas to which access rights have not been made available by the Setting Date;

(b) review and analysis of all Reference Information Documents;

(c) review and analysis of the Provided Environmental Approvals available prior to the Setting Date;

(d) review and analysis of all public records and accessible private records, to the extent Developer reasonably should have known that such private records were available and relevant to the Project (for avoidance of doubt, Developer shall be deemed to have known that any accessible private

records contained or referenced in the DBF Documents or Reference Information Documents are available and relevant to the Project),;

(e) reasonable inquiry with Utility Owners, including request for and review of Utility Plans provided by Utility Owners;

(f) review and analysis of Laws applicable to the Project or the Work as of the Setting Date;

(g) review and analysis of Authority or GDOT-provided borings (or such other or additional borings requested, and thereafter obtained (if approved) by or on behalf of Developer, and performance, review and analysis of corings and other investigations within the Existing Right of Way and, to the extent not included therein, the Property; and

(h) review and analysis of field studies and geotechnical investigations relevant to the Project performed by or on behalf of GDOT or Authority and provided to Developer, and performance, review and analysis of Developer's own field studies and geotechnical investigations on the existing Right of Way and, to the extent not included therein, the Property and adjacent locations, except areas to which access rights have not been made available by the Setting Date.

For the avoidance of doubt, a Reasonable Investigation shall familiarize Developer with (A) surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archaeological, paleontological and cultural resources or artifacts, and species listed as threatened or endangered under any federal or State endangered species Laws, affecting the Site or surrounding locations, and (B) the Eligible Existing Improvements.

"**Recognized Environmental Condition**" has the meaning set forth in ASTM E-1527-13.

"**Record Design Documents**" means the Design Documents, in form and substance, as described in TP Section 4.3.5 (Record Design Documents).

"**Reference Information Documents**" means the collection of information, data, documents and other materials that Authority or GDOT has provided to Developer for general or reference information only, including specifically all contents of the PMCS.

"**Refinancing**" means:

(a) any amendment, variation, novation, supplement, refunding, defeasance or replacement of any Developer Financing or Developer Financing Agreements;

(b) the issuance by Developer of any indebtedness in addition to Developer Financing, secured or unsecured;

(c) the disposition of any rights or interests in, or the creation of any rights of participation with respect to, Developer Financing and Developer Financing Agreements or the creation or granting by Developer or any Lender of any other form of benefit or interest in either Developer Financing, Developer Financing Agreements or Developer's Interest whether by way of security or otherwise; or

(d) any other arrangement put in place by Developer or another Person that has an effect similar to any of clause (a) through clause (c), inclusive, above or that has the effect of limiting Developer's ability to carry out any of the actions described in clause (a) through clause (c), inclusive, above.

"**Refinancing Gain**" has the meaning set forth in PA Section 4.6.2 (*Share of Refinancing Gain*).

"**Refinancing Lender**" means a Lender providing Refinancing.

"**Registered Architect**" means an individual properly registered as an architect with the State of Georgia.

"**Registered Engineer**" means a Professional Engineer (defined term).

"**Registered Professional Engineer**" means a Professional Engineer (defined term).

"**Registered Professional Land Surveyor**" means a Professional Land Surveyor (defined term).

"**Related Project**" has the meaning set forth in PA Section 11.2.1 (*Related Project Integration*).

"**Related Transportation Facility(ies)**" means all existing and future highways, streets and roads, including upgrades and expansions thereof, that are or will be adjacent to, connecting with or crossing under or over the Project, as specifically identified in the TP Section 1.3 (Related Transportation Facilities). The Related Project is a Related Transportation Facility.

"**Released for Construction Design Documents**" means the Design Documents described in TP Section 4.3.3 (Released for Construction (RFC) Design Documents).

"**Relevant Event**" means (a) any Compensation Event or any other matter as a result of which there may be an adjustment to the DBF Contract Sum; (b) any Refinancing; or (c) any termination or prepayment pursuant to PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

"**Relief Event**" means the occurrence of any of the following events, subject to any limitations, claims submissions requirements, and other conditions set forth in the Project Agreement, occurring during the Construction Period, and that (i) is beyond the reasonable control of Developer; (ii) directly delays the Critical Path; (iii) otherwise actually, demonstrably, materially and adversely affects performance of Developer's obligations (other than payment obligations) in accordance with the DBF Documents; and (iv) is not attributable to the negligence, reckless or willful misconduct, act or omission or breach or violation of applicable Law, Governmental Approval, or contract (including any DBF Document) by a Developer-Related Entity, provided that, in each case, such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer or any Developer-Related Entity:

(a) Force Majeure Event;

(b) Change in Law;

(c) actual delay (and only delay) to the Critical Path suffered by Developer with respect to Work that was not Nonconforming Work under Section 2.4.5.3 of PA Exhibit 20 (*Nonconforming Work*);

(d) Authority Change;

(e) Authority-Caused Delay;

(f) as and when real property interests are acquired affording Developer access to the affected portion(s) of the Project Limits, performance of work within the Project Limits by Separate Contractors that directly disrupts the Work or other documented delays to the Critical Path of the Work directly caused by such Separate Contractor, in each case excluding any Utility Adjustment Work by a Utility Owner;

(g) (i) discovery at, near or on the Existing Right of Way or (in each case, after acquired) the State Proposed/State Acquired Right of Way, State Proposed/Developer Acquired Right of Way, or Developer Proposed/State Acquired Right of Way, as applicable, of (A) any Pre-existing Hazardous Materials or Hazardous Materials not otherwise constituting a Developer Release of Hazardous Materials, provided that where such condition was identified in the RIDs, Developer shall account for same in the Baseline Project Schedule and impacts shall be limited to such conditions not identified therein (whether in type or quantity), or (B) any archaeological, paleontological or cultural resources not known to Developer prior to the Setting Date or that would not have become known to Developer by undertaking a Reasonable Investigation; or (ii) discovery at or on Parcels of Developer Proposed/Developer Acquired Right of Way (in each case, after acquired) of any Pre-existing Hazardous Materials not known to Developer prior to the effective date of the Parcel's acquisition or that would not have become known to Developer by undertaking a Reasonable Investigation, provided that, if applicable, where such condition was identified in the RIDs, Developer shall account for same in the Baseline Project Schedule and impacts shall be limited to such conditions not identified therein (whether in type or quantity);

(h) discovery at, near or on the Existing Right of Way, (after acquired) the State Proposed/State Acquired Right of Way, or (after acquired) Developer Proposed/State Acquired Right of Way of any Unexpected Endangered Species, excluding any such presence of species known to Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

(i) Third-Party Hazardous Materials Releases that (i) occur after the Setting Date, (ii) occur on the Existing Right of Way, (after acquired) the State Proposed/State Acquired Right of Way, (after acquired) the Developer Proposed/State Acquired Right of Way, or (after acquired) the Developer Proposed/Developer Acquired Right of Way, as applicable, (iii) are required to be reported to a Governmental Entity, and (iv) render use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

(j) issuance by a court in a legal proceeding of any preliminary or permanent injunction or temporary restraining order (or other similar order, legal restraint, or prohibition) that prohibits prosecution of any material portion of the Work, except if arising out of, related to, caused by, resulting from, or based on the wrongful act or wrongful omission of any Developer-Related Entity;

(k) suspension, termination or interruption of a NEPA Approval, except to the extent that such suspension, termination or interruption results from failure by any Developer-Related Entity to locate or design the Project or carry out the Work in accordance with the NEPA Approval or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, excluding Necessary Basic Configuration Changes, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Developer Proposed/Developer Acquired Right of Way);

(l) any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval as compared to the NEPA Basic Configuration, except to the extent the change in design concept (i) had already been incorporated into Developer's design schematics assumed in connection with the DBF Contract Sum, or (ii) results from failure by any Developer-Related Entity to locate or design the Project or carry out the Work in accordance with the NEPA Approval or other Governmental Approval;

(m) failure to obtain or to maintain once issued, or delay in obtaining beyond the timelines specified in the Technical Provisions, a Governmental Approval from any Governmental Entity, except to the extent that such failure or delay results from failure by any Developer-Related Entity to locate or design the Project or carry out the Work in accordance with the NEPA Approval or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in

the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Developer Proposed/Developer Acquired Right of Way);

(n) GDOT's (i) lack of good and sufficient title to any parcel in the Existing Right of Way, (after acquired) the State Proposed/State Acquired Right of Way, or (after acquired) the Developer Proposed/State Acquired Right of Way, to the extent it interferes with or adversely affects performance of Work (ii) inability or failure to obtain an interest (including by easement or other right of access) to real property not identified in the State Proposed Right of Way and required for construction of the Project as demonstrated by Developer, exclusive of any Developer Proposed/Developer Acquired Right of Way, Temporary Interests, or parcels that are solely for the convenience of Developer, to the extent it interferes with or adversely affects performance of Work, or (iii) the existence at any time following issuance of NTP3 of any title reservation, condition, easement or encumbrance on any parcel in the Existing Right of Way or (after acquired) the State Proposed/State Acquired Right of Way, of record or not of record, to the extent it interferes with or adversely affects performance of Work, except any title reservations, conditions, easements or encumbrances (A) concerning Utilities or (B) caused, permitted or suffered by a Developer-Related Entity;

(o) subject, as applicable to PA Section 7.4.11.6 (*Applications for Utility Permits*), unreasonable and unjustified delay by a Utility Owner in connection with a Utility Adjustment, or failure or delay of any Utility Owner in obtaining any required easement, right of way or other property interest as may be required; provided that, in each case, all of the Conditions to Assistance have been satisfied and 30 days have expired since Developer has asked for Authority's assistance;

(p) GDOT's failure to acquire good and sufficient title to any parcel in the State Proposed/Developer Acquired Right of Way by the State Proposed/Developer Acquired ROW Acquisition Date after Developer provides notice to GDOT that Developer has performed all of the acquisition services required under PA Section 2.5.3 (*State Proposed/Developer Acquired Right of Way*), to the extent it interferes with or adversely affects performance of Work;

(q) any delay to the Critical Path directly resulting from any Unidentified Utility Adjustment Work for an Unidentified Utility Facility discovered within the relevant time periods under, and subject to the terms and conditions of, PA Section 7.4.13 (*Unidentified Utility Adjustments*);

(r) any (i) Necessary Basic Configuration Changes (subject to the terms and conditions of PA Section 14.7 (*Necessary Basic Configuration Changes*)) or (ii) erroneously excluded Parcel(s) under PA Section 2.7.1.2(a) (*Developer Proposed/State Acquired Right of Way*);

(s) any other event that the DBF Documents expressly state shall be treated as a Relief Event;

(t) the discovery of any Unexpected Subsurface Condition during the carrying out of the D&C Work;

(u) a Utility Owner failure to cooperate, to the extent, under the terms, and subject to the conditions, of PA Section 7.4.9.9 (*Failure of Utility Owners to Cooperate*);

(v) *ultra vires* enforcement of any inapplicable local law (or political subdivision thereof) by or on behalf of the local Governmental Entity;

(w) thirty days after receipt by Authority of a Suspension Notice provided by Developer under PA Section 17.10.1 (*Developer's Right to Suspend Work*), if any revocation, termination, or nonrenewal of any of the Joint Resolution, the Intergovernmental Agreement, or the Estate for Years, or any revocation,

or nonrenewal of the MOU materially impacts Authority's ability to make the payments required under this Project Agreement, commencing on such 30th day and ending upon the earlier of (i) dispatch by Authority to Developer under PA Section 17.10.2 (*Developer's Right to Suspend Work*) of evidence that Authority has obtained a source of funds sufficient to enable Authority to make all payments due to Developer under the DBF Documents during the Term and (ii) Authority's determination, in its sole discretion, that any such material impact has been substantially cured;

(x) Latent Defects to the extent affected or impacted by the Work and as and to the extent materially and adversely affecting the completion of Work on those Parcels identified in PA Section 7.13.2 (*Existing Improvements and Latent Defects*);

(y) a Pandemic Event; and

(z) The discovery of a material error in the Authority Boring Data in accordance with PA Section 7.12.13 (*Discovery of Unexpected Subsurface Conditions and Errors in Authority Boring Data*).

"**Relief Event Determination**" has the meaning set forth in PA Section 13.2 (*Relief Event and Compensation Event Determinations*).

"**Relief Event Notice**" means a Notice required to be provided by Developer under PA Section 13.1 (*Notices*).

"**Relief Event Package**" has the meaning set forth in PA Section 13.1.4 (*Compensation Event Packages and Relief Event Packages*).

"**Relocation Benefits Claim Form**" means the form required by TP Section 6.3.4.2 (Relocation Assistance).

"**Relocation Benefits Package**" means the package described in TP Section 6.4.2.2 (Acquisitions Involving Displacements and Relocations).

"**Request for Alternative Parcel Grouping**" means the request described in TP Section 6.6.4.1 (Alternative Parcel Grouping).

"**Request for Change Proposal**" means a Notice issued by Authority to Developer setting forth a proposed Authority Change and requesting Developer's assessment of cost, and schedule impacts thereof, as set forth in PA Section 14.1.2 (*Request for Change Proposal*).

"**Request for Parcel Certification Release**" has the meaning set forth under TP Section 6.5.2.1 (Request for Parcel Certification Release).

"**Request for Proposals**" or "**RFP**" has the meaning set forth in Recital K.

"**Required Personnel**" means those individuals filling the roles assigned by Developer for "Required Personnel" positions listed in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Revised Baseline Project Schedule**" means the Baseline Project Schedule described under TP Section 2.3.2.4 (Revised Baseline Project Schedule).

"**Revised Baseline SOV**" means the SOV updated at the close of Refinancing to reflect the Refinancing, and other updates to the previously accepted Baseline SOV for certain changes as provided for in TP Section 2.3.4.4 .

"**Revised DBF Contract Sum**" has the meaning set forth in PA Section 4.2.8.3 (*Change in Financial Plan*).

"**Revised Financial Model**" has the meaning set forth in PA Section 4.2.8.3 (*Change in Financial Plan*).

"**Revised Schedule of Values**" means the modified SOV provided by Developer in accordance with TP Section 2.3.4 (SOV and Price-Loading) when substantial changes are made to Developer's price breakdown structure of the DBF Contract Sum and/or changes are made to the DBF Contract Sum itself. For avoidance of doubt, any Revised Schedule of Values is not prepared on Developer's initiative, but instead upon notification by Authority of its desire for a Revised Schedule of Values.

"**Roles (Key Personnel)**" means for each Key Personnel, the "role, co-location requirements and time commitment" requirements set forth for that Key Personnel in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**Roles (Required Personnel)**" means for each Required Personnel, the "role, co-location requirements and time commitment" requirements set forth for that Required Personnel in TP Attachment 2-1 (Key Personnel and Required Personnel).

"**ROW Acquisition Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the ROW Acquisition Manager.

"**ROW Acquisition Plan**" means the plan described in TP Section 6.3.1 (ROW Acquisition Plan).

"**ROW Project Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the ROW Project Manager. For avoidance of doubt, the ROW Project Manager is not the "project manager" under the Intergovernmental Agreement referred to in Recital F.

"**ROW Service Class**" has the meaning set forth in TP Section 6.1.1 (ROW Service Classes).

"**ROW Submittals**" means the Submittals required by TP Section 6 (Right of Way) (other than the ROW Acquisition Plan and the Monthly Acquisition Services Status Report).

"**Rules**" has the meaning set forth in Recital D.

"**SAAG**" has the meaning set forth in PA Section 2.5.2 (*State Proposed/Developer Acquired Right of Way*).

"**Safety Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Safety Manager.

"**Safety Plan**" means the plan provided by Developer that fully describes Developer's policies, procedures, plans, training programs, and worksite controls to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during the period commencing at NTP1 through Final Acceptance.

"**SC List**" means the nonexclusive itemized list of Work that remains to be completed in order to satisfy the conditions to achieving Substantial Completion, prepared by Developer and included in the D&C Closeout Plan in accordance with PA Section 7.6 (*Substantial Completion, Punch List, Final Acceptance*) and TP Section 2.2.1.20 (D&C Closeout Plan).

"**Schedule of Values**" has the meaning set forth in TP Section 2.3.4 (SOV and Price-Loading).

"**Security Document**" means any Lien, indenture, trust agreement, security agreement, hypothecation, assignment, pledge, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Person as security for Developer Financing or Developer's obligations pertaining to Developer Financing and in each case encumbering Developer's Interest or any portion thereof and any documents described in the definition of "Lender Agent". The initial list of Security Documents will be set forth on Schedule A (*Developer Financing Agreements*) to the Direct Agreement and incorporated by reference in PA Exhibit 22 (*Initial List of Developer Financing Agreements, Security Documents*).

"**Separate Contractor(s)**" means each and any separate contractor or vendor engaged by Authority, GDOT or any other Governmental Entity of the State to perform, provide, and/or supply work, services, labor or materials for (a) the Project that is expressly excluded from Developer's Work pursuant to the DBF Documents or (b) another project to construct a Related Transportation Facility, in each case on the Project Limits (after the relevant portion is acquired).

"**Service Line**" means a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. However, unless otherwise noted in the Technical Provisions, the term "Service Line" excludes any line that supplies an active feed from a Utility Owner's facilities to supply, activate or energize Authority's, GDOT's or a Governmental Entity's Highway Service System, which line, including its actual connection to the Utility facility, shall instead be considered to be part of the applicable Highway Service System.

"**Setting Date**" means March 15, 2024.

"**Shop Drawing Engineer**" means a Professional Engineer that is the initiator or producer of Shop Drawings.

"**Shop Drawings**" means the Design Documents described in TP Attachment 4-1 (Shop Drawing Requirements). Shop Drawings include all working, shop, and erection drawings, associated trade literature, calculations, schedules, manuals, and similar documents submitted by Developer to define some portion of the Permanent Works or Temporary Works not fully detailed in the Released for Construction Design Documents that requires additional drawings and coordination prior to constructing the item.

"**SIR**" has the meaning set forth in PA Section 16.1.2.2 (*Deductibles*).

"**Site**" means the Project Limits and all Temporary Interests.

"**Source Code**" and "**Source Code Documentation**" mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, revisions, additions, substitutions, replacements, updates, upgrades and corrections made to the foregoing items.

"**SOV Line Item**" means those numbered line items on the Schedule of Values corresponding to those portions of the Work or charges, each with an associated dollar value and in total equal to the DBF Contract Sum as it may be adjusted in accordance with this Project Agreement.

"**SOV Update**" means an update to the SOV provided by Developer in accordance with TP Attachment 2-7 (SOV and Price-Loading Requirements) after the Proposal SOV, NTP1 Baseline SOV, NTP2 Baseline SOV, NTP3 Baseline SOV, or Revised Baseline SOV is accepted that shows updated price information for each line item on an earned value basis through a given update interval and forecasts the balance to finish.

"**Special Event**" means an event identified in accordance with TP Section 18.4.1 (Special Events and Holidays) and TP Table 18-2 (Annual Daily Restrictions), from time to time, by Notice and in advance, from Authority to Developer, of specified duration and location.

"**Special Provision**" means the additions or revisions to the Standard Specifications identified in TP Attachment 1-4 (Project Standards).

"**Specialty Report**" means a specialty report prepared in accordance with TP Section 6.3.5.2 (Specialty Reports).

"**Standard Specification(s)**" means all, or any one of, the GDOT Standard Specifications specifically set forth in TP Attachment 1-4 (Project Standards), Table 2 (Project Standards – Standard Specifications Construction of Transportation Systems). For avoidance of doubt, the (defined term) "Standard Specifications" does not mean the entirety of the GDOT Standard Specifications, but instead those portions included in the Technical Provisions as described.

"**State**" means the State of Georgia.

"**State Accounting Office Supplier (Vendor) Management Form**" means the then-current form available at the weblink identified at Attachment 1 (*Form of Project Certificate*) to PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), as such weblink may be updated from time to time.

"**State Depository**" means a bank or trust company which has its deposits insured by the Federal Deposit Insurance Corporation and which is appointed by the State Depository Board pursuant to O.C.G.A. § 50-17-50 *et seq*., i.e., the "Georgia 1 Fund".

"**State Proposed/Developer Acquired Right of Way**" means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines established in and designated as "State Proposed/Developer Acquired ROW" within PA Exhibit 4 (*Parcel Acquisition Table*) for which Developer is responsible to acquire a leasehold estate or other similar property interest or rights. The term specifically includes all air space, surface rights and subsurface rights within the limits of the State Proposed/Developer Acquired Right of Way and specifically excludes any Developer Proposed/Developer Acquired Right of Way, State Proposed/State Acquired Right of Way, and Developer Proposed/State Acquired Right of Way.

"**State Proposed/Developer Acquired ROW Acquisition Date**" means the date set forth in PA Exhibit 4 (*Parcel Acquisition Table*).

"**State Proposed Right of Way**" means the Existing Right of Way, State Proposed/Developer Acquired Right of Way, State Proposed/State Acquired Right of Way, and Developer Proposed/State Acquired Right of Way, if any.

"**State Proposed/State Acquired Right of Way**" means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines established in and designated as "State Proposed/State Acquired ROW" within PA Exhibit 4 (*Parcel Acquisition Table*) for which Authority is obligated to provide access to Developer and/or acquire a leasehold estate pursuant to an Estate for Years. The term specifically includes all air space, surface rights and subsurface rights within the limits of the State Proposed/State Acquired Right of Way and specifically excludes any Developer Proposed/Developer Acquired Right of Way, State Proposed/Developer Acquired Right of Way, and Developer Proposed/State Acquired Right of Way. All portions of the State Proposed/State Acquired Right of Way, as and to the extent of any property interests in same acquired by Authority, shall thereafter and without further amendment to PA Exhibit 4 (*Parcel Acquisition Table*) be deemed Existing Right of Way.

"**State Transportation Board**" means the 14-member board which exercises general control and supervision of GDOT.

"**Structural Elements**" has the meaning set forth in TP Section 13.1 (General Requirements).

"**Subcontract**" means any Contract between a Contractor and a Subcontractor.

"**Subcontractor**" means any other Person, including any Supplier with whom any Contractor has further subcontracted, purchased or procured any part of the Work, at all tiers.

"**Submittal**" means each Discretionary Submittal, Non-Discretionary Submittal and R&C Submittal, and in each case, shall include any ROW Submittal and any resubmittal which Developer is required to make in accordance with PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

"**Submittal Packaging Plan**" means the plan provided as part of the Basis of D&C by Developer that depicts the component parts and packaging of Submittals during the period from NTP1 through Final Acceptance.

"**Submittal Requirements Database**" means the more recent of:

(a) the Submittal Requirements Database included in TP Attachment 2-10 (Submittal Requirements Database); or

(b) the latest Authority-accepted version of updates to the Submittal Requirements Database submitted by Developer in accordance with TP Section 2 (Project Management).

"**Substantial Completion**" means the occurrence of all the events and satisfaction of all the criteria and conditions for completion of D&C Work as set forth in PA Section 7.6 (*Substantial Completion, Punch List, Final Acceptance*), as and when confirmed by Authority's issuance of a Certificate of Substantial Completion in accordance with the procedures and within the time frame established in PA Section 7.6.1 (*Substantial Completion*).

"**Substantial Completion Date**" means the date upon which Authority issues the Certificate of Substantial Completion.

"**Substantial Completion Deadline**" means the deadline and required date for Substantial Completion of the Project as set forth in the Milestone Schedule, as such deadline may be extended from time to time pursuant to this Project Agreement. The initial Substantial Completion Deadline is the date identified as such in the Proposal.

"**Substantial Completion Long Stop Date**" means 12:01 a.m. on the date that is 180 days after the Substantial Completion Deadline, as such date may be extended from time to time under the Project Agreement.

"**Subsurface Utility Engineering**" means an engineering process for accurately identifying the quality of subsurface utility information needed for highway plans, and for acquiring and managing that level of information during the development of a highway project, as more particularly described, as of the Effective Date, at the FHWA website http://www.fhwa.dot.gov/programadmin/sueindex.cfm.

"**SUE Plans**" means the SUE plans attached as TP Attachment 7-5 (Utility Plans).

"**Supplemental Agreement**" means a written, mutual agreement between Authority and Developer for changes in the Work under PA Article 14 (*Authority Changes; Developer Changes; Directive Letters*) or to account for certain amounts under this Project Agreement that Authority states will be paid by Authority to Developer, which, in each case, shall set forth any adjustments to the DBF Contract Sum and/or the Contract Time, if any, including on account of any Relief Event Determination and/or Compensation Event Determination as set forth under PA Section 13.2 (*Relief Event and Compensation Event Determinations*), or in relation to PA Section 4.8.2 (*Financial Model Audits*). For the avoidance of doubt, the term "Supplemental Agreement" excludes any Termination Compensation payable in the form of a Termination Compensation Supplemental Agreement.

"**Supplier**" means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other similar items or persons to or from the Site shall not be deemed to be performing Work at the Site.

"**Surety**" means each surety company meeting the requirements and qualifications under PA Section 16.2.1.2 (*P&P Bonds*), which has issued any of the P&P Bonds or the Warranty Bond. A "Surety" may include a surety company, insurance company, or other Person, in each case, approved by Authority not meeting such requirements but nonetheless approved to issue any of the P&P Bonds or the Warranty Bond.

"**Suspension Notice**" has the meaning set forth in PA Section 17.10.1.1 (*Developer's Right to Suspend Work*).

"**System Redundant Member**" means a system redundant member as defined in FHWA Memorandum "Clarification of Requirements for Fracture Critical Members" dated June 20, 2012.

"**Taxes**" means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld, or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, or act, business, status or transaction of Developer, including any interest, penalty, or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

"**Team Communications and Partnering Plan**" means the plan provided by Developer in accordance with TP Section 2.2.1.3 (Team Communications and Partnering Plan) which includes Developer's approach to achieving effective communication and partnering.

"**Technical Dispute**" has the meaning set forth in PA Section 17.9.2.1 (*Dispute Resolution Procedures*).

"**Technical Provisions**" means the "State Road and Tollway Authority Technical Provisions for Design-Build-Finance Agreement P.I. No. 0013918, I-285/I-20 West Interchange," dated as of the Effective Date, as such documents that comprise the Technical Provisions may individually or collectively (a) have been generally revised from time to time up to the date of issuance of the RFP, or (b) be changed, added to or replaced pursuant to the DBF Documents. The Technical Provisions include all the Project Standards, as well as other standards, criteria, requirements, conditions, procedures, specifications and other provisions set forth in the manuals and documents identified therein.

"**Temporary Interests**" means any additional temporary property interests or rights, other than the Existing Right of Way, State Proposed/State Acquired Right of Way, State Proposed/Developer Acquired Right of Way, Developer Proposed/Developer Acquired Right of Way, and Developer Proposed/State Acquired Right of Way that Developer may require for performance of the Work, including for temporary activities in connection with the Construction Work, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earthwork material borrow sites and similar sites, and in connection with Railroad Work under the Railroad Agreements.

"**Temporary Traffic Control Plan**" means the plan provided by Developer in accordance with TP Section 18.3.2 (Temporary Traffic Control Plans).

"**Temporary Utility Adjustment**" means any (a) interim Utility Adjustment of any Utility (i.e., the installation, removal, and disposal of an interim Utility facility) pending installation of a permanent Utility facility in the same or a new location, and (b) removal and reinstallation of the Utility facility in the same place without an interim Utility Adjustment.

"**Temporary Works**" means any temporary Construction Work necessary for the construction of the Permanent Works. "Temporary Works" includes falsework, formwork, scaffolding, temporary shoring, temporary earthworks, temporary paving, cofferdams, special erection equipment, and any other parts and materials associated therewith.

"**Term**" has the meaning set forth in PA Section 3.1 (*Term*).

"**Termination by Court Ruling**" has the meaning set forth in PA Section 18.11 (*Termination by Court Ruling*).

"**Termination Compensation**" means each of the measures of compensation upon termination prior to the stated expiration of the Term, pursuant to PA Article 19 (*Assignment and Transfer*), and as set forth in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

"**Termination Compensation Supplemental Agreement**" has the meaning set forth in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

"**Termination Date**" means (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

"**Termination for Convenience**" has the meaning set forth in PA Section 18.1 (*Termination for Convenience*).

"**Termination Holdback**" has the meaning set forth in PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

"**Termination Turnover Requirements**" means the requirements for the condition of the Project at Termination specified in the approved transition plan submitted by Developer pursuant to PA Section 18.6.1 (*Termination Procedures and Duties*).

"**Third Party Claim**" means, subject to PA Section 16.5.4 (*Indemnity by Developer*), any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations, or legal or administrative proceedings asserted, initiated or brought by a Person that is not an Indemnified Party or Developer with respect to any Third Party Loss.

"**Third Party Damage Claim Plan"** means the plan provided by Developer and approved by Authority pursuant to TP Section 2.2.1.22.

"**Third-Party Hazardous Materials Release**" means a Hazardous Materials Release directly by a Person that is (a) not an Indemnified Party or a Developer-Related Entity or acting in the capacity of an Indemnified Party or a Developer-Related Entity and (b) otherwise not arising out of, relating to, or resulting from the negligence or willful misconduct of any Developer-Related Entity.

"**Third Party Loss**" means, subject to PA Section 16.5.4 (*Indemnity by Developer*), any actual or alleged Loss sustained or incurred by a Person that is not an Indemnified Party or Developer.

"**Threatened or Endangered Species**" means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 *et seq*. or any species listed as threatened or endangered pursuant to the State endangered species act.

"**Time Impact Analysis**" means a time impact analysis prepared in accordance with TP Section 2.3.5 (Time Impact Analysis) and based on the latest accepted Baseline Project Schedule.

"**Traffic Interruption Requests**" has the meaning set forth in TP Section 18 (Traffic Control), Attachment 18-3 (Traffic Interruption Request).

"**Traffic Noise Model**" means the traffic noise model initially prepared by Authority for the NEPA Approval and subsequently updated in accordance with TP Section 5.3.5 (Time Periods for Amendments to Provided Environmental Approvals).

"**Transferee**" means any party as defined pursuant to PA Section 19.2.2.1 (*Standards and Procedures for Certain Authority Approvals*).

"**Transportation Improvement Plan**" means the GDOT statewide and the Atlanta Regional Commission transportation improvement plans, as updated from time to time.

"**Transportation Management Plan**" means Developer's plan for transportation management and Incident response throughout the Term, as more particularly described in TP Attachment 18-2 (Requirements for the TMP).

"**Trust**" has the meaning set forth in this PA Exhibit 1 (*Abbreviations and Definitions*), definition of "Institutional Lender".

"**Trustee**" has the meaning set forth in PA Section 4.2.9.1 (*Construing Rights for Financial Plans*).

"**Two-Week Detail Schedule**" means the two-week detail schedule provided by Developer in addition to the Project Schedule and provides a more detailed breakdown of the activities for the purpose of coordination of the D&C Work, oversight planning, verification of D&C Work completed, and materials inspection and testing.

"**Unexpected Endangered Species**" means the presence of Threatened or Endangered Species discovered within the Project Limits during the Construction Period, the temporary, continual or habitual presence of which, as of the Setting Date, was neither:

(a) known to Developer; or

(b) reasonably to be expected to be found temporarily, continually or habitually on the Site based on a Reasonable Investigation and otherwise the review and analysis of the Reference Information Documents or publicly available information undertaken by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Good Industry Practice.

"**Unexpected Subsurface Condition**" means an actual subsurface condition encountered within the State Proposed Right of Way during the performance of the D&C Work, including in respect of bridge and structure foundations, sound barrier foundations, retaining walls or earthwork, and such condition is materially different from:

(a) conditions that may have been reasonably inferred from a review of the Authority Boring Data, prior to the Setting Date pursuant to the RFP;

(b) conditions that as of the Setting Date are known to Developer;

(c) conditions that as of the Setting Date are identified in the Reference Information Documents; or

conditions that as of the Setting Date reasonably could have been identified or discovered by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice based on the Reference Information Documents and/or any publicly available information, the existence and nature of which the Developer had or reasonably should have notice of, access to the State Proposed Right of Way granted prior to the Setting Date, or any visual examination of the Existing Right of Way and, to the extent reasonably visible for such examination, any other property which may form part of the Site and surrounding location.

"Unexpected Subsurface Conditions" exclude those conditions described in PA Section 6.1.3 (*Preliminary Planning and Engineering Activities; Site Conditions*), any Latent Defects, and any other condition that would otherwise meet this definition, if discovered or encountered on any Temporary Interests.

"**Unexpected Subsurface Condition Allowance**" has the meaning set forth in PA Section 7.12.1.1 (*Discovery of Unexpected Subsurface Conditions*).

"**Unexpected Subsurface Condition Order**" has the meaning set forth in PA Section 7.12.6.1 (*Discovery of Unexpected Subsurface Conditions*).

"**Unidentified Utility Adjustment**" means any Utility Adjustment of an Unidentified Utility Facility that is specifically identified by Developer within the timeframes, pursuant to, under the terms, and subject to the conditions, of PA Section 7.4.13.1 (*Unidentified Utility Adjustments*).

"**Unidentified Utility Adjustment Deductible**" means the first $100,000 of additional Costs incurred by Developer with respect to any Unidentified Utility Adjustment identified by Developer after the following the time period in PA Section 7.4.13.1 (*Unidentified Utility Adjustments*) and prior to the Substantial Completion Date.

"**Unidentified Utility Adjustment Work**" means Utility Adjustment Work in relation to any Unidentified Utility Adjustment.

"**Unidentified Utility Facility**" means any Utility present on the Existing Right of Way, State Proposed Right of Way, or Developer Proposed/State Acquired Right of Way that was not shown on the SUE Plans, or that would not have been discovered with a Reasonable Investigation, in each case excluding any Utility that:

(a) was installed on a part of the State Proposed Right of Way (excluding Developer Proposed/State Acquired Right of Way) after right of entry was granted to Developer in relation to the relevant part of the State Proposed Right of Way in accordance with the terms of this Project Agreement; or

(b) is a Service Line.

"**Uniform Act**" means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

"**Uninsurable Risk**" means a risk, or any component of a risk, against which Developer or a Contractor is required to insure pursuant to this Project Agreement and for which risk, at any time after the Effective Date, either:

(a) the insurance coverage required under the Project Agreement is not available in the worldwide insurance or reinsurance markets in relation to that risk from insurers that meet the qualifications set forth in PA Section 16.1.2.1 (*Qualified Insurers*), to comparable infrastructure projects in North America, and on the terms required in this Project Agreement; or

(b) the terms and conditions for insuring that risk with respect to comparable infrastructure projects in North America are such that the risk is not generally being insured against in the worldwide insurance or reinsurance markets under commercially reasonable terms from insurers that meet the qualifications set forth in PA Section 16.1.2.1 (*Qualified Insurers*).

"**Updated Preliminary DBF Contract Sum**" has the meaning set forth in PA Section 4.2.8 (*Change in Financial Plan*).

"**Updated Preliminary Financial Model**" has the meaning set forth in PA Section 4.2.7.2 (*Interest Rate Adjustments*).

"**User**" means either (a) the traveling public and any others who use the Project, whether by motorized or nonmotorized vehicles, or on foot; or (b) the registered owner of a vehicle traveling on the Project or any portion thereof.

"**Utility**" or "**utility**" means any of the following:

(a) a public, private, cooperative, municipal and/or government line, facility, or system used for the carriage, transmission and/or distribution of power, electricity, light, heat, gas, oil, crude or other petroleum products, hydrocarbons, water, steam, waste, chemicals, signals (including telecommunications, internet, "cable" television/internet, fiber optics, other internet transmission signals), a combined storm water and sanitary system, or other similar commodities or materials, including wireless communications, internet services, television transmission signals, and publicly owned fire, police, other emergency communications, alert, or signal systems, which directly or indirectly service the public;

(b) a line, facility or system which (i) carries, transmits and/or distributes any of the items listed in clause (a) above but does not directly or indirectly serve the public, and (ii) is designated in the Technical Provisions to be treated, for purposes of the DBF Documents only, in the same manner as a line, facility or system that qualifies as a Utility under clause (a) above;

(c) appurtenances to each utility, including the Utility source, guide poles, Service Lines (regardless as to ownership), service laterals, supports, etc.; and

(d) a radio tower or transmission tower (including cellular) that directly or indirectly serves the public.

Notwithstanding the foregoing, the term "Utility" or "utility" excludes:

(i) all storm water lines, facilities, and systems that are part of the drainage system on and for the Project Limits or connect to that system;

(ii) any would-be utility owned by a Railroad; and

(iii) Authority's, GDOT's or a Governmental Entity's Highway Service Systems.

"**Utility Accommodation Manual**" means the Utility Accommodation Manual issued by GDOT, at Ga. Comp. R. & Regs. 672-11-.01 through -.04, as the same may be amended, supplemented or replaced by GDOT from time to time.

"**Utility Adjustment**" means each relocation (temporary or permanent), abandonment and/or dormancy, Protection in Place, removal (of previously abandoned or dormant Utilities as well as of newly-abandoned or dormant Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate the Work or the Project; for avoidance of doubt, the term "Utility Adjustment" shall not refer to any of the work associated with would-be utility facilities owned by any Railroad.

"**Utility Adjustment Field Modification**" means any horizontal or vertical design change to the plans included in a Utility Work Plan (previously accepted by Authority) required by Developer or proposed by a Utility Owner due to (i) non-Utility-related Project design, (ii) Utility design, or (iii) conditions otherwise not accurately reflected in the corresponding previously-accepted Utility Work Plan, that alters the design included in the approved Utility Work Plan.

"**Utility Adjustment Plans**" means the utility adjustment plans described in TP Section 7.3.6 (Utility Adjustment Plans (UAP)).

"**Utility Adjustment Preliminary Plan**" means the utility adjustment preliminary plan described in TP Section 7.3.6 (Utility Adjustment Plans).

"**Utility Adjustment Schedule**" means the schedule described in TP Section 7.3.7 (Utility Adjustment Schedule).

"**Utility Adjustment Work**" means all efforts and costs necessary to accomplish the required Utility Adjustments, including all Incidental Utility Adjustment Work, coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, and acquisition of New Interests, whether provided by Developer or by the Utility Owners, and performance of such obligations (or delegated obligations) necessary or desirable to effect the Utility Adjustment Work. The term also includes any reimbursement of Utility Owners that is Developer's

responsibility pursuant to PA Section 7.4 (*Utility Adjustments*). Any Utility Adjustment Work furnished or performed by the Utility Owner is Utility Adjustment Work and thus part of the Work.

"**Utility As-Builts**" means the drawings described in TP Section 7.4.5.1 (Utility As-Built Requirements) and TP Section 7.4.5.2 (Utility As-Built Plan Requirements).

"**Utility Coordination Meeting**" means the meeting described in TP Section 7.2.3 (Required Meetings).

"**Utility Design Coordinator**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Utility Design Coordinator.

"**Utility Escalation and Mediation Process**" means the dispute resolution process described in Section 4.4.C of the UAM, O.C.G.A. § 32-6-171, and Section 672-19-.02 of the Rules.

"**Utility Facility Relocation Acceptance Form**" means the form set forth in TP Attachment 7-1 (Utility Facility Relocation Acceptance Form), as further described in TP Section 7.4.6 (Utility Facility Relocation Acceptance Form).

"**Utility Impact Analysis**" means the analysis described in TP Section 7.3.3 (Utility Impact Analysis).

"**Utility Management Plan**" means the utility management plan provided by Developer in accordance with TP Section 7 (Utility Adjustments).

"**Utility Manager**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Utility Manager.

"**Utility MOU**" means each memorandum of understanding listed in TP Attachment 7-4 (Executed Utility MOUs).

"**Utility Owner**" means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

"**Utility Owner Obligations**" has the meaning set forth in PA Section 7.4.8.1 (*Utility Owner Obligations*).

"**Utility Plan**" means the existing utility plans described in TP Section 7.3.2 (Verification of Utility Plans and SUE Investigations).

"**Utility Status Report**" means the report described in TP Section 7.3.4 (Utility Status Report).

"**Utility Work Plan**" means the collection of agreements, plans and other information and materials which Developer is required to submit to GDOT in connection with each Utility Adjustment, as more particularly described in TP Section 7.3.8 (Utility Work Plan). Depending on the context, the term also refers to any amended or supplemented Utility Work Plans.

"**Utility Work Plan Retention Request**" means the collection of plans and other information and materials which Developer is required to submit to GDOT in connection with each Utility proposed to remain at its original location within the Existing Right of Way or (after acquired) the State Proposed/State Acquired Right of Way, in either case, under new pavement, all as more particularly described in Section 2.8.B (Retention of Existing Underground Facilities on Highway Construction and Access Permits) of the UAM; a single Utility Work Plan Retention Request may address more than one such Utility.

"**Value Earned for Construction Work**" means the monetary valuation for the portion of the Construction Work performed during each Project Certificate Period as evaluated and determined using the Baseline Schedule of Values and the Baseline Project Schedule to measure the true progress and degree of completion of the D&C Work.

"**Value Earned for Design Work"** means the monetary valuation for the portion of the Design Work performed during each Project Certificate Period as evaluated and determined using the Baseline Schedule of Values and the Baseline Project Schedule to measure the true progress and degree of completion of the D&C Work.

"**Value Earned for General Work**" means the monetary valuation for the portion of the items set forth in Subsection A.1 through Subsection A.6 of the Schedule of Values performed during each Project Certificate Period as evaluated and determined using the Baseline Schedule of Values.

"**Value Earned for Independent Quality Firm Work**" means the monetary valuation for the items set forth in Subsection B.1 through Subsection B.2 of the Schedule of Values performed during each Project Certificate Period as evaluated and determined using the Baseline Schedule of Values.

"**Value Earned for Work**" means the aggregate of the Value Earned for Construction Work, Value Earned for Design Work, Value Earned for General Work and Value Earned for Independent Quality Firm Work for a Project Certificate Period as evaluated and determined using the Baseline Schedule of Values and the Baseline Project Schedule.

"**Warning Notice**" means a Notice that Authority delivers to Developer pursuant to PA Section 17.2 (*Warning Notices*).

"**Warranty**" has the meaning set forth in PA Section 7.9.1 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*).

"**Warranty Bond**" means the surety bond substantially in the form of PA Exhibit 21 (*Forms of P&P Bonds, Warranty Bond*) and meeting the requirements of PA Section 16.2.2 (*Warranty Period Payment and Performance Security*).

"**Warranty Period**" has the meaning set forth in PA Section 7.9.2 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*).

"**Warranty Work**" means all Work for performance of Developer's Warranty obligations in PA Section 7.9.1 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*).

"**Water Quality Specialist**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Water Quality Specialist.

"**Work**" means all of the work and services required to be furnished and provided by Developer, as well as all obligations of Developer, under the DBF Documents, including activities to obtain financing, as well as all administrative, design, engineering, construction, supply, manufacturing, installation, environmental mitigation and management, Utility Adjustment (whether performed by Developer or by the Utility Owner), utility accommodation, real property acquisition and other support services (including support services of procurement, legal, financial, and other professionals), ITS and ITS integration, supervision, management, testing, verification, labor, materials, equipment, maintenance (as required under the Project Agreement), cost reimbursement/payment, documentation, coordination, and fulfillment of such other duties and performance of such other services as required and as may reasonably be inferred for full

and proper completion of the Project and fulfillment of the Warranty in accordance with the DBF Documents. The Work excludes those efforts which such DBF Documents expressly specify will be performed by Persons other than Developer-Related Entities. The term "Work" may also be used to mean the products of the Work. For avoidance of doubt, the "Work" includes the Design Work, the Construction Work, and all other work, services and obligations required to be furnished, performed and provided by Developer under this Project Agreement.

"**Work Breakdown Structure**" means a deliverable-oriented hierarchical structure that breaks the D&C Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the D&C Work. The WBS will contain all of the elements of Design Work and Construction Work. There shall be clearly identifiable linkage between the WBS, the elements of the Work, and the Baseline Project Schedule.

"**Workforce Development Plan**" means the plan defined in Section 3 (Workforce Development Plan Requirements) of TP Attachment 2-12 (Workforce Planning Requirements).

"**Workforce Participant**" means any Project Local Resident hired to perform Work on the Project.

"**Workforce Progress Report**" has the meaning set forth in Section 4 (Documentation of Efforts and Reporting) of TP Attachment 2-12 (Workforce Planning Requirements).

"**Worksite Erosion Control Supervisor**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Worksite Erosion Control Supervisor.

"**Worksite Utility Coordination Supervisor**" means the Required Personnel described in TP Attachment 2-1 (Key Personnel and Required Personnel) as the Worksite Utility Coordination Supervisor.

EXHIBIT 2
PROPOSAL COMMITMENTS

The following constitute Proposal Commitments for the Project:

Key Personnel: The following Key Personnel shall be assigned to the Project pursuant to PA Section 10.4.1 (*Key Personnel*).

Key Personnel Position	Key Personnel Name	Key Personnel Company
Developer's Project Manager	Bob Thompson	C.W. Matthews Contracting Co., Inc.
Design Manager	Peter Graf, PE, SE	Infrastructure Consulting & Engineering, Inc.
Construction Manager	Ryan Beech	C.W. Matthews Contracting Co., Inc.
Project Chief Engineer	Mike Nadolski, PE	C.W. Matthews Contracting Co., Inc.
Quality Assurance Manager	Al Bowman, PE, SE	Michael Baker International, Inc.
Design Quality Assurance Manager	Beth Ann Schwartz, PE	Michael Baker International, Inc.
Construction Quality Assurance Manager	Shea Glassman, PE	KCI Technologies, Inc.
Safety Manager	Frank Fombutu	C.W. Matthews Contracting Co., Inc.
Workforce Manager	Gus Lerma	C.W. Matthews Contracting Co., Inc.
Financial Lead	Maria Kang	Keystone Global Holdings, LLC

Other Proposal Commitments:

Commitment No.	Proposal Location	Proposal Commitment
1.	Pg 31 / Sec C.3.8(d)	Implement Smart work zone system with queue warning.
2.	Pg 30 / Sec C.3.8(d) and in Appendix A	Team will not implement long-term lane closures on I-285 during 2026 World Cup.
3.	Pg 45 / Sec. C.5.3(a)	Completion of new median foundation for overhead signs in the first stage.
4.	Pg 51 / Sec. C.5.3(a)	The detours of Fairburn Road and MLK ABC Detour will not be concurrent.
5.	Pg 58 / Sec. C.5.4(a)	Will partner with GDOT's TMC to ensure interchange changes for navigation are communicated to the private mapping agencies in advance.
6.	Pg 59 / Sec. 5.4(a)	Construction of a temporary sidewalk along Harwell Road in front of Usher-Collier Elementary School.

EXHIBIT 3
FORM OF DIRECT AGREEMENT

This DIRECT AGREEMENT (this "Agreement"), is entered into and effective as of [_____], 2024 by and between the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia ("Authority"), Legacy Infrastructure Contractors, LLC, a Georgia limited liability company ("Developer"), and U.S. Bank Trust Company, National Association, a United States national banking association, as agent for the Lenders, or any swap or other hedge counterparty (or all of them) in accordance with the terms of the Developer Financing Agreements (the "Lender Agent").

RECITALS

WHEREAS, Authority and Developer have entered into that certain Design, Build, and Finance Agreement, dated as of October 10, 2024 (the "Project Agreement"), in connection with the I-285 / I-20 West Interchange Project;

WHEREAS, under the Project Agreement, the Georgia Department of Transportation ("GDOT"), acting as Authority's "project manager", has agreed to provide Approved Project Certificates to Developer which will reflect the value of Project Certificate Amount agreed as completed in the relevant month;

WHEREAS, under the Project Agreement, Authority has agreed to make Project Payments to Developer (or its assignee of the Approved Project Certificates) owed to Developer as reflected in the Approved Project Certificates; and

WHEREAS, Lender Agent, acting on behalf of the Lenders, and any swap or other hedge counterparties desires to enter into this Agreement with Authority and Developer;

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

ARTICLE 1.
DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01. Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings ascribed thereto pursuant to the Project Agreement. In addition, the following terms have the meanings specified below:

Designated Account means [*to be completed at Financial Close*].

Developer Financing Agreements means the agreements referenced under Schedule A hereto.

Developer Financing Default means any "Default" or "Developer Financing Default" under any of the Developer Financing Agreements.

Lender Agent Notice has the meaning set forth to it in Section 2.02.

Section 1.02. Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.

Section 1.03. No Effect on Project Agreement

Nothing in this Agreement amends or modifies any of Developer's obligations to Authority under the Project Agreement. The terms and conditions of this Agreement shall create no rights in favor of Developer or any of its Affiliates.

ARTICLE 2.
CONSENT TO SECURITY, ASSIGNMENT OR SALE AND NOTICES

Section 2.01. Consent to Security, Assignment or Sale, Etc.

(a) Notwithstanding anything to the contrary in the Project Agreement:

(i) Authority acknowledges notice and receipt of and consents to the assignment, creation of security interest, pledge, sale, conveyance or other transfer, as applicable, by Developer to the Public Finance Authority (as the Bond Issuer) of Developer's Interest and the Approved Project Certificates in the manner set forth in the Developer Financing Agreements all in accordance with PA Article 4 (*Financing*);

(ii) Authority acknowledges notice and receipt of and consents to the assignment, creation of security interest, pledge, sale, conveyance or other transfer, as applicable, by the Public Finance Authority to the other Lenders or any Lender Agent of Developer's Interest and the Approved Project Certificates in the manner set forth in the Developer Financing Agreements all in accordance with PA Article 4 (*Financing*); and

(iii) Authority represents and warrants that none of the security interests, pledges, assignments, sales, conveyances or other transfers referred to in Section 2.01(a)(i) and Section 2.01(a)(ii) (A) constitutes (or with the giving of notice or lapse of time, or both, could constitute) a breach or a Developer Default, or (B) requires any consent of Authority that is either additional or supplemental to those granted pursuant to this Section 2.01.

(b) Authority and Developer acknowledge and agree that (i) the documents and instruments referred to in Schedule A attached hereto constitute the "Developer Financing Agreements" for the purposes hereof, the Project Agreement, and the other DBF Documents, (ii) such Developer Financing Agreements, in their current forms, are consistent with, and satisfy and comply with the requirements of, the Project Agreement, including PA Section 4.5 (*Limitations and Requirements for Developer Financing and Developer Financing Agreements*), and (iii) the transactions and indebtedness evidenced by the Developer Financing Agreements referred to in Schedule A constitutes "Developer Financing" under the Project Agreement, and that this Agreement constitutes notice of such Developer Financing for the purposes of PA Section 4.2.6 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*) and PA Section 5.2.4 (*Project Payments*).

(c) For so long as any amount owing under an Approved Project Certificate or under the Developer Financing Agreements is outstanding, Authority will not, without the prior written consent of the Lender Agent, consent to any assignment, transfer, pledge or hypothecation, sale, conveyance, or other transfer of Developer's Interest (unless such assignment, transfer, pledge or hypothecation, sale,

conveyance or other transfer is otherwise permitted to be undertaken by Developer without Lender Agent's consent under the Developer Financing Documents), other than as specified in this Agreement.

Section 2.02. Lender Agent Notice Requirements

The Lender Agent shall promptly provide Notice to Authority (a "Lender Agent Notice"):

(a) upon becoming aware of any Developer Financing Default (whether or not a Lender Agent Notice has been served in connection with the same event) and specify in any such Lender Agent Notice the circumstances and nature of Developer Financing Default to which the Lender Agent Notice relates; and

(b) upon an election to terminate any Developer Financing Agreement following the occurrence of a Developer Financing Default;

(c) upon an election to suspend or terminate funding under any Developer Financing Agreement following the occurrence of a Developer Financing Default and in connection with the exercise of remedies provided by the Developer Financing Agreements in relation to such Developer Financing Default;

(d) upon an election to exercise any other rights or remedies under any Developer Financing Agreement following the occurrence of a Developer Financing Default; and/or

(e) upon an election to accelerate amounts outstanding under the Developer Financing Agreements following the occurrence of a Developer Financing Default and in connection with the exercise of remedies provided by the Developer Financing Agreements in relation to such Developer Financing Default.

ARTICLE 3.
AUTHORITY PAYMENTS UNDER APPROVED PROJECT CERTIFICATES

Section 3.01. Authority's Payment Commitment

Authority agrees to make Project Payments and all other amounts payable by it under the Project Agreement (including under the Approved Project Certificates) in satisfaction of amounts owed to Developer or Lender (or any swap or other hedge counterparty) in accordance with the terms of the Project Agreement and this Agreement. Subject to any prepayment pursuant to the Project Agreement, Authority acknowledges that each Approved Project Certificate represents an irrevocable and unconditional obligation to pay the Project Payment due under such Approved Project Certificate as and when such amount becomes due and payable under such Approved Project Certificate.

Section 3.02. Payment Process; Conditions to Payment

(a) Authority will deposit all amounts due and payable by it under each Approved Project Certificate, on or prior to being due, into the Designated Account. Authority will also deposit Breakage Costs less Breakage Benefits, if any, into the Designated Account. Developer agrees that any payment made with respect to any Approved Project Certificate in accordance with this Section 3.02 shall constitute a complete discharge of Authority's relevant payment obligations under such Approved Project Certificate. All payments shall be made in accordance with the provisions of Section 5 of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

(b) Where Authority has failed to remit any payment as and when due, Lenders shall, upon (i) provision of written notice of the failure to pay to Authority and (ii) provision of a maximum of 30 days for Authority to cure such failure to pay by Authority, be entitled to interest on delinquent payments at the Default Interest Rate up to and including the date that the relevant deposit is made into the Designated Account.

(c) Lender Agent shall provide Authority with a true, complete, and correct (in all material respects) State Accounting Office Supplier (Vendor) Management Form, at least 10 Business Days prior to the presentation of the first Approved Project Certificate for which Lender Agent seeks payment. Lender Agent may elect to provide the foregoing State Accounting Office Supplier (Vendor) Management Form to Developer such that Developer provides it in turn to Authority, in which case Lender Agent shall provide Developer the foregoing form at such time as Developer may provide the same to Authority (and Developer shall so provide such form) at least 10 Business Days prior to the presentation of the first Approved Project Certificate for which Lender Agent seeks payment.

Section 3.03. Lender Acknowledgement

The Lender Agent acknowledges that Authority's liability to make payments pursuant to the Agreement (a) does not waive Authority's rights under the Project Agreement under PA Section 5.2.1 (*Project Payments*) (generally regarding remedy for Nonconforming Work) and PA Section 5.2.2 (*Project Payments*) (no double payment default risk), (b) does not restrict Authority's right to prepay under PA Section 5.2.6 (*Project Payments*), and (c) is constrained further under PA Section 5.4.1 (*Authority Monetary Obligations and Overall Authority Limitation of Liability*) (amounts in the Public Contribution Account) and PA Section 5.4.2 (*Authority Monetary Obligations and Overall Authority Limitation of Liability*) (no rights to funds not in the Public Contribution Account).

ARTICLE 4.
APPROVED PROJECT CERTIFICATES

Section 4.01. Assignment; Process for Assignment or Sale of Approved Project Certificates

(a) Developer

(i) Pursuant to the terms of the Project Agreement, Developer may (directly or indirectly) assign, pledge, sell, or otherwise transfer, as applicable, all of its right, title and interest in the Approved Project Certificates or the Breakage Costs, or both, to the Lender Agent, Lenders, or other swap or hedge counterparty, to the extent not payable directly to the same.

(ii) Upon the first assignment, pledge, sale, or transfer by Developer to a particular assignee or transferee, Developer shall promptly provide Authority with written notice of such assignment, pledge, sale, or transfer.

(b) Lender Agent, Lenders

(i) Subject to clause (iii) below, upon receipt by Lender Agent or a Lender of an interest in an Approved Project Certificate (or right to Breakage Costs) pursuant to the terms, and subject to the conditions, of the Developer Financing Agreements, Lender Agent (or such Lender) may further assign, pledge, sell, or otherwise transfer, as applicable, the assigned, pledged, purchased, or transferred Approved Project Certificate or right to other Project Payments owed under such assigned, pledged, purchased, or transferred Approved Project Certificate (or right to Breakage Costs) to the Lender Agent or Lenders, as applicable.

(ii) Upon the first permitted assignment, pledge, or sale by Lender Agent or Lender to a particular assignee or transferee, (A) if Lender Agent is the assignor, Lender Agent shall promptly provide Authority with written notice of such assignment, pledge, sale, or transfer, or (B) if a Lender is the assignor, Lender Agent shall cause the Lender promptly to provide Lender Agent and Authority with written notice of such assignment, pledge, sale or transfer.

(iii) Notwithstanding the foregoing, a Lender that has purchased or been pledged the right to receive Project Payments owed under an Approved Project Certificate (or right to Breakage Costs) may only resell such Approved Project Certificate (or right to Breakage Costs) to another Person who meets the definition of Lender under the Project Agreement.

(c) Upon the first assignment, pledge or sale to a particular assignee or transferee, Lender Agent shall cause the assignee Lender to provide Authority with a true, complete, and correct (in all material respects) State Accounting Office Supplier (Vendor) Management Form, at least 10 Business Days prior to the presentation of the first Approved Project Certificate for which Lender Agent seeks payment. Lender Agent may afford the Lender assignee the option to provide the foregoing State Accounting Office Supplier (Vendor) Management Form to Developer such that Developer provides it in turn to Authority, in which case, if elected, Lender Agent shall cause the Lender assignee to provide Developer the foregoing form at such time as Developer may provide the same to Authority (and Developer shall so provide such form) at least 10 Business Days prior to the presentation of the first Approved Project Certificate for which the Lender assignee seeks payment. For the avoidance of doubt, only one State Accounting Office Supplier (Vendor) Management Form needs to be provided by each Lender Agent, Lender or assignee with regard to all Approved Project Certificates held by, or pledged to, Lender Agent or such Lender or assignee, as applicable.

(d) The Parties to this Agreement acknowledge and agree that:

(i) receipt by Authority of a true, complete, and correct (in all material respects) State Accounting Office Supplier (Vendor) Management Form is a condition to any Authority obligation to pay any amount under an assigned Approved Project Certificate, provided that, for clarity, only one State Accounting Office Supplier (Vendor) Management Form need be provided to the Authority with regard to all Approved Project Certificates held by the Lender Agent or any such Lender or assignee;

(ii) once such State Accounting Office Supplier (Vendor) Management Form is received by Authority, and in accordance with the provisions of Section 5 of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), Authority shall have at least 10 Business Days to pay under any Approved Project Certificate(s) presented by any such permitted assignee/holder; and

(iii) any assignment, pledge, or sale (or subsequent assignment, pledge, or sale) shall note, on the operative instrument, the obligation to provide Authority with a true, complete, and correct (in all material respects) State Accounting Office Supplier (Vendor) Management Form, at least 10 Business Days prior to the presentation of the first Approved Project Certificate for which any such assignee seeks payment, orienting the assignee to the weblink at which the State Accounting Office Supplier (Vendor) Management Form may be found (i.e., https://sao.georgia.gov/teamworks/financials/vendor-payment-management, as may be updated from time to time).

Section 4.02. Amendments to Approved Project Certificates

No modification or amendment to an Approved Project Certificate that has been assigned, pledged or sold shall be effective without the prior written consent of the Lender Agent and Authority, or if held by a Lender or assignee, such Lender or assignee, as applicable.

ARTICLE 5.
NO SET-OFF

Subject to the following sentence, Authority will not, for any reason, prevent the payment of, setoff, deduct, dilute, reduce, or withhold from or against any amounts due or to become due by Authority (a) under an Approved Project Certificate, or (b) with respect to Breakage Costs, if any, less Breakage Benefits, if any, owed, assigned, pledged, sold, or otherwise transferred by Developer, directly or indirectly and in a single or multiple steps or transactions, to any Lender or payable directly or indirectly to any Lender or any swap or other hedge counterparty. The Parties acknowledge that nothing in this Article 5 of PA Exhibit 3 limits the Authority's rights expressly set forth in the Authority's rights to prepay under PA Section 5.2.6 (*Project Payments*) and PA Exhibit 5, Section B (Terms for Termination Compensation and Prepayment).

ARTICLE 6.
[RESERVED]

ARTICLE 7.
LENDER AGENT ACKNOWLEDGEMENT

The Lender Agent acknowledges that neither Authority nor GDOT has any obligation to Developer or any Lender under the Developer Financing Agreements or to pay any amounts related to Developer Financing, other than the obligations of Authority with respect to Approved Project Certificates, Breakage Costs, if any, less Breakage Benefits, if any, in either case owed or assigned, directly or indirectly and in a single or multiple steps or transactions, to any Lender or otherwise payable directly or indirectly to any Lender or any swap or other hedge counterparty, any Termination Compensation calculated in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*), and any interest on late payments of the any approved Project Certificate and/or Termination Compensation at the Default Interest Rate, as and when obligated to do so under Section 3.02(b). The Lender Agent further acknowledges that the obligations of Authority under the Project Agreement and the Approved Project Certificates are to make payments to Developer, or its permitted direct or indirect assignees, in consideration of and as compensation for the Work performed. The Lender Agent further acknowledges that neither Authority nor GDOT has any obligation to any Lender or other swap or other hedge counterparty under the Project Agreement or this Agreement other than the obligation of Authority to make Project Payments unless and until, and only to the extent that Developer has assigned, sold, pledged, or transferred Approved Project Certificates, if any, or any Breakage Costs (less Breakage Benefits), if any, in either case, directly or indirectly and in a single or multiple steps or transactions, to the Lenders, and Termination Compensation, if applicable, except where such Breakage Cost (less Breakage Benefits), if any, and Termination Compensation, if applicable, are payable directly to any Lender or swap or other hedge counterparty under the terms of the Developer Financing Agreements.

ARTICLE 8.
TERMINATION OF THIS AGREEMENT

This Agreement shall remain in effect until the time at which all of the parties' respective obligations and liabilities under this Agreement, including with respect to Approved Project Certificates, Breakage Costs (less Breakage Benefits), and Termination Compensation payments, have expired, or in the

case of the Approved Project Certificates, Breakage Costs and Termination Compensation have been satisfied in accordance with the terms of hereof and (with respect to Approved Project Certificates, thereof).

ARTICLE 9.
REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations and Warranties of Lender Agent

The Lender Agent hereby represents as follows:

(a) The undersigned signatory for the Lender Agent is an officer of the Lender Agent and has full and complete authority to enter into this Agreement on behalf of the Lender Agent.

(b) The Lender Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement, including specifically full power, right and authority to act as agent for the Lenders in accordance with the terms of the Developer Financing Agreements, including as relates to Lender Agent's obligations to Developer and Authority under this Agreement. This representation is made for the purpose of inducing Authority and Developer to enter into this Agreement.

(c) This Agreement has been duly authorized, executed and delivered by the Lender Agent and constitutes the legal, valid and binding obligation of the Lender Agent, enforceable against the Lender Agent in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

Section 9.02. Representations and Warranties of Developer

Developer hereby represents as follows:

(a) The undersigned signatory for Developer is an officer of Developer and has full and complete authority to enter into this Agreement on behalf of Developer.

(b) Developer has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Project Agreement. This representation is made for the purpose of inducing Authority and the Lender Agent to enter into this Agreement.

(c) This Agreement and the Project Agreement have been duly authorized, executed and delivered by Developer and constitute legal, valid and binding obligations of Developer, enforceable against Developer in accordance with their terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(d) There exists no event or condition that would, with the giving of notice or passage of time or both, constitute a Default and that, to the best of its knowledge, no Default has occurred prior to the date hereof.

Section 9.03. Representations and Warranties of Authority

Authority hereby represents as follows:

(a) As of the date hereof, Authority has full power, right and authority to execute, deliver and perform this Agreement and to perform each and all of the obligations of Authority provided for herein. This representation is made for the purpose of inducing Developer and the Lender Agent to enter into this Agreement.

(b) As of the date hereof, this Agreement constitutes the legal, valid and binding obligation of Authority, enforceable against Authority in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(c) The execution and delivery by Authority of this Agreement and performance by Authority of its obligations hereunder will not conflict with any Laws applicable to Authority that are valid and in effect on the date hereof.

(d) As of the date hereof, there is no action, suit, proceeding, investigation or litigation pending and properly served on Authority, or, to Authority's knowledge, without obligation to investigate, threatened, which challenges Authority's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, and all other Project related documents to which Authority is a party.

(e) As of the date hereof, there has been no amendment, variation, modification or waiver of any terms of the Joint Resolution since its adoption.

(f) As of the date hereof, there has been no amendment, variation, modification or waiver of any terms of the Intergovernmental Agreement or the Estate for Years since its execution.

(g) Authority shall provide a Notice to Lender Agent of non-renewal of the MOU if, as of the date of termination, any Approved Project Certificate remains outstanding.

ARTICLE 10.
GENERAL PROVISIONS

Section 10.01. Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by each of the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any party of any right or remedy under this Agreement or law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 10.02. Disputes

(a) In the event of any dispute between Authority and the Lender Agent under this Agreement, the parties shall resolve the dispute according to the dispute resolution procedures set forth in the Project Agreement, with the Lender Agent having the same rights and obligations of Developer under the disputes resolution procedures set forth in PA Section 17.9 (*Dispute Resolution Procedures*).

(b) Nothing in Section 10.02(a) affects the Lender Agent's rights and remedies against Developer under the Developer Financing Agreements or the procedures available to the Lender Agent under law to exercise its security interests thereunder.

Section 10.03. Successors and Assigns

No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties hereto, provided, however, that (i) Authority may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in the Project Agreement, and (ii) Lender Agent may transfer its rights or obligations hereunder to another Lender Agent pursuant to the Developer Financing Agreements . In connection with any such assignment or transfer by the Lender Agent, Authority agrees to enter into a new direct agreement with the successor Lender Agent on terms that are substantially the same as those of this Agreement. In the event of any change in the identity of the Lender Agent, such change shall not be binding upon Authority unless and until Authority has received a written notice thereof signed by the replaced and substitute Lender Agent and setting forth the address of the substitute Lender Agent to which notices may be sent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 10.04. Severability

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 10.05. Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter, including, for avoidance of doubt, respecting any Approved Project Certificates.

Section 10.06. Notices and Communications

All notices, requests, demands, reports or other communications under this Agreement shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by facsimile or email communication followed by a "hard copy" and with receipt confirmed by telephone, as follows:

(a) All notices, correspondence and other communications to Developer shall be delivered to the address set forth in PA Section 22.11 (*Notices and other Formal Communications*), or otherwise designated by Developer in accordance with such PA Section 22.11 (*Notices and other Formal Communications*).

(b) All notices, correspondence and other communications to Authority will be marked as regarding the "I-285 / I-20 West Interchange Project" and shall be delivered to the address set forth in PA Section 22.11 (*Notices and other Formal Communications*), or otherwise designated by Developer in accordance with such PA Section 22.11 (*Notices and other Formal Communications*).

(c) All notices, correspondence and other communications to the Lender Agent shall be delivered to the following address, or to such other address as the Lender Agent may designate in writing to each other party hereto:

U.S. Bank Trust Company, National Association
U.S. Bank Global Corporate Trust Services
2 Concourse Parkway, NE, Suite 800
Atlanta, Georgia 30328-5588
Attention: Chelsey Jordan
Telephone: (404) 898-2458
Facsimile: (404) 898-8844

Notices, correspondence and other communications shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private courier, or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Eastern Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

Section 10.07. Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement shall not of itself give rise to an automatic right to terminate the Project Agreement.

Section 10.08. Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 10.09. Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

Section 10.10. No Partnership

Nothing contained in this Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 10.10.

Section 10.11. No Interference

Developer joins in this Agreement to acknowledge and consent to the arrangements set forth and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 10.12. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

Section 10.13. Choice of Forum, Etc.

All litigation between or among the parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the Superior Court of Fulton County, Georgia, which shall have exclusive jurisdiction and venue pursuant to O.C.G.A. § 50-21-1. Each party shall bear its own attorney's

fees and costs in any dispute or litigation arising out of or pertaining to this Agreement, and no party shall seek or accept an award of attorney's fees or costs.

[Signature page follows]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement, as of the date first above written.

LEGACY INFRASTRUCTURE CONTRACTORS, LLC, a Georgia limited liability company
as Developer

By:_____

Name:_____

Title:_____

STATE ROAD AND TOLLWAY AUTHORITY

By:_____

Name:_____

Title: Executive Director

Attested by:

By:_____

Name:_____

Title:_____

Attested by:

By:_____

Name:_____

Title:_____

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Lender Agent

By:_____

Name:_____

Title:_____

Attested by:

By:_____

Name:_____

Title:_____

Schedule A

Developer Financing Agreements

List of Developer Financing Agreements:

List of Security Documents:

EXHIBIT 4
PARCEL ACQUISITION TABLE

(State Proposed Right of Way)

Parcel No.	Parcel Grouping	Acquired Date	Parcel Availability Date (SPSA)	State Proposed/ State Acquired	State Proposed/ Developer Acquired
1	A		6/1/2025	X	
2	A		6/1/2025	X	
3	A		6/1/2025	X	
4	A		6/1/2025	X	
5	A		6/1/2025	X	
6	A		6/1/2025	X	
7A	A		6/1/2025	X	
8	A		6/1/2025	X	
9	A		6/1/2025	X	
10	A		6/1/2025	X	
11	A		6/1/2025	X	
12	A		6/1/2025	X	
13	A		6/1/2025	X	
14	A		6/1/2025	X	
14A	A		6/1/2025	X	
14B	A		6/1/2025	X	
15	A		6/1/2025	X	
16	A		6/1/2025	X	
17	A		6/1/2025	X	
18	A		6/1/2025	X	
19	A		6/1/2025	X	
20	A		6/1/2025	X	
21	A		6/1/2025	X	
22	A		6/1/2025	X	
23	A		6/1/2025	X	
24	A		6/1/2025	X	
25	A		6/1/2025	X	
26	A		6/1/2025	X	
27	A		6/1/2025	X	
28	A		6/1/2025	X	
29	A		6/1/2025	X	
30	A		6/1/2025	X	
31	A		6/1/2025	X	
32	A		6/1/2025	X	
33	A		6/1/2025	X	

Parcel No.	Parcel Grouping	Acquired Date	Parcel Availability Date (SPSA)	State Proposed/ State Acquired	State Proposed/ Developer Acquired
34	A		6/1/2025	X	
35	A		6/1/2025	X	
36	A		6/1/2025	X	
37	A		6/1/2025	X	
38	A		6/1/2025	X	
39	A		6/1/2025	X	
40	A		6/1/2025	X	
41	A		6/1/2025	X	
42	A		6/1/2025	X	
43	A		6/1/2025	X	
44	A		6/1/2025	X	
44A	A		6/1/2025	X	
44B	A		6/1/2025	X	
45	A		6/1/2025	X	
46	A		6/1/2025	X	
47	A		6/1/2025	X	
48	A		6/1/2025	X	
49	A		6/1/2025	X	
50	A		6/1/2025	X	
51	A		6/1/2025	X	
52	A		6/1/2025	X	
53	A		6/1/2025	X	
53A	A		6/1/2025	X	
54	A		6/1/2025	X	
55	A		6/1/2025	X	
56	A		6/1/2025	X	
57	A		6/1/2025	X	
58	A		6/1/2025	X	
58A	A		6/1/2025	X	
59	A		6/1/2025	X	
60	A		6/1/2025	X	
62	A		6/1/2025	X	
63	A		6/1/2025	X	
64	A		6/1/2025	X	
65	A		6/1/2025	X	
68	A		6/1/2025	X	
69	A		6/1/2025	X	
70	A		6/1/2025	X	
71	A		6/1/2025	X	

Parcel No.	Parcel Grouping	Acquired Date	Parcel Availability Date (SPSA)	State Proposed/ State Acquired	State Proposed/ Developer Acquired
72	A		6/1/2025	X	
73	A		6/1/2025	X	
74	A		6/1/2025	X	
75	A		6/1/2025	X	
76	A		6/1/2025	X	
77	A		6/1/2025	X	
78	A		6/1/2025	X	
79	A		6/1/2025	X	
80	A		6/1/2025	X	
81	A		6/1/2025	X	
82	A		6/1/2025	X	
83	A		6/1/2025	X	
84	A		6/1/2025	X	
85	A		6/1/2025	X	
86	A		6/1/2025	X	
87	A		6/1/2025	X	
88	A		6/1/2025	X	
89	A		6/1/2025	X	
90	A		6/1/2025	X	
91	A		6/1/2025	X	
92	A		6/1/2025	X	
93	A		6/1/2025	X	
94	A		6/1/2025	X	
95	A		6/1/2025	X	
96	A		6/1/2025	X	
105	A		6/1/2025	X	
106	A		6/1/2025	X	
107	A		6/1/2025	X	
108	A		6/1/2025	X	
109	A		6/1/2025	X	
110	A		6/1/2025	X	
111	A		6/1/2025	X	
112	A		6/1/2025	X	
113	A		6/1/2025	X	
114	A		6/1/2025	X	
115	A		6/1/2025	X	
116	A		6/1/2025	X	
117	A		6/1/2025	X	
118	A		6/1/2025	X	

Parcel No.	Parcel Grouping	Acquired Date	Parcel Availability Date (SPSA)	State Proposed/ State Acquired	State Proposed/ Developer Acquired
119	A		6/1/2025	X	
120	A		6/1/2025	X	
121	A		6/1/2025	X	
122	A		6/1/2025	X	
123	A		6/1/2025	X	
124	A		6/1/2025	X	
125	A		6/1/2025	X	
126	A		6/1/2025	X	
127	A		6/1/2025	X	
128	A		6/1/2025	X	
129	A		6/1/2025	X	
130	A		6/1/2025	X	
131	A		6/1/2025	X	
132	A		6/1/2025	X	
133	A		6/1/2025	X	
134	A		6/1/2025	X	
135	A		6/1/2025	X	
136	A		6/1/2025	X	
137	A		6/1/2025	X	
138	A		6/1/2025	X	
139	A		6/1/2025	X	
140	A		6/1/2025	X	

EXHIBIT 5
TERMS FOR TERMINATION COMPENSATION AND PREPAYMENT

A. Compensation on Termination for Convenience, Termination for Authority Default, or Termination for Suspension of Work

1. In the event of termination under PA Section 18.1 (*Termination for Convenience*), or PA Section 18.4 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*), any outstanding Approved Project Certificates will remain outstanding. Authority may elect to prepay its obligations with respect to Approved Project Certificates as specified in Section B below. For purposes of this PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*), Developer Financing shall not include Breakage Costs or Breakage Benefits.

2. In the event of termination under PA Section 18.1 (*Termination for Convenience*), or PA Section 18.4 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*), the Termination Compensation shall equal:

(i) the amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize under and to terminate Contracts between Developer and third parties or Affiliate Contractors for performance of Work, including to recover any reasonable nonrefundable deposits to Suppliers, but excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliate Contractors; plus

(ii) if termination occurs prior to the Final Acceptance Date, Developer's own reasonable and documented out-of-pocket costs including (without duplication) demobilization, work in progress not yet certified under an Approved Project Certificate and reasonable and documented costs for work done or to be done to carry out termination obligations pursuant to PA Article 18 (*Termination*) (the "Termination Holdback"); plus

(iii) Breakage Costs, if any; minus

(iv) Breakage Benefits, if any; minus

(v) the sum of (i) the greater of

(A) the proceeds received from insurance (including casualty insurance and business interruption insurance, if obtained) that is required to be carried pursuant to PA Section 16.1 (*Insurance*) and provides coverage to pay, reimburse or provide for any of the costs and losses attributable to covered peril or insured loss (exclusive of payments on account of replacement Work performed and to be reimbursed under the builder's risk insurance coverage), and

(B) the proceeds received from insurance (including casualty insurance and business interruption insurance, if obtained) that is actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to PA Section 16.1 (*Insurance*), and that provides coverage to pay, reimburse or provide for any of the costs and losses attributable to any covered peril or insured loss (exclusive of payments on account of replacement Work performed and to be reimbursed under the builder's risk insurance coverage),

plus (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to PA Section 16.1.4.3 (*Insurance*); minus

(vi) the portion of any Compensation Amounts previously paid to (or charged against) Developer that compensated Developer for Work attributable to the period after the Early Termination Date, other than to the extent that such amounts have been committed or spent as work in progress not yet certified under an Approved Project Certificate; minus

(vii) An amount ("Over Allocated Financing Charges") equal to

(A) the present value at the Calculation Date of the outstanding Approved Project Certificates (assuming that Approved Project Certificates are paid on the Funding Availability Date up to the Maximum Available Public Funds in each Fiscal Year) calculated using the Certificate Discount Rate(s), plus

(B) Project Payments made to Developer prior to the Calculation Date, minus

(C) the Value Earned for Work performed up to the Calculation Date, plus the Developer Financing Amount that was modeled in the Financial Model in connection with the Value Earned for Work performed up to the Calculation Date.

The "Calculation Date" will be the Early Termination Date, except in the event of prepayment without termination under Section B.2 below, in which case it will be the date of prepayment. For avoidance of doubt, Over Allocated Financing Charges should be zero in the case of any termination occurring after the Final Certificate has been issued; plus

(viii) Except in instances of prepayment under Section B.2 below, such additional amount in respect of any Adjustment for Change in Financial Plan, above and beyond such amounts already included in Approved Project Certificates, as would be required in order for the Developer to have received, in aggregate, an amount equal to the Adjustment for Change in Financial Plan multiplied by the percentage value of Work completed as of the Calculation Date.

3. In the event of termination under PA Section 18.1 (*Termination for Convenience*), PA Section 18.4 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*) or PA Section 18.11 (*Termination by Court Ruling*), any such Termination Compensation shall be payable as follows:

(i) For Termination for Convenience

(A) Termination for Convenience shall be valid and effective on the date set forth in the Notice of Termination for Convenience, which date shall not be more than three months and no less than one month after the date the notice is delivered.

(B) In the event that the Termination Compensation is positive, Authority will deposit to the Designated Account(s), in immediately available funds, within 45 days after the Early Termination Date, the Termination Compensation due, less the Termination Holdback, subject to subsections (iv)-(v) below. For avoidance of doubt, the Termination Holdback shall in no way reduce or delay payment by Authority of any amount under Approved Project Certificates.

(ii) For Termination for Authority Default or Termination for Suspension of Work

(A) If the Project Agreement is terminated due to Developer's exercise of its right to terminate under PA Section 18.4 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*), termination shall be valid and effective on the date Notice of termination is delivered; and,

(B) subject to PA Sections 18.3.2 (*Compensation to Developer*) and 18.4.4 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*), in the event that the Termination Compensation is positive, Authority will deposit to the Designated Account(s), in immediately available funds, within 45 days after the Early Termination Date, the Termination Compensation due, less the Termination Holdback, subject to subsections (iv)-(v) below. For avoidance of doubt, the Termination Holdback shall in no way reduce or delay payment by Authority of any amount under Approved Project Certificates.

(iii) For Termination by Court Ruling

(A) Termination by Court Ruling shall be valid and effective on the date set forth in the Authority's Formal Communication of the Termination by Court Ruling. If the final court ruling is effective prior to Financial Close, then the termination of the Project Agreement shall be effective immediately upon delivery of such Formal Communication in accordance with PA Section 18.5 (*Termination for Failure to Achieve Financial Close*). If a final court ruling issued after Financial Close specifies a date on which the Project Agreement is terminated, the effective date of termination shall be the date set forth in the final court ruling. If a final court ruling issued after Financial Close does not specify the date on which the Project Agreement is terminated, then the Termination by Court Ruling shall be the date specified in the Authority's Formal Communication of the Court Ruling to Developer.

(B) In the event that the Termination Compensation calculated in accordance with Section F of PA Exhibit 5 is positive, Authority will deposit to the Designated Account(s) , in immediately available funds, within 45 days after the Early Termination Date, the Termination Compensation due, less the Termination Holdback, subject to subsections (iv)-(v) below. For avoidance of doubt, the Termination Holdback shall in no way reduce or delay payment by Authority of any amount under Approved Project Certificates.

(iv) Authority will deposit to the Designated Account(s) the Termination Holdback within 10 days after Developer completes all its post-termination obligations under PA Section 18.6 (*Termination Procedures and Duties*).

(v) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of PA Section 18.8 (*Liability after Termination; Final Release*) shall apply and Lenders and Lender Agent shall continue to have a pledge of and security interest in and to the Security Documents.

4. In the event that the Termination Compensation amount is negative, then Developer shall be liable to pay the amount to Authority within 45 days after delivery of Authority's Notice requiring payment.

B. Prepayment

1. Authority may elect to prepay its obligations with respect to Approved Project Certificates earlier than as scheduled in the Maximum Available Public Funds Schedule in Attachment 2 (*Project Payment Schedule*) of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) pursuant to the conditions set forth below. If Authority elects to make a prepayment with respect to any individual Approved Project Certificate, such Approved Project Certificate shall be prepaid in whole, but not in part. In the event that Authority elects to prepay its obligations with respect to Approved Project Certificates during the Construction Period, the Parties shall exercise good faith efforts to negotiate a mutually acceptable Supplemental Agreement, which shall provide for the funding mechanisms associated with any remaining Work.

2. In the event of prepayment pursuant to PA Section 5.2.6 (*Project Payments*), Authority in its discretion may elect to prepay its obligations with respect to Approved Project Certificates.

(i) Upon such election, Authority will deposit to the Designated Account(s):

(a) the outstanding Developer Financing incurred in connection with the financing of an outstanding Approved Project Certificate, calculated using the Certificate Discount Rate(s); plus

(b) Breakage Costs, if any; minus

(c) Breakage Benefits, if any.

(ii) Upon such election, Authority will additionally deposit to the Designated Account(s) an amount equal to the Adjustment for Change in Financial Plan, if any, that has not been realized as of the Calculation Date and will not be realized in the future.

Further, upon such election, the DBF Contract Sum shall be reduced by the Developer Financing Amount included in the DBF Contract Sum that has not yet been incurred by Developer as of the date of Authority's election hereunder, and will not be incurred in the future by Developer, due solely to Authority's election hereunder, as the Developer Financing Amount is calculated in accordance with the Financial Model, and, if applicable, Over Allocated Financing Charges calculated at the date of prepayment.

3. In the event of termination under PA Article 18 (*Termination*), Authority may elect to prepay its obligations with respect to Approved Project Certificates. Upon such election Authority will deposit to the Designated Account(s):

(i) the outstanding Developer Financing incurred in connection with an Approved Project Certificate, calculated using the Certificate Discount Rate(s); plus

(ii) Breakage Costs, if any; minus

(iii) Breakage Benefits, if any.

4. If Authority elects to prepay its obligations with respect to Approved Project Certificates, then upon receipt of all amounts due in connection with such prepayment, those Approved Project Certificates shall be delivered by the Lender Agent to Authority and cancelled by Authority as prepaid.

5. In the event that the deposit amount calculated in Sections B.2 or B.3 is negative, then Developer shall be liable to pay such amount to Authority within 45 days after delivery of Authority's Notice requiring payment.

C. Compensation on Termination for Failure to Achieve Financial Close

If Financial Close does not occur under the circumstances described in PA Section 18.5.1 (*Termination for Failure to Achieve Financial Close*) or PA Section 18.5.2 (*Termination for Failure to Achieve Financial Close*), and so long as Developer has duly completed, executed, and delivered to Authority, on or prior to the effective date of a termination under either PA Section 18.5.1 (*Termination for Failure to Achieve Financial Close*) or PA Section 18.5.2 (*Termination for Failure to Achieve Financial Close*) a "Transfer and Conveyance of Work Product Agreement" in the form of Form N to the ITP, then the Termination Compensation shall equal $3,350,000 to acquire rights with respect to Developer's Procurement Work Product (to include Procurement Work Product of Developer while Proposer) as of such date. No other termination compensation shall be, or shall be deemed to be, due and payable to any Developer-Related Entity on account of any failure to achieve Financial Close.

D. Compensation on Termination for Failure to Achieve NTP1 or NTP2

1. If the Project Agreement is terminated pursuant to PA Section 18.2 (*Failure to Achieve NTP1*), then Authority will deposit the following Termination Compensation to the Designated Account(s): (a) the documented, actual, reasonable Lender fees and external costs incurred by Developer in connection with Developer Financing between the Effective Date and the Early Termination Date, where external costs mean only those costs for the work necessary to achieve Financial Close for Developer Financing and that are payable for work or services performed by rating agencies, financial advisors, insurance advisors and legal counsel that are not members of Developer or are Developer's Contractors or Subcontractors, plus Breakage Costs minus Breakage Benefits, if any, as a result of such termination, plus (b) $3,350,000 to acquire rights with respect to Developer's Procurement Work Product (to include Procurement Work Product of Developer while Proposer) as of such date, so long as Developer has duly completed, executed, and delivered to Authority, on or prior to the effective date of a termination under either PA Section 18.5.1 (*Termination for Failure to Achieve Financial Close*) or PA Section 18.5.2 (*Termination for Failure to Achieve Financial Close*) a "Transfer and Conveyance of Work Product Agreement" in the form of Form N to the ITP.

2. If the Project Agreement is terminated pursuant to PA Section 18.4.3 (*Termination for Authority Default, Suspension of Work or Materially Delayed NTP2*), then the Termination Compensation will be calculated in accordance with Section A.2 above.

3. In the event that the Termination Compensation is positive, Authority will deposit to the Designated Account(s), in immediately available funds, within 45 days after the Early Termination Date, the Termination Compensation due. In the event that the Termination Compensation amount is negative, then Developer shall be liable to pay such amount to Authority within 15 days after delivery of Authority's Notice requiring payment.

E. Compensation on Termination for Developer Default

1. In the event of termination under PA Section 18.3 (*Termination for Developer Default*), Authority will deposit to the Designated Account(s) any amounts owed under outstanding Approved Project Certificates on the payment dates set forth in PA Exhibit 7 (*DBF Contract Sum and Payment Terms*). Authority will also pay for Developer's reasonable and documented costs for Work in progress that had not yet been certified under an Approved Project Certificate. Authority may elect to prepay its obligations with respect to Approved Project Certificates per Section B.3 above. Authority will also pay Breakage Costs, if any, payable as a result of such termination minus the Breakage Benefits, if any, receivable as a result of such termination. Developer shall be liable to pay to Authority (a) Liquidated Damages, Nonrefundable Deductions, and Lane Closure Deductions, in each case owed to Authority, (b) Over Allocated Financing Charges and (c) reimbursement of all costs and expenses in excess of the DBF Contract Sum reasonably

incurred or expected to be incurred by Authority or any Person acting on Authority's behalf in completing and financing the Work or having the Work completed and/or financed by another Person, including remediating any Nonconforming Work, procurement costs, throw away costs for unused portions of the completed Work, and costs associated with arranging financing.

2. Except as set forth in Section E.1, in no event shall Developer be entitled to Termination Compensation for any direct costs, including demobilization.

3. Amounts owed to Authority by Developer are a separate obligation that does not offset amounts owed by Authority under Approved Project Certificates or for work in progress not yet certified under an Approved Project Certificate.

F. Compensation on Termination by Court Ruling

1. If the Project Agreement is terminated under PA Section 18.11 (*Termination by Court Ruling*), then such termination shall be treated as follows:

(i) If such termination occurs after the Effective Date but prior to Financial Close, then the Termination Compensation will be calculated in accordance with Section C.

(ii) If such termination occurs after Financial Close but prior to NTP1, then the Termination Compensation will be calculated in accordance with Section D.1.

(iii) If such termination occurs after NTP1, then the Termination Compensation will be calculated in accordance with Section A.2 above.

G. Outstanding Amounts or Demands of Authority Against Developer

1. Notwithstanding anything to the contrary herein, Termination Compensation shall include and be adjusted on account of any outstanding amount or demand by Authority for payment of money or damages from Developer to Authority that is independent of the event of termination. The Parties shall adjust the Termination Compensation by the amount of the unpaid award, if any, on any such amount or demand. Offset rights retained by Authority under this Section G shall not apply to amounts outstanding under Approved Project Certificates or Breakage Costs (less Breakage Benefits), if any, payable by Authority under this PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*).

2. At Authority's sole election, it may hold back from payment of the Termination Compensation the amount owing by Developer to Authority not resolved prior to payment. Authority will provide Notice to Developer of any such election, the reason for the withholding, and the amount being held back, prior to or concurrently with tendering payment of the Termination Compensation. For clarity, the Authority shall not hold back with regard to any amount payable with respect to Approved Project Certificates or Breakage Costs (less Breakage Benefits).

3. If as of the date Authority tenders payment under this PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*), the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) Authority will pay Developer the undisputed portion of the Termination Compensation, if any;

(ii) within 30 days after dispatch of such payment, Developer shall deliver to Authority Notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) if finally settled, ordered, or adjudged, and only to the extent of such settlement, order, or judgment, Authority will pay Developer the determined amount of disputed portion within 30 days after the settlement, final order or final judgment, together with interest thereon at the Default Interest Rate from the later of the two dates set forth in Section A.4 above until paid; and

(iv) failure by Authority to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

4. If it is determined by settlement or final judgment that the Termination Compensation due from Authority is less than the payment previously made by Authority, then within 30 days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at the Default Interest Rate from the date of overpayment until the date of reimbursement.

H. Applicable Terms Relating to Any Termination

Developer and Lenders shall mitigate Breakage Costs to the extent commercially reasonable under the circumstances. All Breakage Costs and Breakage Benefits shall be supported by documentation reasonably satisfactory to Authority provided by Developer no later than 20 days after receipt by Authority or Developer of Notice of termination. Breakage Costs and Breakage Benefits for early termination of swaps or other hedging instruments (or other derivative facilities), as applicable, (other than associated costs and fees) will be deemed to be reasonable if Authority is able to verify that (i) the value of the swaps are marked to market consistent with the then current interest rates and/or (ii) the pricing of other hedging instruments (or derivative facilities) are marked to market at the then-current interest rates.

I. Termination Compensation Supplemental Agreement.

Authority shall remit any Termination Compensation due to Developer under this PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*) using a Termination Compensation-specific form of agreement ("Termination Compensation Supplemental Agreement").

EXHIBIT 6
PROJECT FINANCIAL PLAN

Part A

Provided by Developer in the Proposal pursuant to Section D.5 of Exhibit D to the ITP

Part B

[if applicable, the updated Financial Plan, pursuant to PA Section 4.2.8 (*Change in Financial Plan*)]

EXHIBIT 7
DBF CONTRACT SUM AND PAYMENT TERMS

Unless expressly stated otherwise, references to sections under this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) are internal to this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

1. **DBF Contract Sum**.

1.1 The Preliminary DBF Contract Sum is $1,248,980,537, as adjusted on the Financial Close Date to reflect the DBF Contract Sum at Financial Close in accordance with PA Section 4.2.7 (*Interest Rate Adjustments*) and PA Section 4.2.8 (*Change in Financial Plan*). The DBF Contract Sum may be adjusted from time to time in accordance with the Project Agreement.

1.2 For purposes of preparing, processing, and reviewing all Project Certificates, GDOT will serve as the representative and payment review and approval agent for Authority as provided in the Project Agreement. All draft and final Project Certificates, and all deliverables in connection therewith, shall be submitted to GDOT, with copies to Authority, and GDOT will provide approvals on behalf of Authority with respect to all such Project Certificates, and Authority will issue all Project Payments on account of the Work as and to the extent of funds legally available therefor in the Public Contribution Account. References herein to Authority's review and approval, shall mean review and approval by GDOT as payment review and approval agent for Authority pursuant to the Intergovernmental Agreement.

1.3 Project Payments owed by Authority to Developer pursuant to a Supplemental Agreement shall be paid in accordance with the Supplemental Agreement applicable to such Project Payments, and the remainder of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) shall not apply to such Project Payments unless otherwise agreed by the Parties in the applicable, executed Supplemental Agreement, it being understood and agreed that payment under a Supplemental Agreement shall be, or be deemed to be, due and owing no earlier than 10 Business Days after Authority receives the Supplemental Agreement and supporting documentation. If Supplemental Agreements are to be paid through Approved Project Certificates, then the Maximum Available Public Funds Schedule will be updated to reflect such means of payment.

2. **Baseline Schedule of Values; Invoicing Process (Draft Project Certificate)**.

2.1 Draft Project Certificate Package.

2.1.1 The draft Project Certificate shall be in the form included as Attachment 1 (*Form of Project Certificate*) to this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), with no additions or deletions other than those approved by Authority, with such supporting documents (the "Project Certificate Support Package"). Developer may present variations to the formats of the Project Certificate for Authority approval at least 15 Business Days prior to the submittal of the first draft Project Certificate. Once Authority has approved the varied format(s), the formats shall not change unless approved by Authority prior to submission to Authority. Developer shall obtain Authority's approval of the requirements for the supporting documents which are to be included with the Project Certificate within 15 Business Days after issuance of NTP1.

2.1.2 The draft Project Certificate package shall include one "hard copy" and one electronic copy of: (a) the draft Project Certificate Cover Sheet; (b) the draft Project Certificate; and (c) the Project Certificate Support Package, collectively for the period covered by the draft Project Certificate.

2.2 Timing.

2.2.1 Except as otherwise provided in Section 2.2.3 below, Developer shall submit a draft Project Certificate to GDOT at a maximum frequency of once every month. Once approved in accordance with Section 4, the Project Certificate serves as an invoice for Work performed in the preceding calendar month or other period as the Parties may agree, each a "Project Certificate Period."

2.2.2 Except as otherwise provided in Section 2.2.3 below, Developer shall submit each draft Project Certificate after submittal of the SOV Update and Project Schedule Update and no earlier than five Business Days following the end of the Project Certificate Period.

2.2.3 *Specific Timing Matters*

2.2.3.1 Following Commercial Close, and no later than 30 days prior to the target Financial Close Date, Developer may submit the first draft Project Certificate package, and State Accounting Office Supplier (Vendor) Management Form, for those items identified on rows E.1 and A.7 of the Proposal SOV (generally, the Financial Close Amount and Mobilization). The first draft Project Certificate shall be postdated to the Financial Close Date. A Project Certificate Support Package is not required for the first draft Project Certificate package, but evidence of costs incurred with respect to such items will be required for submission.

2.2.3.2 Authority shall ensure that GDOT provides feedback on the first draft Project Certificate within 10 Business Days of receipt of the first draft Project Certificate package. If GDOT concurs that the first draft Project Certificate complies with this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), then GDOT and Developer shall proceed in accordance with Section 4.1.2 of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

2.2.3.3 Following NTP1, Developer may submit a second draft Project Certificate package for any incurred amounts identified on row A.1 of the Proposal SOV (generally, the insurance and bonds). A Project Certificate Support Package is not required for the second draft Project Certificate, but evidence of costs incurred with respect to such items will be required for submission.

2.2.3.4 Subsequent draft Project Certificate packages shall not be submitted until the first Project Schedule Update to the accepted NTP1 Baseline Project Schedule and the first SOV Update to the accepted NTP1 Baseline Schedule of Values are submitted by Developer to Authority.

2.3 Project Certificate Amounts.

2.3.1 *Generally*.

2.3.1.1 Except as set forth in Section 2.2.3.1 and Section 2.2.3.3, the "Project Certificate Amount" for a given Project Certificate Period shall be calculated as follows: (a) Value Earned for General Work performed; *plus* (b) Value Earned for Independent Quality Firm Work; *plus* (c) the Value Earned for Design Work performed; *plus* (d) Value Earned for Construction Work performed; *plus* (e) Allocated Developer Financing Amount in accordance with Section 2.3.3; *plus* (f) Developer Related Expenses; *minus* (g)

Deductions in accordance with Section 2.4; *plus or minus* (h) other adjustments in accordance with the Project Agreement, in each case, for such period.

2.3.1.2 At no time may the sum of previously approved Project Certificate Amounts plus the amount of the current draft Project Certificate exceed an amount equal to the DBF Contract Sum, as adjusted under the Project Agreement (e.g., less cumulative Deductions and reflecting all other adjustments accumulated up to and including the current Project Certificate Period).

2.3.1.3 Project Certificates shall be based upon the Baseline Schedule of Values, and amounts determined shall be based upon calculations for Value Earned for Work performed Work that are made only by reference to the Baseline Schedule of Values.

2.3.3 *Allocated Developer Financing Amount, Financial Close Amount, Adjustment for Change in Financial Plan and Developer Related Expenses.*

2.3.3.1 Except for the Project Certificates described in Sections 2.2.3.1 and 2.2.3.3 of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) to the Project Agreement, each Project Certificate shall include an allocation of the Developer Financing Amount (the "Allocated Developer Financing Amount"). Such allocation shall be calculated as follows.

$$\text{Allocated Developer Financing Amount} = \left(\frac{A}{(B - C - D)}\right) * E$$

Where:

A	=	aggregate of Value Earned for General Work, Value Earned for Independent Quality Firm Work, Value Earned for Design Work and Value Earned for Construction Work performed during the Project Certificate Period;
B	=	the D&C Amount;
C	=	the amounts identified on row A.7 of the Proposal SOV that are included in the first Approved Project Certificate line 2(b); and
D	=	the amounts identified on row A.1 of the Proposal SOV that are included in the second Approved Project Certificate line 2(a); and
E	=	the amounts identified on row E-3 of the Baseline Schedule of Values.

2.4 Deductions

2.4.1 *Generally*

Subject to Developer's option to pay Deductions directly under Section 2.4.3, Deductions to a Project Certificate shall be made monthly based on performance during the Project Certificate Period. Each Project Certificate Support Package shall detail occurrences of Nonrefundable Deductions, Lane Closure Deductions, and Liquidated Damages in the Project Certificate Period. For avoidance of doubt, GDOT may apply full Deductions for each Project Certificate Period regardless as to whether Developer has Disputed any Deduction (or the amount of any Deduction). If the Dispute is resolved in whole or part in favor of Developer, then the amount so determined

will be included in the draft Project Certificate delivered for the next succeeding Project Certificate Period.

2.4.2 *Deduction Amount*

The amount of Deductions to a Project Certificate in a given month shall be calculated as follows: (a) total Nonrefundable Deductions for the month as identified in PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*); plus (b) total Monthly Lane Closure Deductions for the Project Certificate Period as identified in PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*); plus (c) total Liquidated Damages for the month as identified in Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

2.4.3 *Developer Option to Pay Directly*

Notwithstanding anything to the contrary in the DBF Documents, prior to GDOT making any Deduction to a Project Certificate, Developer shall have the option to pay directly to Authority the equivalent amount of any such Deduction. If GDOT determines that a Deduction is to be applied in accordance with Section 2.4.1, then during the Project Certificate Review Meeting for the applicable Project Certificate, Developer may elect to pay the amount of such Deduction directly to Authority. If Developer makes such election in writing in accordance with Section 4, such Deduction shall not be included in the applicable Project Certificate and upon payment of such amount by Developer, Authority shall have no further right to offset or deduct such amount from any future Project Certificate; *provided* that, if Developer has failed to make such payment by the delivery of the draft Project Certificate for the next succeeding Project Certificate Period, then the amount of such Deductions will be included in such succeeding Project Certificate and Developer shall not have the further right to elect to pay such Deductions.

3. **Project Certificate Review Meetings**.

Developer shall schedule and hold "Project Certificate Review Meetings" on a monthly basis for review, with GDOT, of the draft Project Certificate. Developer shall hold the Project Certificate Review Meeting no earlier than five Business Days following submission of the draft Project Certificate. The Project Certificate Review Meeting is intended to result in GDOT's approval of the draft Project Certificate, as adjusted for agreed Deductions and other changes. Developer shall present and review with Authority the Project Certificate package, including the SOV Update and SOV Line Item assignment data exhibit generated from the Project Schedule Update.

At a minimum, the meeting shall address and finalize the following:

- actual start dates, actual finish dates, percent completion (where relevant), and Value Earned for Work during the Project Certificate Period and for the Project to date;
- incorporation of all the effects of all approved Supplemental Agreements on the DBF Contract Sum; and
- the occurrence and amount of Deductions, any Material Indexation Adjustments, and other adjustments (including specifically any offsets made further to Authority's rights under PA Section 17.3.3.2 (*Damages; Offset*)) and the option for Developer to elect to pay such Deduction amounts directly instead of reducing the amount of the Project Certificate as permitted by Section 2.4.3 and PA Section 17.3.3.2 (*Damages; Offset*).

4. **Approval of Project Certificates.**

4.1 Procedure.

4.1.1 Within five Business Days after each Project Certificate Review Meeting, Developer shall submit to Authority the final Project Certificate package reflecting the GDOT-approved modifications and indicating in writing whether Developer has elected to pay any Deductions or other adjustments directly to Authority in lieu of reducing the applicable Project Certificate as permitted by Section 2.4.3 and PA Section 17.3.3.2 (*Damages; Offset*). No final Project Certificate will be reviewed or processed until GDOT receives a complete Project Certificate package in compliance with the requirements of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*). If the final Project Certificate submitted by Developer is consistent with GDOT-approved modifications to the draft Project Certificate package, then Authority shall cause GDOT to confirm its approval of the final Project Certificate within five Business Days after receipt from Developer.

4.1.2 Upon approval of the final Project Certificate by GDOT, GDOT and Developer shall sign, and number (sequentially), the final Project Certificate indicating that the Project Certificate has been approved (each, an "Approved Project Certificate").

4.2 Further Developer Prerogatives with respect to Approved Project Certificates.

4.2.1 Upon request by Developer, Authority may split the Approved Project Certificate into two or more (up to a maximum of four) Approved Project Certificates for the Project Certificate Period in an aggregate amount equal to the related Project Certificate Amount.

4.2.2 Refer to PA Section 4.2 (*Developer Right and Responsibility to Finance; Developer Financing Constraints*), PA Section 4.5 (*Limitations and Requirements for Developer Financing and Developer Financing Agreements*), and PA Section 5.2.4 (*Project Payments*) for rights and obligations of Developer relating to any sale, assignment, or pledge of any of its rights, title and interest in and to any related Project Certificate Amounts owed under a single Approved Project Certificate.

5. **Payment of Amounts Under Approved Project Certificates**.

5.1 The Lender Agent or Developer, as applicable, (or any permitted assignee of either) may present Approved Project Certificates to Authority for payment in the amounts certified under each such Approved Project Certificate, it being understood that Authority's total payment of Approved Project Certificates in a Fiscal Year shall not exceed the Cumulative Maximum Available Public Funds in the Maximum Available Public Funds Schedule for such Fiscal Year. Any excess amount of such Approved Project Certificates shall be paid in the next Fiscal Year in which there are Maximum Available Public Funds available for payment in accordance with the Maximum Available Public Funds Schedule and in accordance with Section 5.7. Approved Project Certificates may be submitted for payment once every Fiscal Year, no earlier than 10 Business Days prior to the Funding Availability Date, unless the amount of the Cumulative Maximum Available Public Funds specified in the Maximum Available Public Funds Schedule for that Fiscal Year has not been paid out with respect to all Approved Project Certificates submitted by the Funding Availability Date, in which case Approved Project Certificates may be submitted at any time following GDOT's and Developer's execution of the Approved Project Certificate pursuant to Section 4.1.2 (*Approval of Project Certificates*) until the total funds paid out equals the Cumulative Maximum Available Public Funds specified in the Maximum Available Public Funds Schedule for that Fiscal Year. The Person presenting Approved Project Certificate(s) to Authority for payment must also present at the same time a completed Summary of Approved Project Certificate Payment Details, in the

form included in Attachment 3 to this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*). For the avoidance of doubt, Approved Project Certificates submitted but not fully paid in a Fiscal Year need not be resubmitted for payment of any excess unpaid amounts remaining in the next Fiscal Year in which there are funds available for payment pursuant to Section 5.4 and Section 5.7 of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

5.2 The Lender Agent or Developer, as applicable, (or any such assignee) must present Approved Project Certificates in sequential order by Approved Project Certificate number (e.g., Approved Project Certificate number 1 must be presented for payment before Approved Project Certificate number 2, and so forth). Authority may, in its sole discretion, refuse to pay any amount under any Approved Project Certificates submitted for payment out of order until the Lender Agent or the Developer, as applicable, has corrected its submission.

5.3 The Lender Agent or Developer, as applicable, may present Approved Project Certificates (with accompanying documents described in Section 5.1 above) by delivering a hardcopy to Authority or by sending electronically (via the PMCS) such Approved Project Certificate followed up by a hardcopy on the next Business Day.

5.4 The funds allocated for a given Fiscal Year under the Maximum Available Public Funds Schedule will be available to Authority on the Funding Availability Date in that Fiscal Year. Subject to the constraints in the foregoing Sections 5.1, 5.2 and 5.3 of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), Authority will pay any amounts certified under each Approved Project Certificate meeting the requirements described in the foregoing Sections 5.1, 5.2 and 5.3 of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) as follows: (a) all Approved Project Certificates submitted where Cumulative Maximum Available Public Funds are available as specified in the Maximum Available Public Funds Schedule for that Fiscal Year will be paid within 10 Business Days of receipt thereof, however (b) if such Approved Project Certificate is submitted for payment 10 Business Days prior to the Funding Availability Date, payment will be made on the Funding Availability Date. Any excess amounts of such Approved Project Certificates will be paid on future Funding Availability Dates in accordance with Section 5.7, into Designated Account(s) in accordance with the provisions set forth in this Section 5.

5.5 Payment.

5.5.1 The Maximum Available Public Funds Schedule in Attachment 2 (*Project Payment Schedule*) to this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) sets forth the maximum value of Approved Project Certificates that may be paid each Fiscal Year.

5.5.2 If the Lender Agent or Developer, as applicable, has presented Approved Project Certificates in a total amount less than the amounts set forth in the Maximum Available Public Funds Schedule for the Fiscal Year, taking into account Approved Project Certificates already presented for payment during the same Fiscal Year, then the remaining amounts shall be available in the following Fiscal Year.

5.5.3 If Lender Agent or Developer, as applicable, has presented Approved Project Certificates in a total amount greater than the amounts set forth in the Maximum Available Public Funds Schedule for the Fiscal Year, taking into account Approved Project Certificates already presented for payment during the same Fiscal Year, then Authority shall proceed according to Section 5.7.

5.6 Restrictions on Payment. Once Authority has paid the Lender Agent or Developer, as applicable, amounts owed under an Approved Project Certificate, the Lender Agent or Developer, as

applicable, shall not be allowed to resubmit the same Approved Project Certificate for payment to Authority.

5.7 In the event that the amount of an Approved Project Certificate or a combination of Approved Project Certificates presented for payment exceeds the Maximum Available Public Funds Remaining for the then current Fiscal Year, then Authority will pay the Maximum Available Public Funds Remaining on such date. Authority will pay the remaining amounts due on such Approved Project Certificate on the next Funding Availability Date(s) in accordance with the Maximum Available Public Funds Schedule without further action by the Developer, Lenders, or Lender Agent prior to making payments on Approved Project Certificates submitted on a later date. Nothing in this Section 5.7 shall be taken to imply that Authority is entitled to amend the Public Funds Amount or the Maximum Available Public Funds Remaining that are available on any particular date.

6. No Waiver

No payments made shall be construed as an acceptance by or on behalf of Authority of any Nonconforming Work or improper materials nor shall any such payments be conclusive evidence of the performance of this Project Agreement.

7. Disputes

If Authority and Developer disagree as to the amount identified on the draft or final Project Certificate, or other matters relating to the procedure outlined in this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*), then such Disputes shall be resolved pursuant to the Dispute Resolution Procedures. If any such Dispute is resolved such that Authority is determined to have owed an amount on a final Project Certificate as of a specific date, then Developer shall be entitled to interest on such amount from such specific date to the effective date of the resolution of such Dispute at the Default Interest Rate.

8. Errors

Without limiting PA Section 17.3.3 (*Damages; Offset*), if any calculations certified in any Project Certificate as true and correct as of the date thereof are thereafter determined to be inaccurate or otherwise incorrect, then corrections of such inaccuracies shall be accounted for in subsequent Project Certificate processes under Sections 2 to 4 of this PA Exhibit 7 (*DBF Contract Sum and Payment Terms*). In no event, however, will any such inaccuracies be used to reduce the amount payable under an Approved Project Certificate.

ATTACHMENT 1 to EXHIBIT 7

FORM OF PROJECT CERTIFICATE

I-285 / I-20 West Interchange Project

Authority Contract No.: P.I. No. 0013918

Project Certificate Number and Project Certificate Period: #___, _____, 20__ through _____, 20__

Total Project Certificate Amounts for this Project Certificate Period must equal the amount reflected on Line 2(f) below.

PROJECT CERTIFICATE COVER SHEET

Use the following table for the Project Certificates referenced in Exhibit 7, Section 2.2.3.1 and Section 2.2.3.3. Delete the table if not in use.

DBF Contract Sum and Payment Summary			
1(a)	Financial Close DBF Contract Sum	$[_____]	
1(b)	Aggregate adjustments to Financial Close DBF Contract Sum for approved Supplemental Agreements	$[_____]	
1(c)	Aggregate adjustments to Financial Close DBF Contract Sum, if applicable, for Refinancing and prepayments	$[_____]	
1(d)	DBF Contract Sum *(Line 1(a) plus Line 1(b) less Line 1(c))*		$[_____]
1(e)	Aggregate of prior Approved Project Certificates adjusted, if applicable, for Refinancings and prepayments	($[_____])	
1(f)	Aggregate of prior Deductions (except Deductions for which Developer has paid directly in accordance with the Project Agreement) and other adjustments (prior holdbacks, withholdings, charge backs, reimbursements or offsets) under the Project Agreement	($[_____])	
1(g)	Net outstanding balance of DBF Contract Sum before this Project Certificate Period *(Line 1(d) less Line 1(e) and less Line 1(f))*		$[_____]
Summary for Project Certificate Period			
2(a)	Insurance & Bonds	$[_____]	
2(b)	Mobilization	$[_____]	
2(c)	Financial Close Amount	$[_____]	
2(d)	Supplemental Agreements or Refinancing gainshare (enumerated)	$[_____]	
2(e)	Deductions (enumerated by Liquidated Damages, Nonrefundable Deductions, Lane Closure Deductions allocated for the Project Certificate Period) and other adjustments (prior holdbacks, withholdings, charge	$[_____]	

	backs, reimbursement, corrections, or offsets), but excluding any such amounts that Developer elected to pay directly in accordance with the Project Agreement		
2(f)	Project Certificate Amount equals *(Line 2(a) plus Line 2(b) plus Line 2(c) plus the net of (Line 2(d) minus Line 2(e)))*		$[_____]
2(g)	DBF Contract Sum amount for Project Certificate Period *Line 2(a) plus Line 2(b) plus Line 2(c) plus the net of Line 2(d)*		$[_____]
DBF Contract Sum Remaining			
3(a)	Net outstanding balance of DBF Contract Sum after this Project Certificate Period *(Line 1(g) less Line 2(g))*		$[_____]

Use the following table for all Project Certificates other than those referenced in Exhibit 7, Section 2.2.3.1 and Section 2.2.3.3. Delete the table if not in use.

DBF Contract Sum and Payment Summary			
1(a)	Financial Close DBF Contract Sum	$[_____]	
1(b)	Aggregate adjustments to Financial Close DBF Contract Sum for approved financed Supplemental Agreements	$[_____]	
1(c)	Aggregate adjustments to Financial Close DBF Contract Sum for approved non-financed Supplemental Agreements	$[_____]	
1(d)	Aggregate adjustments to Financial Close DBF Contract Sum, if applicable, for Refinancing and prepayments	$[_____]	
1(e)	DBF Contract Sum excluding non-financed portions *(Line 1(a) plus Line 1(b) less Line 1(d))*		$[_____]
1(f)	DBF Contract Sum *(Line 1(e) plus Line 1(c))*	($[_____])	
1(g)	Aggregate of prior Approved Project Certificates adjusted, if applicable, for Refinancing and prepayments	($[_____])	
1(h)	Aggregate of non-financed Supplemental Agreements amounts included in prior Project Certificates	($[_____])	
1(i)	Aggregate of prior Deductions (except Deductions for which Developer has paid directly in accordance with the Project Agreement), payments relating to prior approved Supplemental Agreements and other adjustments (prior holdbacks, withholdings, charge backs, reimbursements or offsets) under the Project Agreement	($[_____])	
1(j)	Net outstanding balance of DBF Contract Sum before this Project Certificate Period *(Line 1(f) less Line 1(g) less Line 1(h) and less Line 1(i))*		$[_____]
Summary for Project Certificate Period			

2(a)	Value Earned for General Work performed[1]	$[_____]	
2(b)	Value Earned for Independent Quality Firm Work performed[2]	$[_____]	
2(c)	Value Earned for Design Work performed[3]	$[_____]	
2(d)	Value Earned for Construction Work performed[4]	$[_____]	
2(e)	Developer Related Expenses	$[_____]	
2(f)	Allocated Developer Financing Amount	$[_____]	
2(g)	Supplemental Agreements or Refinancing gainshare (enumerated)[5]	$[_____]	
2(h)	Deductions for the Project Certificate Period (enumerated by Liquidated Damages, Nonrefundable Deductions, Lane Closure Deductions) and other adjustments (prior holdbacks, withholdings, charge backs, reimbursement, corrections, offsets or approved non-financed Supplemental Agreements), but excluding any such amounts that Developer elected to pay directly in accordance with the Project Agreement	$[_____]	
2(i)	Project Certificate Amount equals *(Line 2(a) plus Line 2(b) plus Line 2(c) plus Line 2(d) plus Line 2(e) plus Line 2(f) plus the net of Line 2(g) minus Line 2(h)*		$[_____]
2(j)	DBF Contract Sum amount for Project Certificate Period *Line 2(a) plus Line 2(b) plus Line 2(c) plus Line 2(d) plus Line 2(e) plus Line 2(f) plus the net of Line 2(g)*		$[_____]
DBF Contract Sum Remaining			
3(a)	Net outstanding balance of DBF Contract Sum after this Project Certificate Period *(Line 1(j) less Line 2(j))*		$[_____]

Submitted by:

[_____]

By: _____
Name: _____
Title: _____

Date: _____

Approved by:

GEORGIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

Date: _____

[1] Work performed under Supplemental Agreements that are not intended to be paid pursuant to Approved Project Certificates is included in Lines 2(a), 2(b), 2(c), 2(d), 2(g) and deducted in Line 2(h). This is solely for purposes of accounting for the DBF Contract Sum, as adjusted, and not for purposes of incorporating the value within the Project Certificate. If a Supplemental Agreements requires that it be paid pursuant to an Approved Project Certificate, such amounts will be included in the relevant Project Certificates in accordance with the applicable Supplemental Agreement.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

APPROVAL OF PROJECT CERTIFICATE

Authority and Developer hereby confirm that Project Certificate No. [XXXX] has been approved and that the Value Earned for Work performed, the Allocated Developer Financing Amount, Developer Related Expenses, Deductions and other adjustments applicable to this Project Certificate have been calculated according to the terms of Agreement resulting in the Project Certificate Amount.[6]

LEGACY INFRASTRUCTURE CONTRACTORS, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____

GEORGIA DEPARTMENT OF TRANSPORTATION
as representative and payment review and approval agent for the Georgia State Road and Tollway Authority

By: _____
Name: _____
Title: _____

Date: _____

[6] Update at Financial Close to refer to actual financing documents as part of a Financial Close Supplement to PA

I-285 / I-20 West Interchange Project

Authority Contract No.: P.I. No. 0013918

Project Certificate No: [XXXX]

Project Certificate Period: _____, 20__ through _____, 20__

Date: [_____]

ASSIGNMENT OF
APPROVED PROJECT CERTIFICATE

FOR VALUE RECEIVED, Legacy Infrastructure Contractors, LLC ("Developer") hereby sells, assigns, pledges, and transfers to [LENDER AGENT]/[LENDER] (the ["Lender Agent"]/["Lender"]) all of the payments owed to it under this Approved Project Certificate pursuant to the terms of the Direct Agreement dated as of [_____] by and among Developer, the Lender Agent and Authority.

ASSIGNOR:

LEGACY INFRASTRUCTURE CONTRACTORS, LLC, a Georgia limited liability company By: _____
Name: _____
Title: _____

ASSIGNEE:

[LENDER AGENT]/[LENDER]

By: _____
Name: _____
Title: _____

Note: Assignees must provide (or cause to be provided to) Authority a true, complete, and correct (in all material respects) State Accounting Office Supplier (Vendor) Management Form, at least 20 Business Days prior to presenting an Approved Project Certificate for payments a condition to any Authority obligation to pay any amount under an assigned Approved Project Certificate, and once such State Accounting Office Supplier (Vendor) Management Form is received by Authority, and Authority shall have at least 10 Business Days to pay under any Approved Project Certificate(s) from the date presented by such permitted assignee/holder. The State Accounting Office Supplier (Vendor) Management Form may be found at the following weblink, as may be updated from time to time: https://sao.georgia.gov/teamworks/financials/vendor-payment-management.

DEVELOPER CERTIFICATE

In order to induce the State Road and Tollway Authority ("Authority") to make payment as requested by the Project Certificate, Developer hereby certifies, represents, and warrants to Authority, with respect to Project Certificate No(s).____ for the period from _____ to _____, as follows:

1. Unless otherwise indicated, capitalized terms used herein shall have the meanings set forth in that certain Design, Build and Finance Agreement between Authority and Developer (the "Project Agreement").

2. The Work associated with each SOV Line Item described in the exhibits and documents attached hereto has been completed to the level represented by this Project Certificate and has been fully performed in compliance in all material respects with the requirements of the DBF Documents; and the information contained in such exhibits and documents is true, complete, and correct in all material respects.

3. The amounts set forth in the Project Certificate allocated with respect to the Developer Financing are true and correct.

4. The amount specified in the Project Certificate has been computed in accordance with, and is due and payable under, the terms and conditions, has not been the subject of any previous Project Certificate (unless disputed or rejected for payment) and is not the subject of any pending Project Certificate from Developer.

5. No Developer Default has occurred and is continuing that has not been reported to Authority.

6. The representations and warranties of Developer set forth in the Project Agreement are true and correct as of the date of this Project Certificate.

7. All Governmental Approvals necessary for the Work that are Developer's obligation to obtain pursuant to the DBF Documents and to which this Project Certificate relates have been secured, except to the extent Authority and the issuing Governmental Entity have granted a written exception, and there exists no reason to believe that any future Governmental Approvals that are Developer's obligation to obtain pursuant to the DBF Documents for the Work cannot be secured.

8. Neither Developer nor the D&C Contractor, nor any Contractor is barred or suspended from providing goods or services to any local, state or federal agency. Except for any specific subcontractor or Supplier listed as barred or suspended in an attachment hereto, each Subcontractor for the Work has certified in its respective invoice to the D&C Contractor that it is not barred or suspended from providing goods or services to any local, state or federal agency, and to Developer's knowledge no Subcontractor has been so barred or suspended.

9. As of the date hereof, the D&C Contractor, and all Contractors and Subcontractors, together with all Utility Owners and other third parties engaged or retained by Developer or such Contractors for performance or supply of Work have been paid all amounts due under their respective contracts or purchase agreements (in each case, other than amounts to be paid pursuant to this Project Certificate, and in each case other than amounts in dispute, of which Developer has previously given Authority written notice setting forth in detail the amounts in dispute).

10. Prevailing wages have been paid to all employees of Developer, the D&C Contractor, and all Contractors and Subcontractors in accordance with the rates set forth in the Project Agreement.

11. Developer has not requested nor received any payments from Authority on account of any amount sought hereby.

12. Developer and the undersigned making the certifications in connection with the Project Certificate acknowledge that GDOT and Authority will rely on the certifications and information presented herein and represent and certify that the calculations as set forth in the Project Certificate are true and correct as of the date hereof. In no event, however, will any such inaccuracies, if later determined, be used to reduce the amount payable under this Approved Project Certificate.

13. Also attached hereto are:

(a) A certificate and release signed by the D&C Contractor, each other Contractor for Work, and each Subcontractor and Utility Owner or other third party engaged or retained for performance of Work or supply of related services, materials or equipment included in any preceding Project Certificate for which Developer received payment, certifying that it has received payment in full for such services, materials or equipment, except only for amounts in dispute, stating any amounts in dispute and waiving and releasing any and all claims or Liens, known or unknown, suspected or unsuspected, arising out of such services, materials or equipment against any person or property whatsoever, including Authority, GDOT, the State, the Project, any P&P Bond and any letters of credit; and

(b) An "Affidavit of Wages Paid" submitted by the D&C Contractor, each other Contractor, and each Subcontractor, certifying wages paid and compliance with applicable prevailing wage requirements.

LEGACY INFRASTRUCTURE CONTRACTORS, LLC, a Georgia limited liability company

By: _____
Name: _____
Title: _____

Date:

ATTACHMENT 2 TO EXHIBIT 7

PROJECT PAYMENT SCHEDULE

	COLUMN A	COLUMN B	COLUMN C
Fiscal Year	**Project Payment Amount**	**Maximum Available Public Funds Schedule[1]**	**Cumulative Maximum Available Public Funds[2]**
FY 2025	$97,201,601	$140,059,417	$140,059,417
FY 2026	$65,759,267	$22,901,451	$162,960,868
FY 2027	$197,033,280	$197,033,280	$359,994,148
FY 2028	$221,533,281	$221,533,281	$581,527,429
FY 2029	$213,998,324	$213,998,324	$795,525,753
FY 2030	$201,101,057	$201,101,057	$996,626,810
FY 2031	$203,368,018	$203,368,018	$1,199,994,828
FY 2032	$48,985,709	$207,833,334	$1,407,828,162

[1] As adjusted at Financial Close in accordance with PA Section 4.2.7 (*Interest Rate Adjustments*) and PA Section 4.2.8 (*Change in Financial Plan*).

[2] In the event the Best Value Proposer's DBF Contract Sum exceeds the Maximum Available Public Funds Schedule, SRTA shall update the Maximum Available Public Funds Schedule to total the Best Value Proposer's DBF Contract Sum, prior to Commercial Close. To the extent SRTA determines that additional funding will be made available earlier than FY 2033, SRTA and the Best Value Proposer may agree to such revised funding profile and the DBF Contract Sum shall be reduced to account for differences in the Developer Financing Amount.

ATTACHMENT 3 TO EXHIBIT 7

SUMMARY OF APPROVED PROJECT CERTIFICATE PAYMENT DETAILS

Row	Column A	Column B	Column C	Column D A
	Approved Project Certificate No.	**Amount Requested for Payment**	**Payee**	**Designated Account for Deposit**
1	*One Approved Project Certificate No. per row*			
2				
3				
4				
5				
6				
7				
8				

EXHIBIT 8
FEDERAL REQUIREMENTS

Exhibit Description	**No. of Pages**
Attachment 1 – Federal Requirements for Federal Aid Construction Facilities	4
Attachment 2 – Required Contract Provisions, Federal-Aid Construction Contracts - FHWA Form 1273	15
Attachment 3 – [Reserved]	N/A
Attachment 4 – Federal Prevailing Wage Rates	5
Attachment 5 – Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) (43 FR 14895)	8
Attachment 6 – Disadvantaged Business Enterprise Program - Criteria for Acceptability	8
Attachment 7 – Debarment and Suspension Certification	1
Attachment 8 – Certification Regarding Use of Contract Funds For Lobbying	1
Attachment 9 – Buy America Certificate of Compliance and Build America, Buy America Certificate of Compliance for Construction Materials	2

ATTACHMENT 1 TO EXHIBIT 8

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES

GENERAL. — The work herein proposed will be financed in whole or in part with federal funds, and therefore all of the statutes, rules and regulations promulgated by the federal government and applicable to work financed in whole or in part with federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA-1273," are included in this PA Exhibit 8 (*Federal Requirements*). Whenever in said required contract provisions references are made to:

(a) "contractor," "prime contractor," "bidder" or "prospective primary participant," such references shall be construed to mean Developer or its authorized representative and/or the D&C Contractor or its authorized representative, as may be appropriate under the circumstances;

(b) "contract" or "prime contract," such references shall be construed to mean the Project Agreement;

(c) "subcontractor," "supplier," "vendor," "prospective lower tier participant" or "lower tier subcontractor," such references shall be construed to mean, as appropriate, Contractors other than the D&C Contractor; and

(d) "department," "agency" or "department or agency entering into this transaction," such references shall be construed to mean GDOT, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "NONDISCRIMINATION," and Section VI, "SUBLETTING OR ASSIGNING THE CONTRACT," of the Form FHWA-1273 required contract provisions, Developer shall cause the contractor to comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the Proposal. No request for subletting or assigning any portion of the contract in excess of $10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by 23 U.S.C. § 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. § 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.

(a) Part 26, Title 49, Code of Federal Regulations applies to this Project. Pertinent sections of said Code are incorporated within other sections of the Project Agreement and any other Contract and the

GDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 C.F.R. Part 26. Each contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex, sexual orientation, or gender identity in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) withholding monthly progress payments;

(2) assessing sanctions;

(3) Liquidated Damages; and/or

(4) disqualifying the contractor from future bidding as non-responsible.

(b) In accordance with 49 C.F.R. § 26.29, all Project contractors: (a) must pay all subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made to such contractor; and (b) ensure prompt and full payment of retainage to all subcontractors within 30 days after such subcontractor's work is satisfactorily completed. The foregoing requirement must be included in any agreement for Project services between a Project prime contractor and a subcontractor.

(c) The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are attached.

WORK HOURS

Each project contractor and subcontractor party to a contract or subcontract covered by this Section V must comply in all respects with the requirements of 40 U.S.C. 3702 and 3704 as supplemented by 29 C.F.R. § 5. Each project contract or subcontract covered by this Section V must specifically incorporate the foregoing requirement.

CONVICT PRODUCED MATERIALS

(a) FHWA Federal-aid projects are subject to 23 C.F.R. § 635.417, convict produced materials.

(b) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

(a) Developer and its Contractors and Subcontractors shall allow GDOT, FHWA, and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and other records of Developer and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 C.F.R. § 200.333, Developer and its Contractors and Subcontractors shall retain all such books, documents, papers, and other records for three years from the date of submission of the final expenditure report made pursuant to any such contract. Notwithstanding the foregoing: (i) if

any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken; (ii) upon written notice from GDOT, FHWA, or the Comptroller General of the United States that any records must be retained beyond the 3-year period, such materials shall be retained until the Contractor or Subcontractor (as applicable) receives written notice from the party imposing such requirement that retention shall no longer be required; and (iii) records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(b) Developer agrees to include (and cause to be included) this section in each Contract and each Subcontract at each tier, without modification except as appropriate to identify the Contractor or Subcontractor who will be subject to its provisions.

RECOVERED MATERIALS

Developer and its contractors (at all tiers) shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding Fiscal Year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

CLEAN AIR/WATER

The following provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts:

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency.

CARGO PREFERENCE ACT

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction (46 CFR Part 381) (and Developer and Contractor shall insert the substance of the required provisions set forth in this section, in all applicable construction and procurement contracts and subcontracts).

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

(a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor).

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations[1] relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by GDOT or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to GDOT or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, GDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or

    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as GDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor

[1] The following statutory and regulatory cites are referred to herein as the "Acts" and "Regulations," respectively:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- 28 C.F.R. Part 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964).

becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request GDOT to enter into any litigation to protect the interests of GDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

ATTACHMENT 2 TO EXHIBIT 8

FHWA-1273

Revised October 23, 2023

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. Wage rates and fringe benefits. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. Frequently recurring classifications. (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii)The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii)The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov,* refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. Unfunded plans. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. Interest. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. Withholding requirements. The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) Signature. The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) Falsification. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) Length of certified payroll retention. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. Contracts, subcontracts, and related documents. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. Required disclosures and access (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) Sanctions for non-compliance with records and worker access requirements. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) Required information disclosures. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) Apprenticeship ratio. The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Reciprocity of ratios and wage rates. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. Withholding process. The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

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3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

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XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

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ATTACHMENT 3 TO EXHIBIT 8

[**RESERVED**]

ATTACHMENT 4 TO EXHIBIT 8

FEDERAL PREVAILING WAGE RATES

General Decision Number: GA20230247 01/05/2024

Superseded General Decision Number: GA20230247

State: Georgia

Construction Type: Highway

County: Fulton County in Georgia.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least $17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least $12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2024

SUGA2014-081 10/03/2016

	Rates	Fringes
CARPENTER, Includes Form Work	$ 15.74**	0.00
CEMENT MASON/CONCRETE FINISHER	$ 15.33**	0.00
FENCE ERECTOR	$ 16.54	0.00

HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine)	$ 13.25**	2.69
INSTALLER - GUARDRAIL	$ 14.95**	0.00
INSTALLER - SIGN	$ 13.03**	0.00
IRONWORKER, REINFORCING	$ 14.64**	0.00
IRONWORKER, STRUCTURAL	$ 15.12**	0.00
LABORER: Concrete Paving Joint Sealer	$ 17.66	0.00
LABORER: Grade Checker	$ 11.45**	0.00
LABORER: Mason Tender - Brick	$ 11.61**	0.00
LABORER: Mason Tender - Cement/Concrete	$12.32**	0.00
LABORER: Pipelayer	$ 12.34**	0.00
LABORER: Asphalt (Includes Distributor, Raker, Screed, Shoveler, and Spreader)	$ 13.87**	0.00
LABORER: Common or General, Includes Erosion Control	$ 11.21**	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 17.52	2.70
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.38**	0.00
OPERATOR: Broom/Sweeper	$ 14.83**	1.38
OPERATOR: Bulldozer	$15.68**	1.25
OPERATOR: Compactor	$ 14.64**	0.00
OPERATOR: Concrete Saw	$ 18.94	0.00
OPERATOR: Crane	$ 21.08	0.00
OPERATOR: Distributor	$ 16.69**	1.01
OPERATOR: Grader/Blade	$ 18.48	0.00
OPERATOR: Hydroseeder	$ 15.20**	0.00
OPERATOR: Loader	$ 13.64**	0.94
OPERATOR: Mechanic	$ 19.01	0.00
OPERATOR: Milling Machine Groundsman	$ 13.43**	1.24

OPERATOR: Milling Machine	$ 17.02**	2.39
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$17.03**	0.00
OPERATOR: Piledriver	$ 16.70**	0.00
OPERATOR: Roller	$ 13.32**	0.84
OPERATOR: Scraper	$ 12.64**	0.00
OPERATOR: Screed	$15.18**	1.66
OPERATOR: Shuttle Buggy	$ 14.06**	1.98
PAINTER: Spray	$ 23.30	0.00
TRAFFIC CONTROL: Flagger	$ 11.95**	0.00
TRAFFIC CONTROL: Laborer-Cones / Barricades/Barrels - Setter/Mover/Sweeper	$ 12.66	0.00
TRAFFIC SIGNALIZATION: Laborer	$ 14.00**	1.08
TRAFFIC SIGNALIZATION: Electrician	$24.72	5.26
TRUCK DRIVER: Dump Truck	$ 16.41**	0.00
TRUCK DRIVER: Flatbed Truck	$ 14.91**	1.07
TRUCK DRIVER: Hydroseeder Truck	$ 16.74**	0.00
TRUCK DRIVER: Lowboy Truck	$ 18.98	0.00
TRUCK DRIVER: Off the Road Truck	$ 12.38**	0.00
TRUCK DRIVER: Pickup Truck	$ 13.29**	0.00
TRUCK DRIVER: Water Truck	$ 13.23**	0.00
TRUCK DRIVER: Semi/Trailer Truck	$ 16.26**	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.20) or 13658 ($12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being

enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (iii)).

General Decision Number: GA20240234 01/05/2024

Superseded General Decision Number: GA20230234

State: Georgia

Construction Type: Highway

County: Cobb County in Georgia.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least $17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least $12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2024

SUGA2014-068 10/03/2016

	Rates	Fringes
CARPENTER, Includes Form Work	$ 15.56**	0.00
CEMENT MASON/CONCRETE FINISHER	$ 14.24**	1.56
FENCE ERECTOR	$ 16.54**	0.00
FORM WORKER	$16.45**	2.51

HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine)	$ 12.37 **	1.95
INSTALLER - GUARDRAIL	$ 14.58**	0.00
INSTALLER - SIGN	$ 12.61**	0.00
IRONWORKER, REINFORCING	$ 14.64**	0.00
IRONWORKER, STRUCTURAL	$ 15.12**	0.00
LABORER: Concrete Paving Joint Sealer	$ 17.66	0.00
LABORER: Grade Checker	$ 11.45**	0.00
LABORER: Mason Tender - Brick	$ 11.61**	0.00
LABORER: Mason Tender - Cement/Concrete	$11.90**	0.00
LABORER: Pipelayer	$ 12.80**	0.00
LABORER: Asphalt (Includes Distributor, Raker, Screed, Shoveler, and Spreader)	$ 13.42**	0.74
LABORER: Common or General, Includes Erosion Control	$ 11.06**	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 15.82**	1.62
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.38**	0.00
OPERATOR: Broom/Sweeper	$ 14.83**	1.38
OPERATOR: Bulldozer	$14.53**	0.81
OPERATOR: Compactor	$ 14.64**	0.00
OPERATOR: Concrete Saw	$ 18.68	0.00
OPERATOR: Crane	$ 21.38	3.32
OPERATOR: Distributor	$ 16.34**	1.78
OPERATOR: Grader/Blade	$ 18.42	5.04
OPERATOR: Hydroseeder	$ 15.20**	0.00
OPERATOR: Loader	$ 13.87**	0.93
OPERATOR: Mechanic	$ 18.72	0.00
OPERATOR: Milling Machine Groundsman	$ 13.43**	1.24

OPERATOR: Milling Machine	$14.34**	0.82
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$16.25**	2.59
OPERATOR: Piledriver	$ 16.70**	0.00
OPERATOR: Roller	$ 13.49**	0.77
OPERATOR: Scraper	$ 12.64**	0.00
OPERATOR: Screed	$14.17**	0.85
OPERATOR: Shuttle Buggy	$ 14.13**	1.58
PAINTER: Spray	$ 23.30	0.00
TRAFFIC CONTROL: Flagger	$ 11.54**	0.92
TRAFFIC CONTROL: Laborer-Cones / Barricades/Barrels - Setter/Mover/Sweeper	$13.81**	0.00
TRAFFIC SIGNALIZATION: Laborer	$ 13.58**	1.10
TRAFFIC SIGNALIZATION: Electrician	$22.40	4.63
TRUCK DRIVER: Dump Truck	$17.23	0.00
TRUCK DRIVER: Flatbed Truck	$ 14.91**	1.07
TRUCK DRIVER: Hydroseeder Truck	$ 16.74**	0.00
TRUCK DRIVER: Lowboy Truck	$ 18.98	0.00
TRUCK DRIVER: Off the Road Truck	$ 12.38**	0.00
TRUCK DRIVER: Pickup Truck	$ 13.29**	0.00
TRUCK DRIVER: Water Truck	$ 13.19**	1.46
TRUCK DRIVER: Semi/Trailer Truck	$ 16.26**	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.20) or 13658 ($12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being

enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union, which prevailed in the survey for this classification, which in this example would be Plumbers 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Division National Office Branch of Wage Surveys. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

ATTACHMENT 5 TO EXHIBIT 8

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246) (43 FR 14895)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 C.F.R. § 60–4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in

geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minorities and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minority and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the-openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Contract or Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. § 60–4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local

or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246) (43 FR 14895)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered areas, are as follows:

GOALS FOR FEMALE PARTICIPATION

APPENDIX A
(43 FR 19473)

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of $10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal of federally-assisted construction contract or subcontract. Area covered: Goals for Women apply nationwide.

Goals and timetables

Timetable		Goals (percent)
4-1-78	to 3-31-79	3.1
4-1-79	to 3-31-80	5.0
4-1-80	Until Further Notice	6.9

GOALS FOR
MINORITY PARTICIPATION

Appendix B-80

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of $10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing wok on a Federal, federally assisted or non-federally related project, contact or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4-5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the areas covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this appendix B-80.

FEDERAL REGISTER / VOL. 45, NO. 194 / FRIDAY, OCTOBER 3, 1980 / NOTICES

State	Goal (percent)
Georgia:	
035 Augusta, GA:	
SMSA Counties:	
0600 Augusta, GA-SC	27.2
GA Columbia; GA Richmond, SC Aiken;	
Non-SMSA Counties	32.-8
GA Burke; GA Emanuel; GA Glascock; GA Jefferson; GA Jenkins; GA Lincoln; GA McDuffie, GA Talleferro; GA Warren; GA Wilkes; SC Allendale; SC Bamburg; SC Barnwell; SC Edgefield; SC McCormick;	
036 Atlanta, GA:	
SMSA Counties:	
0520 Atlanta, GA	21.2
GA Butts; GA Cherokee; GA Clayton; GA Cobb; GA DeKalb; GA Douglas; GA Fayette, GA Forsyth; GA Fulton; GA Gwinnett; GA Henry; GA Newton; GA Paulding; GA Rockdale; GA Walton	
Non-SMSA Counties	19.5
GA Banks; GA Barrow; GA Bartow; GA Carroll; GA Clarke; GA Coweta; GA Dawson; GA Elbert; GA Fannin; GA Floyd; GA Franklin; GA Gilmer; GA Gordon; GA Greene; GA Habersham; GA Hall; GA Haralson; GA Hart; GA Heard; GA Jackson; GA Jasper; GA Lamar; GA Lampkin; GA Madison; GA Morgan; GA Oconee, GA Oglethorpe; GA Pickins, GA Pike; GA Polk; GA Rabun; GA Spalding; GA Stephens; GA Towns; GA; Union; GA Upson White	
037 Columbus, GA:	
SMSA Counties:	
1800 Columbus, GA – AL	29.6 Al
Russell; GA Chattahoochee; GA Columbus	

Non-SMSA Counties..... 31.6
Al Chambers; AJ Lee; GA Harris; GA Marion; GA Meriwether; GA Quitman; GA Schley; GA Stewart; GA Sumter; GA Talbot: GA Troup; GA Webster

038 Macon, GA:
SMSA Counties:
4680 Macon, GA 27.5
GA Bibb; GA Houston; GA Jones; GA Twiggs
Non-SMSA Counties..... 31.7
GA Baldwin; GA Bleckley; Crawford; GA Crisp; GA Dodge; GA Dooly; GA Hancock; GA Johnson; GA Laurens; GA Macon; GA Monroe; GA Peach; GA Pulaski; GA Putman; GA Taylor; GA Telfair; GA Treutlan; GA Washington; GA Wheeler; GA Wilcox; GA Wilkinson

039 Savannah, GA:
SMSA Counties:
7520 Savannah, GA.....30.6
GA Bryan; GA Chatham; GA Effingham

Non-SMSA Counties..... 29.8
GA Appling; GA Atkinson; GA Bacon, GA Bulloch; GA Candler; GA Coffee; GA Evans; GA Jeff Davis; GA Liberty; GA Long; GA McIntosh; GA Montgomery; GA Screven; GA Tattnall; GA Toombs; GA Wayne; SC Beaufort; SC Hampton; SC Jasper

040 Albany, GA:
SMSA Counties:
0120 Albany, GA..... 32.1
GA Dougherty; GA Lee

Non-SMSA Counties 31.1
GA Baker; GA Ben Hill; GA Berrien; GA Brooks; GA Calhoun; GA Clay; GA Clinch; GA Colquitt; GA Cook; GA Decatur; GA Early; GA Echols; GA Grady; GA Irwin; GA Lanier; GA Lowndes; GA Miller; GA Mitchell; GA Randolph; GA Seminole; GA Terrell; GA Thomas; GA Tift; GA Turner; GA Worth

Florida:
041 Jacksonville FL:
Non-SMSA Counties 22.2
GA Brantley; GA Camden; GA Charlton; GA Glynn; GA Pierce; GA Ware

ATTACHMENT 6 TO EXHIBIT 8

DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
CRITERIA FOR ACCEPTABILITY

The purpose of this special provision is to establish criteria for acceptability of DBE firms for work performed on this contract. The intent is to ensure all participation counted toward fulfillment of the DBE goals is (1) real and substantial, (2) actually performed by viable, independent DBE owned firms, and (3) in accordance with the spirit of the applicable laws and regulations.

The policy of the Georgia Department of Transportation is to ensure compliance with Title VI of the Civil Rights Act of 1964, 49 Code of Federal Regulations, Part 26 and related statutes and regulations in all program activities.

To this end the Georgia Department of Transportation shall not discriminate on the basis of race, color, sex or national origin in the award, administration and performance of any Georgia Department of Transportation assisted contract or in the administration of its Disadvantaged Business Enterprise Program. The Georgia Department of Transportation shall take all necessary and reasonable steps to ensure nondiscrimination.

The DBE Goal specified in the contract will be a percentage representing the DBE Race Conscious Participation. The Contractor will strive to achieve an additional percentage in his/her contracts for all projects during the course of the current State Fiscal Year, in order to meet the overall Georgia Department of Transportation DBE goal.

The DBE program applies to all Federal Aid projects regardless if a DBE Goal is established in the Contract or not. If no percentage goal is set forth in the proposal, the contractor may enter a proposed DBE participation. This voluntary DBE participation will count as race neutral DBE participation. Prime Contractor shall report race-neutral participation in accordance with the DBE Monthly Report requirements shown in this document.

Project DBE payments and commitments may not be transferred to or combined with another contract.

DEFINITIONS: For the purposes of this provision, the following definitions will apply; all other capitalized terms have the meaning ascribed in PA Exhibit 1 (*Acronyms, Abbreviations, and Definitions*):

Contract means the Project Agreement.

Contract amount means the D&C Amount.

Contractor and Prime Contractor means Developer.

Department means GDOT.

Disadvantaged Business Enterprises (DBE) are firms Certified by the Georgia Unified Certification program that are for-profit small business concerns:

(1) Which is at least 51 percent owned by one or more individuals who are both

socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.

Good Faith Efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Socially and Economically Disadvantaged Individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

(1) Any individual who the Department finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are reputably presumed to be socially and economically disadvantaged.

(i) "Black Americans," which includes persons having origins, in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation

becomes effective.

(3) GDOT will presume that such persons are socially and economically disadvantaged only to the extent permitted by applicable federal law.

Race-conscious measure is one focused specifically on assisting only DBEs, including women- owned DBEs.

Race-neutral measure is one being, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Joint Check is a two-party check written by a prime contractor, to a DBE firm and a regular dealer of material/supplies or another third party for items or services incorporated into a project. The prime contractor issues the check as payer to the DBE and the supplier jointly (to guarantee payment to the supplier) in payment for the material/supplies used by the DBE.

DBE DIRECTORY: A DBE directory or source list is available to facilitate identifying DBEs with capabilities relevant to general contracting requirements and to particular solicitations. The Department has made the directory electronically available to all bidders and proposers in their efforts to meet the DBE requirements. The directory or listing includes firms which the Department has certified to be eligible DBEs in accordance with 49 CFR Part 26.

GOAL FOR PARTICIPATION: If a percentage goal for DBE participation in this contract is set forth elsewhere in this proposal, the Contractor shall complete the DBE GOALS – Commitment List form included in the proposal.

The Contractor is encouraged to make every effort to achieve the goal set by the Department. However, if the Contractor cannot find sufficient DBE participants to meet the goal established by the Department, the Department may consider for award a proposal with less participation than the established goal in accordance with GDOT Standard Specification 102.07.H Failure to List Disadvantaged Business Enterprise (DBE) Participants, 49 Code of Federal Regulations 26.53 Good Faith Effort Procedures, and 49 CFR Appendix A to Part 26—Guidance Concerning Good Faith Efforts.

To be eligible for award of this contract, all bidders are required to submit the following information, as well as Good Faith Effort supporting documentation when applicable, to the Department by the close of business on the 3rd working day following opening of the bid as a matter of bidder responsibility:

i. The names and addresses of DBE firms committed to participate in the Contract.

ii. A description of the work each DBE will perform; The Contractor shall provide information with their bid showing that each DBE listed by the Contractor is certified in the NAICS code(s) for the kind of work the DBE will be performing.

iii. The dollar amount of participation for each DBE firm participating; Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.

iv. Written confirmation from the DBE committed to participating in the contract, as provided in the prime contractor's commitment.

v. If the contract goal is not met, evidence of good faith efforts must be provided.

Failure by a bidder to furnish the above information may subject the bid to disqualification. Also failure by the bidder to submit satisfactory evidence of good faith efforts may subject the bid to disqualification.

Award of a contract by the Department to a Prime Contractor who has listed DBE participants with the bid does not constitute final approval by the Department of the listed DBE. The Department reserves the right to approve or disapprove a disadvantaged firm after a review of the disadvantaged firm's proposal participation. Payment to the Contractor under the contract may be withheld until final approval of the listed DBEs is granted by the Department.

If the Contractor desires to substitute a DBE in lieu of those listed in the proposal, a letter of concurrence shall be required from the listed DBE prior to approval of the substitution, unless this requirement is waived by the Department.

Agreements between bidder and a DBE promising not to provide Subcontracting quotations to other bidders are prohibited.

SUBLETTING DISCRIMINATION PROHIBITED: No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of this contract on the grounds of race, color, sex or national origin.

The following assurance becomes a part of this contract and must be included in and made a part of each subcontract the prime contractor enters into with their subcontractors (49 CFR 26.13):

> "The contractor, and/or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT – assisted contracts. Failure by the contractor to carry out these requirements is (breach) of this contract which may result in the termination of this contract or such other remedy as the Department deems appropriate".

FAILURE TO ACHIEVE REQUIREMENTS: Periodic reviews shall be made by the Department to determine the extent of compliance with the requirements set forth in this provision. If the Contractor is found to be in noncompliance, further payments for any work performed may be withheld until corrective action is taken. If corrective action is not taken, it may result in termination of this contract. During the life of the contract, the contractor will be expected to demonstrate good faith efforts at goal attainment as provided by 49 CFR 26.

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Department's written consent to substitute and, unless the Department's consent is provided the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE, in accordance with 49 CFR 26.53.

Participation will be counted toward fulfillment of the DBE goal as follows:

(A) When a DBE participates in a contract, the Contractor counts only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of the portion of a construction contract (or other contract not covered by paragraph (A) (2) of this section) performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except

supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the Department determines the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(B) **Joint Venture:** When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract the DBE performs with own forces toward DBE goals.

(C) **Commercially Useful Function**: Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function (CUF) on that contract.

(1) A DBE performs a commercially useful function when responsible for execution of the work of the contract and carrying out responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

a. Joint Check Agreement: All two-party checks written by a prime contractor, to a DBE firm and a third party must be approved by the Department prior to claiming DBE credit. After-the-fact requests may not be permitted toward the Goal.

(2) A DBE does not perform a commercially useful function if their role is limited to being an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of their contract with their own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume the DBE is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (C) (3) of this section, the DBE may present evidence to rebut this presumption.

(5) The Department's decisions on commercially useful function matters are subject to review by the US DOT, but are not administratively appealable to the US DOT.

(D) **Trucking:** The following factors are to be used in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which they are responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner / operator who are certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provided on the contract.

(5) The DBE may also lease trucks from a non-DBE and is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(6) The DBE may lease trucks without drivers from a non-DBE bona-fide truck leasing agency. If the DBE leases trucks from a non-DBE truck leasing agency and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

(7) For purposes of this paragraph (D), a lease must indicate the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display a "leased to" sign with the name and identification number of the DBE.

(E) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) (i) If the materials or supplies are obtained from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. (ii) For purposes of this section, a regular dealer is a firm owning, operating, or

maintaining a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business engaging, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (E)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (E)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(4) You must determine the amount of credit awarded to a firm for the provision of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis. Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.

(5) No participation will be counted not in compliance with Special Provision entitled "Criteria for Acceptability" which is a part of this contract or with any provisions included in 49 CFR Part 26.

(6) If the contract amount overruns, the contractor will not be required to increase the dollar amount of DBE participation. Likewise, if the contract amount under runs, the contractor will not be allowed to under run the dollar amount of DBE participation except when the DBE subcontracted items themselves under run. Contractor must demonstrate Good Faith Effort in meeting the goal during commission of the contract.

REPORTS

A. The contractor shall submit a "Monthly DBE Participation Report" on this contract monthly which shall include the following:

1. The name of each DBE participating in the contract.

2. A description of the work to be performed, materials, supplies, and services provided by each DBE.

3. Whether each DBE is a supplier, subcontractor, owner/operator, or other.

4. The dollar value of each DBE subcontract or supply agreement.

5. The previous, current, and total-to-date payments to each DBE participating in the contract, minus any credits not allowed.

6. Must include Contractor's signature with the following statement: "I HEREBY CERTIFY THAT THE ABOVE STATEMENT IS TRUE AND CORRECT. SUPPORTING DOCUMENTATION IS ON FILE AND IS AVAILABLE FOR INSPECTION BY DEPARTMENT PERSONNEL AT ANY TIME. ALL PARTICIPATION COUNTED TOWARD FULFILLMENT OF THE DBE GOAL IS (1) REAL AND SUBSTANTIAL; (2) ACTUALLY PERFORMED BY VIABLE, INDEPENDENT DBE OWNED FIRMS; AND (3) IN ACCORDANCE WITH THE SPIRIT OF APPLICABLE LAWS AND REGULATIONS".

7. The report shall be updated by the Prime Contractor whenever the approved DBE has performed a portion of the work that has been designated for the contract. Copies of this report should be transmitted promptly to the Engineer. Failure to submit the report within 30 calendar days following the end of the month may cause payment to the contractor to be withheld.

8. The Prime Contractor shall notify Authority at least 24 hours prior to the time the DBE commences working on the project. The DBE must furnish supervision of the DBE portion of the work, and the person responsible for this supervision must report to Authority's Authorized Representative (or designee) when they begin work on the project. They must also inform Authority when their forces will be doing work on the project.

B. In order to comply with 49 CFR 26.11, the Prime Contractor shall submit documentation regarding all payments made from the Prime Contractor to all DBE subcontractors on federal aid projects in the form of copies of cancelled checks or bank electronic fund transfer (EFT) receipts which validate said payments made on the DBE Monthly Participation Reports. This information shall be required monthly and submitted with the DBE Monthly Participation Report.

C. Failure to respond within the time allowed in the request will be grounds for withholding all payments on all Contracts.

SUBSTITUTION OF DBEs: The Contractor shall make reasonable efforts to replace a DBE Subcontractor unable to perform work for any reason with another DBE. The Department shall approve all substitutions of Subcontractors in order to ensure the substitute firms are eligible DBEs.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the

original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

CERTIFICATION OF DBEs: To ensure the DBE Program benefits only firms owned and controlled by Disadvantaged Individuals, the Department shall certify the eligibility of DBEs and joint ventures involving DBEs named by bidders.

Questions concerning DBE Certification/Criteria should be directed to the EEO Office at (404) 631-1972.

ATTACHMENT 7 TO EXHIBIT 8

DEBARMENT AND SUSPENSION CERTIFICATION

[1.] [For Developer]: By executing the Project Agreement (with respect to Contractors, any Contract), Developer shall be deemed to have signed and delivered the following:

[1.] [For Contractors and Subcontractors]: By executing the [Contract]/[Subcontract], [Contractor]/[Subcontractor] shall be deemed to have signed and delivered the following:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private agreement or transaction; (ii) violation of federal or state antitrust statutes (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging); (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, or obstruction of justice; or (iv) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects its present responsibility;

c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1b of this certification;

d. have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default;

e. if a corporation, have not been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and

f. if a corporation, does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Where Developer, Contractor, or Subcontractor is unable to certify to any of the statements in this certification, such Person shall attach a certification to its proposal or bid, or shall submit it with the executed Project Agreement, Contract, or Subcontract, stating that it is unable to provide the certification and explaining the reasons for such inability.

[signature on following page]

[_____]*[Developer/Contractor/Subcontractor]*

By: _____

Name:

Title:

ATTACHMENT 8 TO EXHIBIT 8

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

[For Developer]: By executing the Project Agreement (with respect to Contractors, any Contract), Developer shall be deemed to have signed and delivered the following:

[For Contractors and Subcontractors]: By executing the [Contract]/[Subcontract], [Contractor]/[Subcontractor] shall be deemed to have signed and delivered the following:

1. The prospective Developer/Contractor certifies, to the best of its knowledge and belief, that:

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

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with THIS Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Project Agreement or Contract. If during the term of this contract there occurs any event that materially affects the accuracy of the information contained in any Standard Form-LLL declaration previously filed by the undersigned in connection with this contract, the undersigned shall complete and submit an updated Standard Form-LLL in accordance with its instructions no later than the end of the calendar quarter in which such event occurs.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who makes a prohibited expenditure or fails to file (or amend) the required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

3. Developer/Contractor shall require that the language of this certification be included in all lower tier Contracts which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, *et seq*., apply to this certification and disclosure, if any.

NOTE: DEVELOPER AND EACH CONTRACTOR (AND SUBCONTRACTOR) IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS OVER $100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM DEVELOPER AND EACH CONTRACTOR (AND SUBCONTRACTOR) BEING PAID $100,000 OR MORE.

ATTACHMENT 9 TO EXHIBIT 8

COMPLIANCE WITH BUY AMERICA AND BUILD AMERICA, BUY AMERICA REQUIREMENTS

Developer shall comply with the requirements of 23 U.S.C. § 313, as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021), and the federal regulations under 23 C.F.R. § 635.410, 2 C.F.R § 200.322(c) and 2 C.F.R. § 184.

23 C.F.R. § 635.410 permits federal financial assistance in the Project Agreement only if (a) all iron and steel used in the Project be produced in the United States (i.e., all manufacturing processes, from the initial melting stage through the application of coatings, to occur in the United States); (b) all manufactured products[1] used in the Project are produced in the United States (i.e., the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product[2], unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation); and (c) all construction materials[3] (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States (i.e., all manufacturing processes for the construction material occurred in the United States and satisfy the material-specific requirements set forth in 2 C.F.R. § 184.6); provided, however, that the following exceptions shall apply:[4]

(i) iron and steel where all manufacturing processes did not occur in the United States may be used so long as the cumulative cost of such construction materials as they are delivered to the Project does not exceed 0.1% of the total contract amount, or $2,500, whichever is greater;

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure Project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure Project, but are not an integral part of the structure or permanently affixed to the infrastructure Project.

Concurrently with execution, Developer has completed and submitted, or shall complete and submit, to GDOT a Buy America Certificate and a Build America, Buy America Certificate, each in the format below. After submittal, Developer is bound by its original certifications.

[1] "Manufactured products" is as defined in 2 C.F.R. § 184.3.

[2] To be calculated in accordance with 2 C.F.R. § 184.5.

[3] "Construction materials" is defined in 2 C.F.R. § 184.3 (as affected by section 70917(c)(1) of the Infrastructure Investment and Jobs Act).

[4] A waiver is currently in place for steel, iron, manufactured products, and construction materials in electric vehicle chargers manufactured prior to July 1, 2024 (see: FHWA "Waiver of Buy America Requirements for Electric Vehicle Chargers": https://www.federalregister.gov/documents/2023/02/21/2023-03498/waiver-of-buy-america-requirements-for-electric-vehicle-chargers).

A false certification is a criminal act in violation of 18 U.S.C. § 1001. Should the Project Agreement be investigated, Developer has the burden of proof to establish that it is in compliance.

At Developer's request, GDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist pursuant to 23 C.F.R. § 635.410(c), as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021). However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by GDOT. A request for a waiver shall be treated as a Change Request under PA Section 14.2 (*Developer Changes*).

Capitalized terms used, but not otherwise defined in this Attachment 9 to PA Exhibit 8 (*Federal Requirements*) have the meanings ascribed in PA Exhibit 1 (*Abbreviations, and Definitions*).

BUY AMERICA CERTIFICATE

Certificate of Compliance

Developer hereby certifies that it is in compliance with the requirements of 23 U.S.C. § 313 as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021), and the Federal regulations under 23 C.F.R. § 635.410, 2 C.F.R. § 200.322(c), and 2 C.F.R. § 184 for this Project.

P.I. No. 0013918 - I-285 / I-20 West Interchange MMIP Project
Cobb and Fulton Counties

Developer further certifies that as required, Developer will maintain all records and documents pertinent to the Buy America requirement, for not less than 3 years from the date of Final Acceptance. These files will be available for inspection and verification by the Department and/or FHWA.

We further certify that the total value of foreign steel as described in the Buy America requirements for this Project will not exceed one-tenth of one percent (0.1%) of the total contract price or $2,500.00, whichever is greater.

Date:_____

Signature:_____

Developer's Name:_____

Title:_____

Subscribed and sworn to before me this day of , .

_____
Notary Public/Justice of the Peace

My Commission Expires: _____

Or

Certificate for Noncompliance

P.I. No. 0013918 - I-285 / I-20 West Interchange MMIP Project
Cobb and Fulton Counties

Developer hereby certifies that it cannot comply with the requirements of 23 U.S.C. § 313, as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021), and the applicable regulations in 23 C.F.R § 635.410, 2 C.F.R. § 200.322(c), and 2 C.F.R § 184, but may qualify for a waiver to these requirement(s) pursuant to the foregoing statutes and regulations, and that Developer has submitted or will submit, within 15 Days after the date of this certificate, a Change Request under PA Section 14.2 (*Developer Changes*).

Developer acknowledges, agrees, and further certifies that if the foregoing waiver of requirements sought via submission of a timely Change Request pursuant to PA Section 14.2 (*Developer Changes*) is not available or not pursued by Authority, then Developer shall comply with, and cause all Subcontractors of any tier to comply with, the applicable Buy America requirements within the foregoing statutes and regulations and submit, and cause to be submitted, promptly following Notice from Authority to Developer of such unavailability or intent not to pursue such waiver, a Certificate of Compliance in form and substance under this Attachment 9 to PA Exhibit 8 (Other Legal Requirements).

References to "PA" (and to sections, exhibits, and attachments thereto) are to the Design Build Finance Agreement by and between the Authority ad Developer, with respect to the foregoing project.

Date:_____

Signature:_____

Developer's Name:_____

Title:_____

Subscribed and sworn to before me this day of , .

_____
Notary Public/Justice of the Peace

My Commission Expires: _____

BUILD AMERICA, BUY AMERICA

CERTIFICATE OF COMPLIANCE FOR CONSTRUCTION MATERIALS

Developer hereby certifies that it is in compliance with the "BUILD AMERICA, BUY AMERICA" ("BABA") requirements of the Infrastructure Investment and Jobs Act ("IIJA"), as set forth under Pub. L. No. 117-58, §§ 70901-52, and that all construction materials as defined under BABA furnished for the Project will have been produced in the United States of America.

P.I. No. 0013918 - I-285 / I-20 West Interchange MMIP Project
Cobb and Fulton Counties

Developer further certifies that as required, Developer will maintain all records and documents pertinent to the Build America, Buy America requirement, at the address given below, for not less than 3 years from the date of Final Acceptance. These files will be available for inspection and verification by the Department and/or FHWA.

Date:_____

Signature:_____

Developer's Name:_____

Title:_____

Address: _____

Subscribed and sworn to before me this day of , .

_____
Notary Public/Justice of the Peace

My Commission Expires: _____

EXHIBIT 9
MILESTONE SCHEDULE

Milestone	Milestone Deadline[1]
NTP2 Conditions Deadline	Not later than 114 days after the date Authority issues NTP1
NTP3 Conditions Deadline	Not later than 203 days after the date Authority issues NTP1
Construction Work Commencement Deadline	Not later than 10 days after the date Authority issues NTP3
Substantial Completion Deadline	2,100 days after the date Authority issues NTP1
Final Acceptance Deadline	180 days after the Substantial Completion Date

[1] If NTP1 occurs on a date that is different than the date assumed in the Proposal, then the respective Milestone Deadlines will be adjusted accordingly.

EXHIBIT 10
PROPOSAL SCHEDULE; PROPOSAL SOV

See next page.

EXHIBIT 11
HAZARDOUS MATERIALS RISK ALLOCATION TERMS

1. Developer shall be solely responsible for Hazardous Materials Management, including all required remediation and disposal, of Hazardous Materials on the Site (or off-Site if any release of Hazardous Materials arises out of, relates to, is caused by, or results from the Work or the Project), including Pre-existing Hazardous Materials, in each case in accordance with applicable Law and Governmental Approvals, even if the required Hazardous Materials Management extends beyond Substantial Completion, and regardless as to whether Hazardous Materials Management is required due to an Authority Release(s) of Hazardous Materials or a Third-Party Hazardous Materials Release. For the avoidance of doubt, nothing in this paragraph 1 precludes Developer from seeking relief and compensation as and when entitled under the Project Agreement with respect to Hazardous Materials Management.

2. Authority will be responsible for Hazardous Materials Management with respect to any given Hazardous Materials Release only if Developer has not undertaken timely Hazardous Materials Management, as determined by Authority in its sole judgment, or if Authority provides Developer with Notice that Authority will perform the Hazardous Materials Management with respect to such Hazardous Materials Release. In no case shall any Authority undertaking of Hazardous Materials Management with respect to any given Hazardous Materials Release constitute a change in responsibility for subsequent (or previously- or concurrently-undertaken) Hazardous Materials Management by Developer.

3. Except in the case of Developer or Developer Related Entity release of Hazardous Material, Authority will not require any monitoring by or on behalf of Authority of Hazardous Materials under the Project Agreement for any duration beyond expiration or early termination of the Project Agreement.

4. Notwithstanding the aforementioned or anything to the contrary in the Project Agreement, none of the following costs and expenses shall be chargeable to or reimbursed by Authority:

(a) without limiting PA Section 14.7.6 (*Pre-Existing Hazardous Materials; Developer Proposed/Developer Acquired Right of Way; Third-Party Hazardous Materials Releases*), costs and expenses attributable to Developer Release(s) of Hazardous Materials and any Hazardous Materials with respect to any Temporary Interests (other than Authority Release(s) of Hazardous Materials);

(b) delay costs and expenses, except to the extent expressly set forth under the Project Agreement;

(c) disruption costs and expenses;

(d) costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and

(e) attorneys' fees or other expenses incurred by Developer in demonstrating or determining the proportionate responsibility between the parties as to Developer Release(s) of Hazardous Materials, Authority Release(s) of Hazardous Materials, and Pre-existing Hazardous Materials.

5. For avoidance of doubt, and without otherwise limiting Developer's right to seek relief, as and when entitled hereunder, where Authority, by or through GDOT, may respond to Releases of Hazardous Materials through the Towing and Recovery Incentive Program (TRIP), nothing in this PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*) shall be interpreted to limit Developer's obligations to replace, re-work or repair any of the Work affected by the release of Hazardous Materials giving rise to the

TRIP response; provided, however, that any TRIP response shall not be an Authority-Caused Delay (excluding clause (f) under its definition).

6. Furthermore, nothing contained in this PA Exhibit 11 (*Hazardous Materials Risk Allocation Terms*) shall be interpreted to limit Developer's obligations with respect to PA Section 7.7 (*Hazardous Materials Management*).

EXHIBIT 12
INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

Authority's Authorized Representative:

Authority hereby designates the persons from time to time serving as the Executive Director of Authority as its Authorized Representative and such other persons as the Executive Director may from time to time designate by delivering Notice thereof to Developer pursuant to PA Section 22.11 (*Notices and other Formal Communications*). Any such designations by the Executive Director may be limited in scope and duration and may be revoked at any time by delivery of Notice thereof to Developer.

GDOT's Authorized Representative:

GDOT hereby designates the persons from time to time serving as the Division Director of P3 as its Authorized Representative and such other persons as the Commissioner may from time to time designate by delivering Notice thereof to Developer. Any such designations by the Commissioner may be limited in scope and duration and may be revoked at any time by delivery of Notice thereof to Developer pursuant to PA Section 22.11 (*Notices and other Formal Communications*).

Developer's Authorized Representative:

Developer hereby designates the persons from time to time serving as the Developer Project Manager of Developer as its Authorized Representative and such other persons as the Developer Project Manager may from time to time designate by delivering Notice thereof to Authority. Any such designations by the Developer Project Manager may be limited in scope and duration and may be revoked at any time by delivery of Notice thereof to Authority pursuant to PA Section 22.11 (*Notices and other Formal Communications*).

EXHIBIT 13
LANE CLOSURE DEDUCTIONS

A. Lane Closure Deductions:

1. Lane Closure Deductions may be assessed during the period commencing at NTP2 and ending at the Substantial Completion Date.

2. Refer to TP Section 18 (Traffic Control) for allowable and restricted hours for the various Lane Closure conditions.

3. The Lane Closure Deduction for each Lane Closure shall be assessed in accordance with Table 1 below:

Table 1: Closure Deductions[1]

Lane Closure impacting:	Lane Closure Deduction ($/hr. for each lane impacted)
I-20 Mainline - Eastbound	$5,200
I-20 Mainline - Westbound	$4,600
I-285 Mainline	$2,000
I-285 to I-20 Interchange Ramps	$20,800
I-20 to I-285 Interchange Ramps	$8,000
Intersection Ramps	$4,900
Major Roadways	$3,000
Minor Roadways	$1,500

[1] The Lane Closure Deductions in Table 1 are for one direction of travel.

4. Each Lane Closure Deduction shall be measured in one Hour increments. Use of all or part of any restricted Hour results in an assessment of the full hourly Lane Closure deduction.

5. Each Lane Closure shall be deemed to start when the WTCS informs the TMC of the start, or absent that, when the Lane Closure may reasonably be inferred to have started based upon Traffic Interruption Requests (TIR), inspections, streaming camera records (as may be applicable), and CCTV records. Each Lane Closure shall be deemed to end when TMC records the re-opening (or otherwise the end of the Lane Closure), or absent that, when the circumstances giving rise to the Lane Closure no longer apply or there is effectively no closure of that portion of the lane previously affected by the Lane Closure, whichever is the earlier, as determined by Authority in its reasonable discretion.

6. Authority shall be entitled to assess one or more Lane Closure Deduction(s) and include any Lane Closure that is not an Excused Closure. No Lane Closures Deductions shall be assessed with respect to any Excused Closure.

7. Where one or more Lane Closures create one or more travel lanes in opposing directions of travel, each Lane Closure will be assessed independently.

8. In the case of a Lane Closure that occurs at any time during a Special Event, the Lane Closure deductions shall be increased by 50%, where the deduction calculation itself (Table 1 value

multiplied by the duration factor in Section 4) is assessed first and then the product multiplied by 1.5.

9. If any traffic lane(s) is/are the subject of an Excused Closure, and a Lane Closure occurs in the adjacent traffic lane(s) remaining in service, then the Lane Closure on the adjacent traffic lane(s) shall be subject to Lane Closure Deductions unless the basis for the Lane Closure in such adjacent traffic lane(s) independently meets the definition and criteria of an Excused Closure.

10. Lane Closure Deductions will not be assessed for Lane Closures occurring due to performance of traffic pacing in accordance with the requirements of TP Attachment 18-1 (Temporary Traffic Control) and the restrictions in TP Section 18.4.2.5 (Pacing and Work Over Mainline(s)).

11. Lane Closure Deductions will be accrued monthly, in arrears, and the cumulative value of such Lane Closure Deductions ("Monthly Lane Closure Deductions") shall be used in the preparation of the Project Certificate under PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

12. For avoidance of doubt, and except as may be stated otherwise in this PA Exhibit 13 (*Lane Closure Deductions*), the closure, blockage, restriction, or impermissible narrowing of multiple lanes, ramps, or crossing streets within the Project Limits, or any combination of the foregoing, at the same time or because of the same cause, will be treated as multiple Lane Closures (one Lane Closure for each affected lane, shoulder, and crossing street).

B. Excused Closures

1. Subject to clause B.2 of this PA Exhibit 13 (*Lane Closure Deductions*), the following Lane Closures shall be deemed to be Excused Closures:

   (a) Lane Closures that result from a Relief Event (only to the extent of the duration of the Relief Event);

   (b) for those circumstances where the actions of another contractor do not constitute a Relief Event, Lane Closures arising as a direct result by another contractor performing its work within the Project Limits (e.g., a Utility Owner self-performing work where a Lane Closure is permitted and required to support their work);

   (c) Lane Closures arising as a direct result of an Emergency or Incident, in either case, only to the extent not arising out of, relating to, or resulting from:

      i. any breach of the Agreement caused by a Developer-Related Entity;

      ii. any defect or Nonconforming Work;

      iii. any willful misconduct or negligent act or omission of a Developer-Related Entity; or

      iv. any risk that Developer is required to insure against pursuant to the terms of the Agreement;

   (d) Lane Closures performed during the allowable Lane Closure hours provided in TP 18.

2. Developer shall use commercially reasonable best efforts to:

   (a) mitigate the impact of the relevant Lane Closure;

(b) reopen the affected portions of the Project as quickly and as safely as possible to traffic;

(c) minimize Developer's activities that impact traffic flow during such Lane Closure; and

(d) with respect to any Emergency or Incident, respond to the Emergency or Incident in accordance with the applicable provisions of the DBF Documents.

3. The duration of any Excused Closure is only as long as the event(s) giving rise to the Lane Closure exist.

4. Authority will not assess any Lane Closure Deductions for Excused Closures so long as the Lane Closure constitutes an Excused Closure and Developer continues to perform its obligations under clause B.2 of this PA Exhibit 13 (*Lane Closure Deductions*).

EXHIBIT 14
DBE REQUIREMENTS

1. DBE PERFORMANCE PLAN REQUIREMENTS

1.1 DBE Overview

(a) Developer shall comply with the requirements set forth in this Project Agreement, including this PA Exhibit 14 (*DBE Requirements*), including Attachment 6 (*DBE Criteria for Acceptability*) to PA Exhibit 8 (*Federal Requirements*). Developer shall prepare a DBE Performance Plan describing the approach to meet the required DBE Goals for the Work in accordance with the requirements set forth in the Project Agreement including this PA Exhibit 14 (*DBE Requirements*).

(b) As part of the DBE Performance Plan, Developer shall also include a proactive outreach program for DBE firms and a system of processes and procedures, including reports, that document adherence to the DBE participation schedule and achievement of the Project's DBE Goals.

(c) Developer shall adhere to the minimum requirements for the DBE Performance Plan described in this PA Exhibit 14 (*DBE Requirements*).

(d) Developer shall prepare the DBE Performance Plan consistent with the DBE Performance Plan set forth in the Proposal Commitments and responsive to all requirements of the Project Agreement and this PA Exhibit 14 (*DBE Requirements*).

(e) Upon the Financial Closing Date, Developer shall submit an updated version of the DBE Performance Plan identifying:

(i) any additional DBE firm commitments, modifications to the previously submitted plan;

(ii) any of DBE Contractors that will be performing work in the period between NTP1 and NTP2 (if applicable); and

(iii) a plan to manage and document the associated Work of those DBE Contractors (if applicable).

(f) Developer shall submit the DBE Performance Plan to Authority in accordance with the Submittal Requirements Database and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

1.2 DBE Goals

(a) Developer shall describe the plans and methods to achieve the DBE Goal identified in PA Section 10.9.2.1 (*DBE Goals, Commitments*) in its DBE Performance Plan, including:

(i) the approach to calculating the value of Design Work and Construction Work in accordance with the requirements of this PA Exhibit 14 (*DBE Requirements*) which shall contribute to meeting the DBE Goal;

(ii) the approach to achieving milestones related to DBE Goals, including use of a schedule which shall identify expected DBE firm participation in Design Work and

Construction Work with annual targets for each goal throughout the D&C Period; and

(iii) identification of areas of Work Developer has identified for potential DBE participation with a range of the approximate percentage of the value of the applicable Work relative to the value of all Design Work and Construction Work.

(b) As part of Developer's DBE Performance Plan, Developer shall provide the information contained in Form 1 of this PA Exhibit 14 (*DBE Requirements*) and the following information:

(i) the estimated dollar amount of DBE Contracts for Work to be awarded and paid; and

(ii) the areas and types of anticipated Work to be subcontracted to DBE firms and the anticipated timing of such Work.

(c) Developer shall distribute DBE Contracts among work classifications on the basis of Developer's needs and the availability of DBE firms in the various classifications.

1.3 **Good Faith Efforts**

(a) Developer shall describe, within the DBE Performance Plan, the good faith efforts to be implemented to ensure that DBEs have maximum opportunity to successfully bid and perform on the Project, and how Developer will meet the DBE Goal.

(b) Developer shall initiate, undertake, and maintain good faith efforts using a result-oriented approach that is emphasized in all management functions.

(c) Good faith efforts includes the efforts to achieve the DBE Goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. These efforts shall include the following:

(i) soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the Work;

(ii) selecting portions of the Work to be performed by DBEs to increase the likelihood of meeting the DBE Goal (including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation);

(iii) providing interested DBEs with adequate information about plans, specifications, and requirements of the Project Agreement in a timely manner to assist them in responding to a solicitation;

(iv) negotiating in good faith to secure contracts with DBEs whether or not committed to prior to the execution of the Project Agreement;

(v) not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;

(vi) making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;

(vii) effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs;

(viii) providing assistance to DBE Contractors in obtaining surety bonding, lines of credit, etc., if required by the applicable Contract;

(ix) notifying a DBE Contractor in writing of any potential problem and attempting to resolve the problem prior to formally requesting Authority's consent to terminate or substitute the DBE Contractor or reduce the amount of work committed to the DBE Contractor in accordance with PA Section 10.9.3 (*DBE Contractors*);

(x) developing processes to track and monitor the following: invoicing by Developer and its Contractors and prompt payment to DBE Contractors. This shall include any efforts that Developer will make to assist with mobilization efforts and early purchase of materials, or any other payment measures that will aid the viability of DBE firm participation in the Work;

(xi) timely payment of all monies due and owing to DBE Contractors, including subcontractors, consultants, sub-consultants, suppliers and service providers, in accordance with the requirements of PA Section 10.11 (*No Retainage; Prompt Payment to Contractors and Pay When Paid Provisions*) and any additional Developer commitments regarding prompt payment requirements beyond those required in the Project Agreement;

(xii) timely submittal of complete and accurate DBE payment reports in accordance with the reporting requirements specified herein;

(xiii) timely submittal of "good faith efforts" information and documentation to Authority throughout the D&C Period, as Contracts are entered into and new Contractors are selected;

(xiv) informing Authority in writing in a timely manner of any problems anticipated in attaining the DBE Goal; and

(xv) if Authority or any Contractor requests the termination or substitution of a DBE Contractor or a reduction to the amount of work committed to a DBE Contractor, Developer or the applicable Contractor must adhere to the requirements and conditions in accordance with PA Section 10.9.3 (*DBE Contractors*).

1.4 Good Faith Efforts Forms

If Authority submits a request pursuant to PA Section 10.9.3.7 (*DBE Contractors*), Developer shall submit the following documentation of its good faith efforts and a copy of its DBE Performance Plan to Authority:

(a) the information set forth in Form 2 of this PA Exhibit 14 (*DBE Requirements*). The completed Form 2 shall include information on all DBE and non-DBE firms that submitted a bid/proposal for the Project, including:

(i) the firm's name;

(ii) the firm's address;

(iii) the firm's status as a DBE or non-DBE; and

(iv) the type of work/work category the firm proposed to perform and description of the work.

(b) the information set forth in Form 3 of this PA Exhibit 14 (*DBE Requirements*). The completed Form 3 shall show the good faith efforts that Developer has made to provide equal opportunities to DBE firms, and including a certification on behalf of Developer and its Contractors that Developer has made a good faith effort to ensure that DBEs have an equal opportunity to compete for and perform work on the Project. Developer shall provide the following information and documentation:

(i) the names and dates of advertisement of each newspaper, trade paper and minority-focus paper in which Developer placed requests for DBE participation (the actual advertisement and the number of times it was run shall be included);

(ii) the names and dates of written notices to certified DBEs solicited by direct mail or other means for this Project, and the methods used to follow up on these solicitations;

(iii) items of Work for which Developer requested bids, proposals or materials to be supplied by DBEs and the information furnished to DBEs, for example plans, specifications and requirements for the work and any break downs of work into economically feasible units to facilitate DBE participation;

(iv) the names of DBEs that submitted bids or proposals for any of the work indicated above, which were not accepted by Developer; a summary of Developer's discussions and/or negotiations with them; the name of the contractor, subcontractor, consultant, sub-consultant, supplier or service provider that was selected for the work and the reasons therefore. If the reason for the DBE rejection is an unreasonable price, state the rejected DBE's price bid/proposal and that of the selected contractor, subcontractor, consultant, sub-consultant, supplier or service provider;

(v) a description of the assistance Developer extended to rejected DBEs identified above to remedy the bid deficiencies;

(vi) efforts to assist DBEs on obtaining surety bonding, lines of credit, insurance; and

(vii) effective use of services of available minority/women community organizations, contractor groups and local/state/Federal minority/women business assistance offices.

(c) Any additional documentation that demonstrates Developer made good faith efforts to achieve the DBE Goal and its DBE Commitments, including but not limited to Developer's efforts to encourage its Contractors to solicit DBE participation in their subcontracts.

1.5 **DBE Manager**

(a) Developer shall employ or procure a Contractor that employs a DBE Manager in accordance with TP Attachment 2-1 (Key Personnel and Required Personnel). Developer shall include the following in the DBE Performance Plan:

(i) the names of Developer's personnel supporting activities related to the DBE Performance Plan, including their role and experience working and coordinating with DBE firms on transportation or construction projects; and

(ii) the responsibilities of the personnel listed in clause (a) above, including descriptions of their activities as well as the delegated authority of the personnel and how they are integrated with Key Personnel and Required Personnel on the Project, and identification of meetings they will attend.

(b) The DBE Manager shall manage and implement activities related to the DBE Performance Plan, and ensure compliance with 49 C.F.R. § 26, *et seq*. The DBE Manager shall be responsible for developing, managing and implementing the DBE Performance Plan on a day-to-day basis, for carrying out technical assistance activities for DBEs, and for disseminating information on available business and subcontracting opportunities so that DBEs are provided an equitable opportunity to compete and perform the Work on behalf of Developer.

(c) Additionally, the DBE Manager shall ensure that where a DBE's work does not commence from the moment of the DBE's contract execution, the DBE Manager shall have the duty on behalf of the Developer to proactively communicate with the DBE at a minimum on a quarterly basis, in writing and without limitation, regarding the following:

(i) the status of the overall Project;

(ii) the anticipated commencement date for the DBE's work;

(iii) all relevant information known at the time of the quarterly report that may impact the DBE's work; and

(iv) all other information that is relevant for the DBE's ability to successfully perform its work.

(d) The DBE Manager shall coordinate with Authority and be responsible to ensure that all rules and regulations are carried out in accordance with this PA Exhibit 14 (*DBE Requirements*) and all applicable Laws. All DBE participation will be reviewed and accepted by Authority prior to being counted towards the DBE Goal.

(e) The DBE Manager may be replaced by either Party in accordance with PA Section 10.4.2 (*Required Personnel*).

1.6 **DBE Outreach Program**

The DBE Performance Plan shall describe in detail the processes Developer will use to achieve the following:

(a) develop a proactive outreach program for DBEs;

(b) collaborate with and utilize applicable and relevant resources from Authority's established DBE program;

(c) conduct mandatory outreach events directed at DBE firms after the Project Agreement is executed;

(d) assist DBEs in identifying subcontracting opportunities on the Project, and assist subcontractors in identifying concerns for their specific subcontracting needs;

(e) provide a list of upcoming subcontracting opportunities and events for distribution to Authority;

(f) provide for training and development of DBEs;

(g) provide technical business assistance for DBEs, including coordination with GDOT Equal Employment Opportunity Division; and

(h) work cooperatively with Authority, including the obligation to forward to Authority any complaints received regarding Developer's efforts to be in compliance with the DBE requirements described in the Project Agreement.

1.7 Record Keeping for Monthly DBE Participation Reports

The DBE Performance Plan shall describe, in detail, the processes Developer will use to maintain records regarding the progress of DBE participation sufficient to provide the information required in the Monthly DBE Participation Reports as described in Section 2 (*DBE Participation Reports*) of this PA Exhibit 14 (*DBE Requirements*). Developer shall provide access to records and perform audits in accordance with PA Article 20 (*Records and Audits; Intellectual Property*).

1.8 DBE Contracts

(a) The DBE Performance Plan shall establish procedures to promptly provide Authority with the following information upon execution of a DBE Contract:

(i) the name and business address of the DBE Contractors;

(ii) the total dollar amount of the DBE Contract;

(iii) the specific Work items covered by the DBE Contract;

(iv) the amount of the DBE Contract to be credited to Design Work or Construction Work; and

(v) the estimated quantities of each Work item.

(b) Developer shall provide a copy of each DBE Contract to Authority in accordance with PA Section 10.9.3.3 (*DBE Contractors*).

2. DBE PARTICIPATION REPORTS

2.1 Monthly Reports

(a) Developer shall address its approach to monitoring and tracking its compliance within the DBE Performance Plan, including its performance against the DBE Goal.

(b) In accordance with PA Section 10.9.2.4 (*DBE Goals, Commitments*), Developer shall provide Monthly DBE Participation Reports to Authority in accordance with the Submittal Requirements Database.

2.2 **Monthly DBE Participation Report**

(a) The Monthly DBE Participation Reports shall be in the form of Form 4 of this PA Exhibit 14 (*DBE Requirements*) and shall include the following information for each DBE Contract under which Work was performed during the applicable period:

(i) the name of the relevant DBE Contractor;

(ii) a description of the work to be performed, materials, supplies, and services provided by each DBE Contractor;

(iii) status of DBE Contractor as a supplier, subcontractor, owner/operator, or other;

(iv) date of notice to proceed and date that work began;

(v) dollar amount of the DBE Contract and amount applicable to DBE Contractor;

(vi) percent of work completed and percent of payments completed; and

(vii) the previous, current, and total-to-date payments to each DBE Contractor participating in the contract, minus any credits not allowed.

(b) Developer shall also report the following in each Monthly DBE Participation Report:

(i) the dollar amount of outstanding invoices and of uncompleted work remaining on the Contract; and

(ii) expected completion date of the DBE Contract.

(c) Developer shall include documentation with each Monthly DBE Participation Report providing information regarding all payments made to all DBE Contractors in the form of copies of cancelled checks or notarized electronic documentation which validates payments referred to in the relevant Monthly DBE Participation Report.

(d) The Monthly DBE Participation Report shall also include a narrative summary stating whether Developer is on target with respect to the DBE Goal and DBE Commitments, whether it has exceeded the DBE Goal or DBE Commitments (and stating the amount of the excess), or whether it is behind (and stating the amount of the deficit).

(e) The Monthly DBE Participation Report shall identify, and include details of, when a DBE Contractor has completed a portion of the work that has been designated for such DBE Contractor.

(f) Developer shall submit with its final Monthly DBE Participation Report a final certificate of payment to all DBE Contractors using the form attached hereto as Form 5.

2.3 **Consequences of Failure to Report**

If Developer fails to submit a Monthly DBE Participation Report in accordance with this PA Exhibit 14 (*DBE Requirements*), PA Section 10.9.2.6 (*DBE Goals, Commitments*) shall apply.

3. COUNTING DBE PARTICIPATION TOWARD GOALS

3.1 **Certification Requirement**

Authority will recognize DBE credit only for the value of the Work actually performed by a DBE Contractor for which it is certified.

3.2 **Work Performed by DBE Contractors**

(a) The entire amount of that portion of a DBE Contract that is performed by the DBE Contractor's own forces for which it is certified shall be counted toward the DBE Goal.

(b) The cost of supplies and materials obtained by the DBE Contractor for the work of that portion of the DBE Contract, including supplies purchased or equipment leased by the DBE Contractor (except supplies and equipment the DBE Contractor purchases or leases from Developer or its affiliates), may be counted toward the DBE Goal.

3.3 **Bona Fide Services**

The entire amount of fees or commissions charged by a DBE Contractor for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing surety bonds or insurance specifically required for the performance of a contract, may be counted toward the DBE Goal, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3.4 **Second Tier Subcontractors**

When a DBE Contractor subcontracts part of the work of its Contract to another firm, the value of the subcontracted work may be counted toward the DBE Goal only if the DBE Contractor's subcontractor is a DBE and is certified for the types of work being subcontracted. Work that a DBE Contractor subcontracts to a non-DBE firm does not count toward the DBE Goal.

3.5 **Joint Ventures**

(a) When a DBE firm performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract the DBE performs with the DBE's own forces toward the DBE Goal.

(b) For the purposes of this Section 3.5, "joint venture" means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

3.6 **Contrived Arrangements**

(a) No credit will be given toward the DBE Goal for any subcontracting arrangement that is contrived to artificially inflate or obtain the appearance of DBE Contractor participation, including:

(i) any arrangement that uses DBE middlemen or passive conduits that are inconsistent with Good Industry Practice or which serve no Commercially Useful Function (in accordance with Section 3.7 of this PA Exhibit 14 (*DBE Requirements*)), and

(ii) arrangements in which a DBE is acting essentially as a broker, (e.g., DBE second-tier subcontracts between a DBE who is fulfilling project goals, and non-DBE contractors with subcontracts acknowledged by Authority on the same project).

(b) Regardless of whether an arrangement between Developer and a DBE Contractor represents Good Industry Practice, where such an arrangement erodes the ownership, control, or independence of the DBE or does not meet the Commercially Useful Function requirement, Developer shall receive no credit toward the DBE Goal.

3.7 **Commercially Useful Function**

(a) Developer is responsible to ensure the DBE Contractors are performing a Commercially Useful Function. Only expenditures to DBE Contractors that perform a Commercially Useful Function count toward the DBE Goal.

(b) A DBE Contractor performs a Commercially Useful Function when it is responsible for execution of a distinct element of the Work and carrying out its responsibilities by actually performing, managing, and supervising the work involved.

(c) A Commercially Useful Function is performed when:

(i) All employees are under direct supervision of the DBE Contractor and on the DBE Contractor's payroll. Use by a DBE Contractor of personnel from Developer or any other Contractor will not be permitted without prior consent by Authority.

(ii) The DBE Contractor is responsible for obtaining all equipment necessary to perform the contracted Work. The DBE Contractor shall negotiate and enter into equipment lease or purchase order agreements directly with the equipment source. Such lease or purchase order agreements must receive prior acceptance by Authority.

(iii) The DBE Contractor is responsible, with respect to materials and supplies, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. If Developer chooses to assist a DBE Contractor by assuring payment for materials to be placed in the DBE Contractor's work or equipment leased by the DBE Contractor and wants to receive credit toward the DBE Goal for the cost, the following procedures may be used:

(A) the material supplier or lessor may invoice the DBE Contractor and be paid by remittance from the DBE Contractor; or

(B) the supplier or lessor may invoice Developer and DBE Contractor jointly and be paid by Developer and DBE Contractor firm utilizing a joint check from Developer. Such a joint checking arrangement must be in writing, either in

the subcontract or a separate agreement, and accepted by Authority prior to the supplies or equipment being utilized and payment being made.

No credit will be given toward the DBE Goal for the cost of the DBE Contractor's required materials or equipment that Developer pays directly to the material supplier or lessor.

(d) If a DBE Contractor does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE Contractor subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, Developer must presume that the DBE Contractor is not performing a Commercially Useful Function.

(e) A DBE Contractor will be deemed to have performed a Commercially Useful Function and Developer will be allowed DBE Goal credit when a DBE Contractor performs at least 30% of its Contract. This work shall be performed by the DBE Contractor's normal work force.

(f) The following factors will be used in determining whether a DBE Contractor trucking firm or owner/operator is performing a Commercially Useful Function:

(i) the DBE Contractor must be responsible for the management and supervision of the entire trucking operation for which they are responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE Goals;

(ii) the DBE Contractor must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;

(iii) the DBE Contractor receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs;

(iv) the DBE Contractor may lease trucks from another DBE firm, including an owner / operator who are certified as a DBE firm. The DBE Contractor who leases trucks from another DBE firm receives credit for the total value of the transportation services the lessee DBE firm provided on the contract;

(v) the DBE Contractor may also lease trucks from a non-DBE firm and is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE firm; and

(vi) the DBE Contractor may lease trucks without drivers from a non-DBE bona-fide truck leasing agency. If the DBE leases trucks from a non-DBE truck leasing agency and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

For purposes of this Section 3.7(f), a lease must indicate the DBE Contractor has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE Contractor, so long as the lease gives the DBE Contractor absolute priority for use of the leased truck. Leased trucks must display a "leased to" sign with the name and identification number of the DBE Contractor.

(g) When a DBE Contractor is found not to be performing a Commercially Useful Function, the DBE Contractor may present evidence to rebut the finding. Such evidence will be reviewed by Authority and a determination made. Decisions on Commercially Useful Function matters are subject to review by the FHWA.

3.8 **Materials and Supplies**

Developer may count DBE Contractor expenditures for materials or supplies toward the Project DBE Goals as provided in the following:

(a) If the materials or supplies are obtained from a DBE manufacturer, 100% of the cost of the materials or supplies toward DBE Goals is eligible. For purposes of this Section 3.8(a), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) If the materials or supplies are obtained from a DBE regular dealer, 60% of the cost of the materials or supplies toward DBE Goals is eligible. For purposes of this Section 3.8(b), a regular dealer is a firm owning, operating, or maintaining a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(c) To be a regular dealer, the firm must be an established, regular business engaging, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(d) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this Section 3.8 if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(e) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this Section 3.8.

(f) Except to the extent agreed in a Supplemental Agreement, if the overall value of the Work increases, Developer will not be required to increase the dollar amount of DBE participation. Likewise, except to the extent agreed in a Supplemental Agreement, if the overall value of the Work decreases, Developer will not be allowed to reduce the amount of DBE participation.

3.9 **Dealers**

(a) Brokers, manufacturer's representatives, packagers, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this Section 3.9.

(b) With respect to materials or supplies purchased from a DBE firm which is neither a manufacturer nor regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, counts toward the DBE Goal, provided the fees are determined to be reasonable and not excessive as compared with fees

customarily allowed for similar services. None of the cost of the materials and supplies themselves will count toward the DBE Goal.

3.10 **Purchased Material**

(a) If material is purchased from a DBE supplier, 60% of the total cost of the material obtained from the DBE supplier and the cost of delivery if the supplier is transporting the material using equipment it owns or leases on a long-term basis, is eligible to count toward the DBE Goal. 100% of transportation services provided by the DBE truckers will be eligible to count toward the DBE Goal.

(b) A valid purchase order for the material must be executed by Developer and DBE Contractor and accepted by Authority prior to the material being hauled from the supplier's facility.

4. CHANGES AND SUBSTITUTIONS

Any change in previously identified DBE Contractors, or any reduction in the scope of work to be performed by a DBE Contractor, or any change in or variance from the accepted DBE Performance Plan, will require Authority's consent in accordance with PA Section 10.9.3 (*DBE Contractors*).

5. DBE RECOVERY PLAN

(a) If Developer is not on track to achieve the DBE Goal or any DBE Commitment, as demonstrated through the Monthly DBE Participation Report, PA Section 10.9.2.5 (*DBE Goals, Commitments*) shall apply.

(b) If Developer is required to provide a DBE Recovery Plan in accordance with PA Section 10.9.2.5 (*DBE Goals, Commitments*), the DBE Recovery Plan shall:

(i) describe why the DBE Goal or the DBE Commitment (as applicable) is not on track to be met and the amount of the anticipated deficit;

(ii) describe the prior good faith efforts that Developer has made to meet the DBE Goal and DBE Commitment;

(iii) include the information set forth in Form 2 and Form 3 of this PA Exhibit 14 (*DBE Requirements*); and

(iv) describe the good faith efforts and proposed action to be taken by Developer in subsequent months to attain the DBE Goal and the DBE Commitment for the remainder of the D&C Period.

6. FAILURE TO COMPLY

Noncompliance with the DBE Performance Plan requirements of the PA Exhibit 14 (*DBE Requirements*) shall result in assessment of Nonrefundable Deductions in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

FORM 1

DBE COMMITMENTS

Developer:

Developer has executed contracts with the following DBE Contractors:

NAME & ADDRESS	LINE #	ITEM DESCRIPTION	AMOUNT
			$

If any firm listed above is a regular dealer of materials and supplies, but not a manufacturer, the total amount of the agreement and the amount to be credited 60% should be recorded on this form.

Total for DBEs - $_____ or __% of Contract Price.

_____ By: _____
(Developer) Title: _____

The named DBE Contractors confirm their participation in the contract as provided in the commitment.

	DBE Firm:	DBE Owner or Authorized Representative's Signature
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

FORM 2

BIDDERS LIST

STATE OF GEORGIA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION CONTRACTORS
BID OPPORTUNITY LIST

FORM EEOP
PREQUALIFICATION OFFICE
Revised 02/24/20

Please complete and mail or FAX to:
Construction Bidding Administration
600 West Peachtree Street, NW
Suite 1113
Atlanta, Georgia 30308
TELEPHONE: (404) 631-1147
FAX: (404) 631-1070

This information shall be submitted in accordance with GDOT Specification Section 102.18.

Prime Contractor/Consultant: _____

Address/Telephone Number: _____

Bid/Proposal Number: _____

Quote Submitted MM/YY: _____

49 C.F.R. Part 26.11 requires the Georgia Department of Transportation to develop and maintain a "bid opportunity list". The list is intended to be a listing of all firms participating or attempting to participate, on DOT assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project. Prime contractors and consultants must provide information for Nos. 1, 2, 3, and 4 and must provide information they have available on Numbers 5, 5A, 6, 7, 8 and 9 for themselves, and their subcontractors and subconsultants

1. Federal Tax ID Number: _____

2. Firm Name:_____

3. Phone: _____

4. Address: _____

_____

5. Contact: _____

5A. Company Email address: _____

6. ☐ DBE

☐ Non-DBE

7. ☐ Subcontractor

8. ☐ Subconsultant

9. ☐ Supplier

1. Federal Tax ID Number: _____

2. Firm Name:_____

3. Phone: _____

4. Address: _____

_____

5. Contact: _____

5A. Company Email address: _____

6. ☐ DBE

☐ Non-DBE

7. ☐ Subcontractor

8. ☐ Subconsultant

9. ☐ Supplier

---

1. Federal Tax ID Number: _____

2. Firm Name:_____

3. Phone: _____

4. Address: _____

_____

5. Contact: _____

5A. Company Email address: _____

6. ☐ DBE

☐ Non-DBE

7. ☐ Subcontractor

8. ☐ Subconsultant

9. ☐ Supplier

FORM 3

GOOD FAITH EFFORTS

Developer shall submit the following information to demonstrate that a good faith effort has been made to provide opportunities for DBE firms, including contractors, subcontractors, consultants, subconsultants, regular dealers, and service providers, etc. on the Project.

1. List the names and dates of advertisement of each newspaper, trade paper, and minority- focus paper in which a request for DBE participation for this Project was placed by Developer:

Publication	Date of Advertisement

2. List the names and dates of written notices of all certified DBEs solicited by direct mail or other means for this Project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested:

DBE Firms Solicited	Dates of Solicitations	Follow-up Methods and Dates

3. List the items of work for which Developer requested bids, proposals or materials to be supplied by DBEs, if any; the information furnished to interested DBEs in way of plans, specifications and requirements for the Work, and any breakdown of items of Work into economically feasible units to facilitate DBE participation. Where there are DBEs available for doing portions of the Work normally performed by Developer with its own forces, Developer will be expected to make portions of such work available for DBEs to bid on.

   (a) Items of Work: [Describe]

   (b) Information Furnished: [Describe]

   (c) Breakdown of Items: [Describe]

4. List the names of DBEs selected to work on the Project; names of DBEs that submitted bids or proposals for any of the Work indicated above which were not accepted, a summary of Developer's discussions and/or negotiations with them, the name of the subcontractor, consultant, subconsultant, regular dealer, or service provider who was selected for that portion of the work, and the reasons for Developer's choice. If the reason for rejecting a DBE bid was price, give the bid price or proposal by the rejected DBE and the bid price by the selected subcontractor, subconsultant, regular dealer, or service provider. Since the utilization of available

DBEs is expected, only significant price differences will be considered as cause for rejecting such DBE bids.

(a) Proposed DBEs to be utilized on the Project: [List]

(b) Rejected DBEs: [List]

(c) Summary of discussions and negotiations: [Describe]

(d) Selected non-DBEs and reasons for that choice: [Describe]

5. List any assistance that Developer extended to the rejected DBEs identified above to remedy the deficiencies in their bids:

[List]

6. List all efforts Developer made to assist interested DBEs on obtaining required surety bonding, lines of credit, or insurance:

[List]

7. List all efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services:

[List]

8. List Developer's effective use of services available from minority/women community organizations, contractor groups and local/state/Federal minority/women business assistance offices and other organizations to assist in recruitment and placements of DBEs:

[List]

9. List any additional data to support a demonstration of good faith efforts, such as contacts with DBE assistance agencies:

[List]

NOTES:

1) This form provides for a minimum of good faith efforts requirements, see Federal Register, Vol. 79, No. 191, Thursday, October 2, 2014/Rules and Regulations, Appendix A to Part 26 – Guidance Concerning Good Faith Efforts for additional good faith effort considerations.

2) Appropriate documentation such as copies of newspaper ads, letters soliciting bids, and telephone logs should accompany this form.

GOOD FAITH EFFORTS AFFIDAVIT

The undersigned, being first duly sworn, deposes and says that (he/she) is the [Title] of [Company Name]_____, which entity is a [shareholder, partner, joint venture member or other]_____of Legacy Infrastructure Contractors, LLC, a Georgia limited liability company, and he/she affirms that Developer has made good faith efforts to achieve the DBE Goals identified in the Project Agreement.

Legacy Infrastructure Contractors, LLC By: _____Signature

_____
Typed or Printed Name

_____
Title

STATE OF_____

COUNTY OF ____

Subscribed and sworn to before me this___day of _____, 20__.

_____
Signature

_____
Printed Name of Notary Public in and for said County and State [NOTARY SEAL]

_____
My commission expires

FORM 4

MONTHLY DBE PARTICIPATION REPORT

REPORT SUBMISSION DATE: _____

PROJECT NO.: _____

COUNTY: _____ REPORT NO.: _____

CONTRACT ID NO: _____

CONTRACTOR: _____

NOTICE TO PROCEED: _____

DATE WORK BEGAN: _____

CONTRACT $ AMOUNT: _____

DBE $ AMOUNT: _____

DBE REQUIRED %: _____

% DOLLAR COMPLETE: _____

% PROJECT COMPLETE: _____

31-Jan	☐	31-Jul	☐
28-Feb	☐	31-Aug	☐
31-Mar	☐	30-Sep	☐
30-Apr	☐	31-Oct	☐
31-May	☐	30-Nov	☐
30-Jun	☐	31-Dec	☐

S = SUPPLIER SC = SUBCONTRACTOR

APPROVED DBE				VENDOR ID	DESCRIPTION OF WORK	
	S	SC	ORIGINAL SUBCONTRACT AMOUNT	PREVIOUS PAYMENTS	PAYMENTS THIS REPORT	TOTAL PAYMENTS TO DATE
1						
RN						$ 0.00
RC						$ 0.00
2						
RN						$ 0.00
RC						$ 0.00
3						
RN						$ 0.00
RC						$ 0.00
4						
RN						$ 0.00
RC						$ 0.00
5						
RN						$ 0.00
RC						$ 0.00
6						
RN						$ 0.00
RC						$ 0.00

RN COLUMN TOTALS:	$ 0.00	$ 0.00	$ 0.00	$ 0.00
RC COLUMN TOTALS:	$ 0.00	$ 0.00	$ 0.00	$ 0.00

TOTAL % PAID TO DATE:_____

I HEREBY CERTIFY THAT THE ABOVE STATEMENT IS TRUE AND CORRECT AND SUPPORTING DOCUMENTATION IS ON FILE AND IS AVAILABLE FOR INSPECTION BY DEPARTMENT PERSONNEL AT ANY TIME. ALL PARTICIPATION COUNTED TOWARD FULFILLMENT OF THE DBE GOALS IS (1) REAL AND SUBSTANTIAL; (2) ACTUALLY PERFORMED BY VIABLE, INDEPENDENT DBE OWNED FIRMS; AND (3) IN ACCORDANCE WITH THE SPIRIT OF APPLICABLE LAWS AND REGULATIONS.

PRINT NAME: _____
NAME / TITLE

SIGNATURE: _____

FOR DEPARTMENT USE ONLY

THIS DOCUMENT HAS BEEN REVIEWED AT THE PROJECT LEVEL BY:

PRINT NAME: _____
NAME / TITLE

SIGNATURE:
(Mandatory**)** _____

THIS DOCUMENT HAS BEEN REVIEWED AT THE PROJECT LEVEL BY:

PRINT NAME: _____
NAME / TITLE

SIGNATURE:
(Mandatory) _____

FORM 5

CERTIFICATE OF FINAL PAYMENT TO DBEs

Project_____ Developer_____
Contract Price $_____ DBE Goal $ _____
DBE Contract Goal % _____

Final Payment to DBEs

DBE Subcontractor	**Amount Paid**
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$

Only payments related to work, services, or material actually provided by DBE Subcontractors should be shown. Payments under second tier subcontracts from DBE firms to non-DBE firms should not be included.

Developer:			
Signature:			
Typed or Printed Name:			
Title:		Date:	

EXHIBIT 15
OJT REQUIREMENTS

1. OJT PLAN – OBJECTIVES

(a) Developer shall prepare an OJT Plan in accordance with the requirements of this PA Exhibit 15 (*OJT Requirements*) describing Developer's approach to train minorities, females and Disadvantaged Persons in highway construction classifications, by fostering equal training opportunities for minorities, females and Disadvantaged Persons on highway construction projects.

(b) A Disadvantaged Person is a person from a family whose total annual household income is below the limits listed at 125% of the current published Federal Poverty Level ("FPL") in Municipal Planning Organization counties (found, as of the Effective Date, at http://www.gampo.org/members.html) and 100% of the FPL in all other counties, as defined by the Georgia Department of Community Health (found, as of the Effective Date, at https://dch.georgia.gov/federal-poverty-guidelines-0).

2. TRAINING REQUIREMENTS

2.1 OJT Goal and Requirements

(a) Developer shall provide on-the-job training aimed at developing full journeymen in the type of trades and job classifications required for the Work.

(b) Developer shall seek to provide at least 50 trainees on the Project (the "OJT Goal").

(c) Where feasible, 25% of trainees in each occupation shall be in their first year of training.

(d) Developer shall distribute the number of trainees among the work classifications based on needs and the availability of trainees in each classification (within a reasonable area of recruitment).

(e) The OJT Goal applies to all training performed by Developer.

2.2 Recruitment and Training

(a) Developer shall provide the following types of training for trainees:

(i) construction crafts, including lower-level management positions if training is oriented toward construction applications such as office engineers, estimators, time-keepers, etc.; and

(ii) laborers to the extent the training is meaningful and if significance is proven and accepted by Authority.

(b) Developer shall also conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees in a reasonable area of recruitment.

(c) Developer shall only consider applicants meeting the following criteria:

(i) the applicant must be a minimum of 18 years of age;

(ii) the applicant cannot be a current college student on a seasonal break from classes and use the on-the-job training as a summer employment opportunity; and

(iii) no applicant will be accepted as a trainee in any classification for which the applicant has successfully completed a course leading to journey worker status or in which the applicant has been gainfully employed.

(d) Developer shall ensure that a trainee begins training on the Project as soon as feasible after the work that uses the trained skill has begun. Developer shall ensure the trainee remains on the Project as long as training opportunities exist in the work classification or until the trainee has completed the training program.

(e) Developer must submit all required Federal forms for proposed trainees along with acknowledgment letters signed by the trainee entering the OJT program. Developer shall sign forms, as required, and obtain Authority's acceptance and signature.

(f) Developer acknowledges and agrees that only training programs approved by Authority with FHWA concurrence, the U.S. Department of Labor, its agencies, the Bureau of Apprenticeship and Training, or by a state apprenticeship agency or Council recognized by the U.S. Department of Labor may be used to fulfill training requirements in this PA Exhibit 15 (*OJT Requirements*) and may be used to meet the OJT Goal.

(g) Developer may not assign any portion of the training requirements established herein to a Contractor without the prior acceptance of Authority and the written approval of the relevant Contractor.

3. OJT Plan Requirements

3.1 OJT Plan Requirements

Developer shall develop an OJT Plan in accordance with PA Section 10.9.4 (*Job Training Program*) to describe Developer's methods for achievement of the OJT Goal identified in this PA Exhibit 15 (*OJT Requirements*), Section 2.1 (*OJT Goal and Requirements*) while also maintaining compliance with applicable Laws. Developer shall include the following in the OJT Plan:

(a) the approach to management of the OJT Plan, including staffing, roles, and responsibilities, including:

(i) identification of the point of contact for issues and other team members responsible for implementing Developer's OJT Plan, including the name of each individual;

(ii) a description of relevant experience for team members responsible for implementing the OJT Plan; and

(iii) a description of specific roles and responsibilities for these team members;

(b) the approach to develop and implement on-the-job training, including:

(i) identification and description of the classifications where trainees will be used during the D&C Period in accordance with the classifications set forth in the GDOT On-The-Job Training Program Manual, including the breakdowns for selected classifications set forth in the manual. New classifications are subject to acceptance by Authority;

(ii) identification of the minimum length and type of training that will be offered for each position;

(iii) demonstration of the steps taken to use recruitment resources and recruit minorities and women who are applicants for employment or current employees with efforts aimed at developing full journey level status employees in the type of trade or job classification involved;

(iv) a description of how Developer will recruit their workforce, including planned outreach events involving the local community;

(v) a description of how Developer plans to utilize subcontractors to achieve the OJT Goal;

(vi) a description of how Developer shall coordinate with workforce development organizations to advertise job openings locally;

(vii) approach to conducting periodical review of training opportunities and promotion potential for minority and women employees and methods to be implemented which encourage eligible employees to apply for such training and promotion;

(viii) a description of Developer's approach to graduating participants which shall strive to maximize participant graduation rates from the pre-approved trainee programs during the D&C Period;

(ix) a description of how Developer plans to utilize Contractors to achieve the OJT Goal;

(c) the approach to working with Authority in implementation of the OJT Plan; and

(d) the approach to implementing a system of processes and procedures, including reports, that monitor and document progress toward achievement of the OJT Goal, including:

(i) a description of how Developer will monitor hours completed, training provided, and how Developer will alleviate barriers to employment, graduation and successful permanent placement;

(ii) the approach to using a schedule showing the distribution of training hours over each year of the Project for the duration of the D&C Period; and

(iii) a description of the recovery tools and methods that will be implemented should appropriate progress not be made toward the OJT Goal.

3.2 **Additional Requirements and Updates**

(a) Developer shall ensure that no employee shall be employed as a trainee in any classification in which the employee has successfully completed a training course leading to journey-level status or in which the employee has been employed at the journey level.

(b) Developer shall prepare the OJT Plan in accordance with the requirements of the Project Agreement and this PA Exhibit 15 (*OJT Requirements*). Revisions to the OJT Plan must be requested by Developer and are subject to Authority's acceptance.

(c) Developer shall submit and update the OJT Plan to Authority in accordance with the Submittal Requirements Database and PA Section 6.3 (*Submittal Review; Authority Oversight; Independent Quality Assurance*).

4. **Trainee Notification**

(a) Developer, prior to the start of training, shall provide written notice to each individual to be trained under Developer's training program of that individual's designation as a trainee, the training program and classification under which training will be provided, the length of the training program, and the hourly wage rate to be paid to the trainee.

(b) Each month, while enrolled in the training program, Developer shall inform the trainees of the number of hours they have accumulated in the training program.

(c) Upon graduation, each trainee shall be issued a permanent certification designating the bearer as a graduate journey person of the appropriate training program.

5. **Documentation of Efforts and Reporting**

(a) Developer shall submit documentation of good faith efforts or reasonable efforts in accordance with PA Exhibit 15 (*OJT Requirements*), Section 2.1 (*OJT Goal and Requirements*). Developer shall document good faith efforts through the following actions:

(i) demonstrating that Developer reached out to community organizations and used other channels to solicit minority or female workers to fill the training position;

(ii) demonstrating that Developer reviewed its current workforce for potential upgrade, including all subcontractors; and

(iii) interviewing minority or female applicants of which did not produce a viable employee.

(b) Developer shall provide the documentation referred to in Section 5(a) above in the form of correspondence, including emails, letters, interview results, internal and external reports.

(c) Developer shall maintain a record of time trained for each trainee in accordance with State and Federal requirements.

(d) Developer shall prepare and submit an OJT Progress Report, in accordance with the Submittal Requirements Database, documenting trainee progress on a semi-annual basis (semi-annual periods end on June 30th and December 31st) in the form of Form 1 of this PA Exhibit 15 (*OJT Requirements*) ("OJT Progress Report"). Developer is responsible to complete all fields and obtain necessary signatures by Developer and Authority.

(e) When Developer determines that the trainee is capable of performing the full skills of the classification in which he or she is being trained, Developer shall submit a signed final Form 1 of this PA Exhibit 15 (*OJT Requirements*) to Authority.

6. **Training Credit**

(a) Credit for off-site training may be made only if trainees are concurrently employed on the Project and Developer does one or more of the following:

(i) contributes to the cost of the training; and/or

(ii) provides instruction to the trainee or pays the trainee's wages during the off-site training.

(b) Developer shall notify Authority when a trainee is terminated in accordance with PA Exhibit 15 (*OJT Requirements*), Section 2.1 (*OJT Goal and Requirements*).

(c) Developer shall not earn any credit toward the OJT Goal for any trainee that is terminated or leaves the Project prior to completing the training program.

7. **Trainee Pay**

(a) Developer shall pay trainees in accordance with the following:

(i) trainees are paid not less than 60% of the appropriate minimum journeyman's rate specified for the first half of the training period, 75% for the third quarter of the training period, and 90% for the last quarter of the training period;

(ii) if trainees in an approved existing program are enrolled as trainees in the same classification on this Project, the appropriate rates approved by the Departments of Labor or Transportation for the existing program shall apply to the trainees; and

(iii) if applicable, attach a copy of SF 1444 Additional Wage classification and supporting documentation.

(b) Developer shall be compliant with all United States labor laws.

8. **Failure to Comply**

If Developer fails to meet certain of the reporting requirements of this PA Exhibit 15 (*OJT Requirements*), Nonrefundable Deductions will be assessed against Developer in accordance with PA Exhibit 18 (*Measures of Liquidated Damages and Nonrefundable Deductions*).

FORM 1

FORM 1409

1. NAME OF CONTRACTOR		1a. ADDRESS
2. NAME OF TRAINEE	2a. SEX. ☐M ☐ F	2b. ADDRESS
3. AGE OF TRAINEE	4. SOCIAL SECURITY NUMBER xxx-xx-_____	5. EMPLOYEE STATUS *(CHECK ONE)* ☐NEW HIRE ☐ UP-
6. ETHNIC GROUP DESIGNATION *(CHECK ONE)* ☐AFRICAN AMERICAN ☐ASIAN ☐SPANISH AMERICAN ☐AMERICAN INDIAN ☐OTHER		
7. SUMMARY OF PREVIOUS TRAINING: *(ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS).*		
_____HOURS COMPLETED TOWARD _____HOURS REQUIRED IN TRAINING PROGRAM FOR _____		PERSONS IN HOUSEHOLD _____ TOTAL HOUSEHOLD INCOME _____
8. JOB CLASSIFICATION OF TRAINEE 1.	9. DATE TRAINING STARTED ON THIS CONTRACT	10. TYPE OF ON THE JOB TRAINING (C*HECK ONE)* ☐APPRENTICESHIP ☐OTHER

REPORTING PERIODS

INSTRUCTIONS: *One vertical column is to be completed for each succeeding reporting period and the form submitted. Enter June 30, Dec. 31 as applicable in columns a through h below*

	HOURS OF TRAINING DATA	A 20_	B 20__	C 20__	D 20__	E 20__	F 20__	G 20__	H 20__
11.	PROVIDED DURING REPORT PERIOD								
12.	PROVIDED TO DATE								
13.	REMAINING TO COMPLETE THE APPROVED PROGRAM								

14. TERMINATION

(IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION

EFFECTIVE DATE

(CHECK APPROPRIATE)

☐ 1. FULL COURSE
☐ 2. EARLY COMPLETION
☐ 3. ACCEPTED FULL-TIME JOB
☐ 4. INVOLUNTARILY DROPPED
☐ 5. VOLUNTARILY DROPPED
☐ 6. TRANSFERRED TO OTHER TRAINING PROGRAM

15. REPORT PREPARED BY (SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)	15a. DATE

(SIGNATURE) *(TITLE)*	
16. REPORT REVIEWED BY (SIGNATURE AND TITLE OF GDOT OFFICIAL)	16a. DATE
(SIGNATURE) *(TITLE)*	

EXHIBIT 16
REQUIRED STATE CERTIFICATIONS

(on following pages)

Part A: Georgia Security and Immigration Compliance Act Affidavits

Part B: Certification of Compliance with the State of Georgia's Sexual Harassment Prevention Policy

Part C: Drug-Free Workplace

Part A
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT
(Developer)

Contractor(s) Name: _____

Letting: _____

Call No.: _____

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the Georgia Department of Transportation has registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify,* in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.GA. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the Georgia Department of Transportation within five business days after any subcontractor(s) is/are retained to perform such service.

_____ _____
EEV / E-Verify™ Company Identification Number | Date of Authorization

_____ _____
BY: Authorized Officer or Agent | Date
(Name of Person or Entity)

_____
Title of Authorized Officer or Agent

_____
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THE

_____ DAY OF _____, 20__

[NOTARY SEAL]

_____
Notary Public

My Commission Expires: _____

* **or any subsequent replacement** operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT
(Subcontractor)

Name of Subcontractor: _____

Name of Project: _____

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or entity which is engaged in the physical performance of services under a contract with _____ on behalf of the Georgia Department of Transportation has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b).

Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

_____ _____

E-Verify / Company Identification Number Date of Authorization

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20___ in _____(city), _____(state).

_____

Signature of Authorized Officer or Agent

_____

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 20__ [NOTARY SEAL]

_____

Notary Public

My Commission Expires: _____

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT
(Sub-Subcontractor)

Name of Sub-Subcontractor: _____

Name of Project: _____

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or entity which is engaged in the physical performance of services under a contract with _____ (subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and _____ (contractor) on behalf of the Georgia Department of Transportation has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. § 13-10-91(b).

Additionally, the undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to _____ (subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to _____ (subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract).

Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

_____ _____

E-Verify / Company Identification Number Date of Authorization

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20___ in _____(city), _____(state).

_____

Signature of Authorized Officer or Agent

_____

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 20__ [NOTARY SEAL]

_____

Notary Public

My Commission Expires: _____

Part B
CERTIFICATION OF COMPLIANCE WITH THE STATE OF GEORGIA'S SEXUAL HARASSMENT PREVENTION POLICY

The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy (the "Policy"), all contractors who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

A contractor, including its employees and subcontractors, who have violated the Policy, including but not limited to engaging in sexual harassment and/or retaliation may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from State premises, restricted access to State premises and/or personnel, termination of contract, and/or other corrective action(s) deemed necessary by the State.

(i) If [Developer / Contractor / Subcontractor] is an individual who is regularly on State premises or who will regularly interact with State personnel, [Developer / Contractor / Subcontractor] certifies that:

(a) [Developer / Contractor / Subcontractor] has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at https://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy;

(b) [Developer / Contractor / Subcontractor] has completed sexual harassment prevention training in the last year; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at http://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/hr-professionals/employee-training (scroll down to section for entities without a LMS section) or this direct link https://www.youtube.com/embed/NjVt0DDnc2s?rel=0 prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and,

(c) upon request by Authority, the [Developer / Contractor / Subcontractor] will provide documentation substantiating the completion of sexual harassment training.

(ii) If [Developer / Contractor / Subcontractor] has employees and subcontractors that are regularly on State premises or who will regularly interact with State personnel, [Developer / Contractor / Subcontractor] certifies that:

(a) [Developer / Contractor / Subcontractor] will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at http://doas.ga.gov/human-resources-

administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy;

(b) [Developer / Contractor / Subcontractor] has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at http://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/hr-professionals/employee-training (scroll down to section for entities without a LMS section) or this direct link https://www.youtube.com/embed/NjVt0DDnc2s?rel=0 prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

(c) upon request of Authority, [Developer / Contractor / Subcontractor] will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

Date: _____

[Developer / Contractor / Subcontractor]: _____

Signature: _____

Name: _____

Title: _____

Part C
DRUG-FREE WORKPLACE

STATE OF _____)

)SS:

COUNTY OF _____)

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

_____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity that is [a [contractor to]/[subcontractor to a contractor to][the "Developer" under the Design, Build, and Finance Agreement for the I-285 / I-20 West Interchange Project.

The undersigned certifies that the provisions of O.C.G.A. §§ 50-24-1 through 50-24-6, relating to the "Drug-free Workplace Act", have been complied with in full.

The undersigned further certifies that:

(1) a drug-free workplace will be provided for the contractor's employees during the performance of the contract; and

(2) each contractor who hires a subcontractor to work in a drug-free workplace shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with (contractor's name)_____,_____ (subcontractor's name)_____ certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of O.C.G.A. § 50-24-3."

The undersigned further certifies that he/she will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Work.

[*signature page follows*]

_____	_____
(Signature)	(Signature)
_____	_____
(Name Printed)	(Name Printed)
_____	_____
(Title)	(Title)

Subscribed and sworn to before me this _ day of __, 20__.

_____
Notary Public in and for
said County and State

[Notary Seal]

My commission expires: _____

EXHIBIT 17
INSURANCE COVERAGE REQUIREMENTS

The following minimum insurance requirements shall apply and supplement the requirements as set forth in PA Section 16.1 (*Insurance*). Except as otherwise expressly indicated herein, minimum coverages and limits shall be provided on a project-specific, project term, basis.

1. Builder's Risk Insurance During Construction

At all times during the period from NTP3 (or such earlier time as may be required with respect to the Work, including Utility Adjustment Work) until the Substantial Completion Date, Developer shall procure and maintain, or cause to be procured and maintained, a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including terrorism (certified by the Secretary of the Treasury pursuant to the Terrorism Risk Insurance Act, Pub.L. 107-297, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015, Pub.L. 114-1, as further amended by the Terrorism Risk Insurance Program Reauthorization Act of 2019, Pub.L. 116-94, as may be further amended), the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the parts of the Work or portions of the Project under construction, and the works of improvement, including Permanent Works and Temporary Works, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site.

(c) The policy shall provide coverage per occurrence up to the greater of the probable maximum loss as determined by a probable maximum loss study ("PML Study") and $100,000,000 per occurrence, plus an allowance for professional fees, demolition and debris removal, without risk of co-insurance; provided, however, that the policy may include a sublimit for earth movement, flood, named storm, windstorm or convective storm of not less than $25,000,000 per occurrence and in the aggregate. Any PML Study shall be performed and prepared by a qualified third party experienced in performing such analysis such that the results demonstrate the coverage limits adequate to insure the Work. Authority reserves the right to review and comment on the PML Study to verify reasonableness under industry standard underwriting practices prior to issuance of the policy or renewal of any policy.

(d) Developer, Authority, the State, GDOT, the D&C Contractor, Contractors, and Subcontractors of every tier shall each be the insureds on the policy as their respective interests appear, provided, any coverage for architects and engineers may be limited to their site activities only. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other named insureds. Authority and GDOT will also be named as co-Loss Payees under the policy with Developer.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, and (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery.

(f) Subject to commercial market availability, the policy shall be endorsed with LEG3 (defective work endorsement) or DE5 (1995) (defects exclusions) language or such other endorsement as approved by Authority effecting the same result, in any case with a sublimit of no less than $15,000,000.

(g) Subject to commercial market availability, such policy shall include the following minimum coverage sublimits:

(i) $5,000,000 for off-site storage and in-transit;

(ii) $250,000 plans, blueprints and specifications;

(iii) $25,000,000 demolition and debris removal coverage;

(iv) $5,000,000 the increased replacement cost due to any change in applicable codes or other Laws and/or building ordinance compliance (with building ordinance exclusion deleted);

(v) $2,000,000 expense to reduce loss;

(vi) "Soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such delay resulting from damage or loss or replacement thereof) such soft cost limit must be disclosed to and approved by the Lenders and Authority; and

(vii) $3,000,000 damage to adjacent roadway and structures within or adjacent to the Site which are damaged as a result of an insured loss.

2. Builders Risk During Warranty Period

During the Warranty Period, at all times construction work valued at $2,000,000 per location or more is being undertaken, Developer shall procure and maintain, or cause to be procured and maintained, a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including terrorism (certified by the Secretary of the Treasury pursuant to the Terrorism Risk Insurance Act, Pub.L. 107-297, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015, Pub.L. 114-1, as further amended by the Terrorism Risk Insurance Program Reauthorization Act of 2019, Pub.L. 116-94, as may be further amended), the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the parts of the Work or portions of the Project under construction, and the works of improvement, including Permanent Works and Temporary Works, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site. The coverage for existing GDOT Property may be sublimited as provided below in Section 2(f) of this PA Exhibit 17.

(c) The policy shall provide coverage of at least $2,000,000 per occurrence and in the aggregate of the covered property loss, plus an allowance for professional fees, demolition and debris

removal, without risk of co-insurance; provided, however, that the policy may include a sublimit for earth movement and flood.

(d) Developer, Authority, the State, GDOT, the D&C Contractor, Contractors, and Subcontractors of every tier shall each be the insureds on the policy as their respective interests appear, provided, any coverage for architects and engineers may be limited to their site activities only. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other named insureds. Authority and GDOT will also be named as co-Loss Payees under the policy with Developer.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) demolition and debris removal coverage, (v) the increased replacement cost due to any change in applicable codes or other Laws, (vi) expense to reduce loss, (vii) building ordinance compliance, with the building ordinance exclusion deleted, and (viii) soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) Such policy shall include the following minimum coverage sublimits:

(i) $100,000 for off-site storage and in-transit;

(ii) $25,000 plans, blueprints and specifications;

(iii) $100,000 demolition and debris removal coverage;

(iv) $100,000 expense to reduce loss;

(v) $100,000 "Soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such delay resulting from damage or loss or replacement thereof);

(vi) $250,000 damage to adjacent roadway and structures within the Site to be incorporated into the Construction Work which are damaged as a result of an insured loss;

(vii) $250,000 for earth movement, flood, named storm, windstorm or convective storm.

3. Commercial General Liability Insurance

At all times from the Effective Date until the end of the Warranty Period, Developer shall procure and maintain, or cause to be procured and maintained, commercial general liability insurance as specified below.

(a) The policy shall be in form reasonably acceptable to Authority, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall include, but not be limited to, the following coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Separation of insureds;

(iv) Products and completed operations;

(v) Terrorism (to the extent available);

(vi) Underground, Explosion and Collapse;

(vii) Defense (in addition to liability limits);

(viii) Fellow employee exclusion deleted;

(ix) Incidental medical malpractice;

(x) No exclusion for work within 50 feet of a Railroad; and

(xi) Professional services exclusion with an exception for construction management, means and methods.

(c) The Insurance Policy shall cover Developer's liability arising out of the acts or omissions of Developer's employees and any other contractors or other business engaged in the Work.

(d) Developer shall be a named insured on the policy and the policy shall have minimum limits of not less than $1,000,000 per occurrence and $2,000,000 in the annual aggregate with a general aggregate applicable on a per-project basis for bodily injury, personal injury and property damage liability. Completed Operations coverage shall be maintained for an additional eight years after the Substantial Completion Date or an extended reporting period of eight years after the Substantial Completion Date shall be in effect.

(e) The Indemnified Parties shall each be additional insureds on a primary and non-contributory basis on either ISO CG 10 20 04 13 or ISO 10 37 04 13, or equivalent, and the policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insureds.

4. Automobile Liability Insurance

At all times from the Effective Date until Final Acceptance, and at any time that Developer uses vehicles while undertaking activities on Site during the Warranty Period, Developer shall procure and maintain automobile liability insurance as specified below.

(a) The policy limits maintained by Developer from the beginning of the Term through Final Acceptance shall be not less than $1,000,000 combined single limit for bodily injury and property damage.

(b) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned (if any), non-owned and hired vehicles connected with performance of the Work, including loading and unloading.

(c) The Indemnified Parties shall each be included as additional insureds on a primary, non-contributory basis.

(d) Automobile liability insurance coverage need not be provided on a project-specific, project term, basis.

(e) If Developer's or any Contractor's activities involve transportation of Hazardous Materials, the automobile liability Insurance Policy for Developer or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90).

5. Umbrella/Excess Liability Insurance

At all times from the Effective Date through expiration of the Warranty Period, Developer shall procure and maintain, or cause to be procured and maintained with Developer as a named insured, umbrella/excess liability insurance providing following-form coverage excess of the underlying commercial general liability, automobile liability, and employer's liability insurance limits noted herein. This policy must have a minimum limit of $10,000,000 per occurrence and in the aggregate from the Effective Date until NTP3, and $50,000,000 per occurrence and in the aggregate from NTP3 until expiration of the Warranty Period (except as the same may be reduced as provided in the last paragraph of this Section 5).

The policy shall include each of the Indemnified Parties as additional insureds on a primary, non-contributory basis. Completed Operations coverage with the full $50,000,000 limit shall be maintained for an additional eight years after the Substantial Completion Date or an extended completed operations period of eight years after the Substantial Completion Date shall be in effect.

During the Warranty Period, the Umbrella/Excess Liability limit may be reduced to $10,000,000 with coverage to continue or an extended completed operation period shall be in effect for six years after the expiration of the Warranty Period.

6. Pollution Liability Insurance

At all times from NTP1 until the end of the Warranty Period, Developer shall procure and maintain, or cause to be procured and maintained, contractor's pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay (i) to a third party, (ii) as or for clean-up costs, or (iii) as costs that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by the performance of Work that occur on the Project.

(b) Developer and D&C Contractor shall be named insureds on the policy. Each of the Indemnified Parties shall be additional insureds under such policy. The policy shall include standard separation of insureds language providing that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of another named insured, or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage for the other insureds on the policy. The policy shall have no exclusions that limit pollution liability claims and actions by any Indemnified Party against Developer or D&C Contractor.

(c) The policy shall have a limit of not less than $3,000,000 per claim and in the aggregate per policy period, and shall be maintained through Final Acceptance.

(d) The policy shall include, but not be limited to, the following coverages:

(i) premises pollution liability;

(ii) transportation, disposal at non-owned off-site location, clean-up; and

(iii) emergency response.

(e) During the Warranty Period, Developer shall procure and maintain, or cause to be procured and maintained, minimum contractor's pollution liability insurance with limits of $2,000,000 per claim and in the aggregate for bodily injury, personal injury, property damage liability, and clean-up costs in essentially the same form as that required during design and construction. This insurance does not need to be project specific.

7. Professional Liability Insurance

(a) At all times during the Term that professional services are rendered respecting design and construction of the Project until the first to occur of (i) five years after the professional services have concluded for the Project or (ii) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the Project, the D&C Contractor and the Lead Engineer shall procure and maintain professional liability insurance as follows:

(i) [Reserved.]

(ii) A practice contractor's professional liability policy covering the D&C Contractor or a Contractor's Protective Professional Indemnity (CPPI) policy with a minimum limit of $5,000,000 per claim and in the aggregate. No D&C Contractor practice professional liability policy is required if the CPPI option is elected), however should the Developer put in place an Owner's Protective Professional Indemnity (OPPI) policy, then the D&C Contractor will be required to carry a contractor's practice professional Liability policy with a minimum limit of $1,000,000, provided the OPPI (to be carried by Developer) must have a minimum limit of $5,000,000 per claim and in the aggregate. At the option of Developer, the above-noted option to utilize the D&C Contractor's practice professional liability policy can be replaced by a project-specific policy. The CPPI or OPPI policy form is subject to review and acceptance by Authority, but any policies utilized to implement this option must remain in effect for at least five years after all professional services are complete; and

(iii) A practice or project-specific professional liability policy covering the Lead Engineer with policy limits of at least $10,000,000 per claim and aggregate. Coverage must remain in effect for at least five years after all professional services are complete.

Notwithstanding the foregoing, the lead Independent Quality Firms need not be covered by the foregoing project-specific Professional Liability insurance policy, but if not covered, shall maintain its own respective professional liability insurance policy with a minimum limit of at least $5,000,000 per claim and in the aggregate and maintain such coverage for at least five years after all services are complete.

Any professional liability policies maintained by Developer, D&C Contractor, or the Lead Engineer under this Section 7(a)(i), (ii), or (iii) (*Professional Liability Insurance*) (including all alternative coverages) must include Authority, GDOT, the State, the State Transportation Board, Authority's board of directors, and their respective directors, employees, commissioners, and office holders (public individuals only) as "Indemnified Parties" under the policy.

(b) To the extent not covered by the policy (or policies) described above, Developer shall cause the D&C Contractor, the Lead Engineer (in the case of the Design Work) and the lead Independent Quality Firm to require each Contractor and Subcontractor providing professional services (including Independent Quality Firms) respecting such design, construction and quality assurance to procure and keep in force professional liability insurance with minimum limits as specified below in the following table:

Contract Amount	*Minimum Limits of Liability*	*Years Coverage to Remain in Place after Design Service are Completed*
Over $5,000,000	$3,000,000 Each /Claim and Aggregate	5 Years
$1,000,000 -$4,999,999	$2,000,000 Each Claim and Aggregate	5 Years
Under $1,000,000	$1,000,000 Each Claim and Aggregate	5 Years

(c) Each such policy shall insure the party performing the professional services for liability arising out of any negligent act, error or omission in the performance of the professional services or activities for the Project. Such additional policies need not be Project-specific. If any coverage is written on a claims-made basis, the retroactive date applicable to coverage under the policy must precede the effective date of the design subcontract.

8. Workers' Compensation/Employer's Liability Insurance

Developer and D&C Contractor shall each procure and maintain from the Effective Date through the later of expiration of the Warranty Period and completion of Warranty Work, or cause to be procured and maintained at all times when Work is being performed by any employee of Developer or D&C Contractor, a policy (or policies) of workers' compensation insurance for those employees in conformance with applicable Law. The Insurance Policy (or Policies) shall provide statutory workers' compensation benefits and minimum employer's liability limits of $1,000,000 per accident or disease.

The workers' compensation Insurance Policy (or Policies as required by Law) shall contain the following endorsements:

(a) a Federal Employer's Liability Act endorsement;

(b) a voluntary compensation endorsement;

(c) an alternative employer endorsement; and

(d) coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950 and the Jones Act (46 U.S.C. § 30104).

9. Aircraft Liability Insurance

Developer shall ensure that proper insurance is obtained and kept in effect for any Work undertaken via use of UAS or other aircraft. If UASs are utilized during the course of the Project, Developer shall evidence coverage either through a stand-alone unmanned aircraft systems policy or by endorsement (CG 24 50 or equivalent) to the commercial general liability policy.

Minimum limits for aviation insurance shall be typical for such work being undertaken on a project such as this Project. In no event shall such limits be less than $5,000,000 per occurrence and in the

aggregate for bodily injury and property damage liability, excepting that with regard to UASs, the limit of liability shall not be less than $3,000,000 per occurrence with a $3,000,000 annual aggregate.

10. Railroad Protective Liability Insurance

Developer shall provide insurance coverage terms and conditions as may be required by any Railroad as a condition of the Railroad's consent for entry into or work nearby Railroad facilities or property (including Railroad ROW).

All Railroad Protective Liability Insurance Policies shall be in a form acceptable to the Railroad. The original Railroad Protective Liability Insurance Policy shall be submitted to the Railroad with the Railroad as the named insured. Copies of all other insurance policies shall be submitted to the owning Railroad and, if different from the owning Railroad, the operating Railroad, and Authority, and be approved by the Railroad(s) prior to any entry by any Developer-Related Entity upon or nearby Railroad facilities or real property rights.

All Railroad Protective Liability Insurance Policies shall be effective during the period any Work is being performed within 50 feet of the Railroad ROW or otherwise as required by the Railroad.

Such Railroad Protective Liability Insurance Policies shall provide that the placing insurer shall notify the Railroad of any cancellation, effective no earlier than 30 days after notification to the Railroad.

Developer shall comply with, and cause its Contractors and Subcontractors to comply with, any additional or more stringent insurance requirements set forth in TP Section 14 (Railroad), Standard Specification 107.08, and the Railroad Standards.

11. Contractor and Subcontractor Insurance

Except to the extent that a Contractor or Subcontractor is covered as a named insured under a policy maintained by Developer and/or D&C Contractor, each such Contractor or Subcontractor shall be required to provide proof of the following minimum insurance coverages:

(a) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of $500,000 bodily injury by accident, each accident, and $500,000 bodily injury by disease, each employee, and aggregate. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) Commercial General Liability Insurance including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability. Minimum limits shall be no less than $1,000,000 per occurrence and in the aggregate annually.

(c) Automobile Liability Insurance with a limit of at least $500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.

(d) (IQF Subcontractors only) Professional Liability Insurance as specified, at a minimum, under Section 7(b) (*Professional Liability Insurance*) above.

(e) Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability for contracts valued at more than

$5,000,000, coverage shall be in the amount of $4,000,000 per occurrence and in the aggregate, provided, however, that this requirement shall not apply to Subcontractors contracted as truckers transporting materials to or from the Site, or material suppliers.

The Indemnified Parties shall be included as additional insureds on a primary, non-contributory basis for the coverages set forth in clause (b), clause (c), and clause (e) just above, and a waiver of subrogation shall apply to the Indemnified Parties under all such policies. Except with regard to any insurance procured and maintained by the D&C Contractor, any insurance required in this Section 11 carried by any other Contractor is not required to be project-specific.

Should Developer or D&C Contractor implement a contractor-controlled insurance program (CCIP) providing compliant insurance for all participants with regard to on-site activities, all Construction Subcontractors enrolled in the CCIP shall still be responsible for procuring and maintaining automobile liability insurance and the other insurance coverages noted above with regard to off-site work with the Indemnified Parties as additional insureds on a primary, non-contributory basis for the applicable insurance coverages set forth in clause (b), clause (c), and clause (e) just above.

Notwithstanding the foregoing, and for avoidance of doubt, the D&C Contractor shall place insurance consistent with the requirements for Developer and not Contractors.

EXHIBIT 18
MEASURES OF LIQUIDATED DAMAGES AND NONREFUNDABLE DEDUCTIONS

1.1 For Late Substantial Completion and Late Final Acceptance

(a) Liquidated Damages for failure to achieve Substantial Completion by the Substantial Completion Deadline shall equal $121,700 per day for each day that the Substantial Completion Date is later than the Substantial Completion Deadline.

(b) Liquidated Damages for failure to achieve Final Acceptance by the Final Acceptance Deadline shall equal $34,000 per day for each day that the Final Acceptance Date is later than the Final Acceptance Deadline.

(c) Liquidated Damages assessed under subsection (b) above for failure to achieve Final Acceptance by the Final Acceptance Deadline shall not be cumulative and in addition to Liquidated Damages assessed under subsection (a) above for failure to achieve Substantial Completion by the Substantial Completion Deadline, provided that where any such Liquidated Damages under subsection (a) cease to accrue as a result of Developer achieving Substantial Completion, subsection (b) shall then apply.

1.2 [Reserved.]

1.3 For Key Personnel-related Matters

If Developer fails either (a) to cause each individual filling a Key Personnel position to be available, as is required under PA Section 10.4.1.3 (*Key Personnel*) or PA Section 10.4.1.4 (*Key Personnel*) or (b) to provide a proposed replacement under PA Section 10.4.1.2 (*Key Personnel*) that meets or exceeds the Minimum Qualifications (Key Personnel) to Authority within 30 days after notifying Authority of a proposed replacement for any Key Personnel position, then Liquidated Damages with respect to either such failure are as follows:

Key Personnel Position	**Liquidated Damages**
Developer Project Manager (DPM)	$150,000
Design Manager (DM)	$75,000
Construction Manager (CM)	$75,000
Project Chief Engineer (PCE)	$75,000
Quality Assurance Manager (QAM)	$75,000
Design Quality Assurance Manager (DQAM)	$50,000
Construction Quality Assurance Manager (CQAM)	$50,000
Safety Manager	$25,000
Workforce Manager	$25.000
Financial Lead	$25,000

1.4 A further liquidated damage in the amount of $25,000 will be payable from Developer to Authority for each three month period where any Key Personnel position is vacant or not being fulfilled in accordance with the DBF Documents as determined by Authority, in its sole discretion.

1.5 Nonrefundable Deductions

Nonrefundable Deductions shall be assessed by Authority upon the occurrence of the following, which shall not be cumulative, for any single occurrence. Where there are multiple incidents as set forth below contributing to a single occurrence, the highest value (or if of equivalent value, the occurrence with the more frequent assessment) Nonrefundable Deduction shall apply. Where one incident as set forth below contributes to multiple occurrences for which Authority may assess more than one Nonrefundable Deduction, the highest value (or if of equivalent value, the occurrence with the more frequent assessment) Nonrefundable Deduction shall apply. For avoidance of doubt, Nonrefundable Deductions assessed for any given occurrence below may be assessed more than once for each successive occurrence.

Ref.	Main Heading	Subheading	Developer Failure to:	NRD Deduction Amount	NRD Notice
1	**Management and Quality Compliance**	A. Roles and Commitments of Required Personnel	Make available and utilize any Required Personnel in accordance with PA Section 10.4.2.2 (*Required Personnel*) and TP Attachment 2-1 (Key Personnel and Required Personnel), Table 2 (Required Personnel)	$8,100	Y
		B. Replacement of Required Personnel	Provide a proposed Required Personnel replacement that is sufficiently qualified to Authority within the required timeframe as required by PA Section 10.4.2.3 (*Required Personnel*) and PA Section 10.4.2.5 (*Required Personnel*)	$8,100	Y
		C. Compliance with PMP	Develop, utilize or maintain the PMP per the requirements of TP Section 2 (Project Management Plan)	$15,900	N
2	**Environmental -Compliance**	A. Notification	Comply with Hazardous Material reporting or notification obligations under PA Section 7.7.1.1	$25,000	N

Ref.	Main Heading	Subheading	Developer Failure to:	NRD Deduction Amount	NRD Notice
	Maintain Environmental Protection or cause damage		(*Hazardous Materials Management*) and PA Section 7.7.1.1 (*Hazardous Materials Management*)		
		B. Environmental Compliance	Meet the Developer obligations for Hazardous Materials Management under PA Section 7.7 (*Hazardous Materials Management*), and the Authority has provided notice pursuant to PA Section 7.7.2.1 (*Hazardous Materials Management*) and following delivery of such notice, the Authority performs Hazardous Materials Management pursuant to PA Section 7.7.2.1 (*Hazardous Materials Management*).	$25,000	N
		C. Environmental Compliance	Adhere to Comprehensive Environmental Protection Program procedures as required by TP Section 5 (Environmental)	$13,500	N
		D. Environmental Compliance	Submit reports, information, documents, and associated approvals in accordance with TP Attachment 12-1 (MS4 Responsibilities) and Authority's General NPDES Stormwater Permit No. GAR 041000 (MS4 Permit)	$11,680	Y
		E. Environmental Compliance	Prevent environmental damage in contravention of TP Section 5 and NEPA Approval	$25,160	Y

Ref.	Main Heading	Subheading	Developer Failure to:	NRD Deduction Amount	NRD Notice
3	**Submittals**	A. Scheduling Submittal	Submit: 1. Revised Baseline Project Schedule within required time frame in accordance with TP Section 2.3.3 (Project Schedule Updates); 2. Project Schedule Update or revision within required time frame in accordance with TP Section 2.3.3 (Project Schedule Updates); or 3. Two-Week Detail Schedule within required time frame in accordance with TP Section 2.3.6 (Two-Week Detail Schedules)	\$7,100 \$7,100 \$7,100	Y N N
		B. Remedial Plan Submittal	Submit a Corrective / Preventative Action Report (PAR) within the timeframe specified in accordance with TP Attachment 2-10 (Submittal Requirements Database)	\$14,480	N
		C. Remedial Plan Compliance	Implement or comply with the requirements of the accepted Corrective/Preventative Action Report set forth in TP Section 3.5.11 (Corrective/Preventative Action Report) and in accordance with Section 2.5 of PA Exhibit 20 (*Nonconforming Work*)	\$14,480	N
		D. Noise Barrier	Comply with the construction timeline requirements for noise barrier walls set forth in TP Section 22.4 (Construction	\$18,000	Y

Ref.	Main Heading	Subheading	Developer Failure to:	NRD Deduction Amount	NRD Notice
			Requirements) for (a) start of construction of new noise barrier walls with respect to demolition of existing noise barrier walls or tree cutting; and (b) construction completion of noise barrier walls following demolition of existing noise barrier walls or tree cutting		
		E. Maintenance	Implement hazard mitigation as described in TP Section 19.3.4 (Developer Responsibility for Hazard Mitigation) within the timeframe identified in the "Hazard Mitigation" column of the Maintenance Defect Remedy Period in accordance with TP Attachment 19-1 (Maintenance Defect Definition and Remedy Table)	$22,750	N
		F. Maintenance	Remedy a Maintenance Defect within the timeframe identified in the "Repair" column of the Maintenance Defect Remedy Period in accordance with TP Attachment 19-1 (Maintenance Defect Definition and Remedy Table) and TP Section 19.3.5 (Developer Responsibility for Maintenance Defect Repair)	$15,650	N
		G. Signage	Respond to GDOT direction regarding accepted Temporary Traffic Control Plans as specified	$9,900	N

Ref.	Main Heading	Subheading	Developer Failure to:	NRD Deduction Amount	NRD Notice
			in TP Section 18.3.2 (Traffic Control Plans)		
4	**Utilities, Related**	Emergency Procedures Plan	Follow the approved procedures outlined in the Emergency Utility Response Information (EURI) as required in TP Section 7 (Utilities)	$10,280	Y
		ITS	Maintain operational continuity of ITS in accordance with the requirements of TP Section 19.5.6.1 (Operational Continuity of ITS) stemming from Developer actions	$29,580	N
		ITS	Provide notice of an ITS relocation requiring device to be taken out of service in accordance with TP Section 19.5.6.1.1 (ITS Operational Status)	$18,640	N

1.6 In addition to Liquidated Damages and Nonrefundable Deductions, in each of the foregoing instances for which Liquidated Damages or Nonrefundable Deductions may be assessed, Developer shall be liable for any fines assessed against Authority or GDOT as a result of any of the foregoing events or conditions.

EXHIBIT 19
ATC SUPPLEMENT

ATC No.	Description
001A	*Increased MSE Wall Panel Dimension*
002C	*MASH Barrier Standards*
003	*Alternative Minimum K Factor for Sag Curves*
005	*Concrete Noise Barrier Posts*
006A	*Optimized Interchange*
007	*Revised Skew Limit for Concrete Bridges*
009A	*Micropile Foundations*
011A	*7-RS at Crash Rated Noise Barrier*
014	*Steel Edge Beam for Concrete Bridges*
015	*Increase Deck Overhang*
016A	*6% Downgrade on West to South Ramp*
018A	*Diaphragm Type Change*
020	*Cheek Wall at Concrete Beam Section Change*
021	*Placement of Conduit Duct Banks*
022	*ITS Maintenance Area Access*
024A	*Cement Stabilized Reclaimed Base*
025	*I-20 Shoulder Topping Alternate*
028	*Micropile Uplift*

ATC No.	Description
029A	*I-20 over MLK Accelerated Bridge Construction (ABC)*
030A	*Alternate Stirrup Details*
032	*ATC-006A Administrative Update*
034A	*Retain Noise Wall 19 and 20 Foundations and Posts*
035	*Relief Slabs for Deep Culverts*

ATC Unsuccessful Proposer

Notes: **Any ATCs of an Unsuccessful Proposer will be incorporated via Supplemental Agreement.**

I-285 / I-20 West Interchange Project

ATC Conditions

With the incorporation of the agreed upon list of ATCs as part of this PA Exhibit 19 (*ATC Supplement*), the Parties agree that the following conditions* are hereby incorporated in the Project Agreement:

- For conditions applicable to each of the enumerated ATCs, refer to the ATC Review Form preceding each of the ATCs, copies of which are attached hereto and incorporated herein by reference.

EXHIBIT 20
NONCONFORMING WORK

All section references, unless expressly stated otherwise, are to the Articles and Sections within this PA Exhibit 20 (*Nonconforming Work*).

Article 1 LANE CLOSURES

During the D&C Period, Lane Closures will result in Monthly Lane Closure Deductions in accordance with PA Exhibit 13 (*Lane Closure Deductions*).

Article 2 NONCONFORMING WORK

2.1 Developer Responsibility for Nonconforming Work

2.1.1 If Nonconforming Work is discovered by Developer or Authority prior to the Substantial Completion Date (or, in the case of any FA Punch List items, prior to the Final Acceptance Date), Developer shall:

2.1.1.1 correct all Nonconforming Work in accordance with and subject to PA Section 7.9 (*Warranties; Contractor Warranties and Correction of Defects; Correction of Nonconforming Work*) and TP Section 3.5 (Nonconforming Work);

2.1.1.2 promptly take all necessary action to prevent similar Nonconforming Work from occurring; and

2.1.1.3 make any amendments to the Quality Management Plan, for submission to Authority for acceptance in accordance with the Submittal Requirements Database, to diminish the likelihood of future occurrence of similar Nonconforming Work.

2.1.2 Developer may not claim any relief or compensation with respect to the correction of any Nonconforming Work, except to the extent that it is entitled to claim any relief or compensation pursuant to PA Article 13 (*Relief Events; Compensation Events*).

2.2 Discovery of Nonconforming Work

2.2.1 Developer shall promptly notify Authority if Developer discovers any Nonconforming Work. Such notification shall be by means of the NCR System described in TP Section 3.5 (Nonconforming Work) and shall include details of the relevant Nonconforming Work as described therein.

2.2.2 If Authority discovers any Nonconforming Work, Authority may notify Developer including by use of the NCR System, specifying the relevant Nonconforming Work.

2.3 Correction of Nonconforming Work

2.3.1 Developer shall replace, re-work or repair all Nonconforming Work expeditiously and diligently in accordance with the appropriate NCR disposition accepted by Authority pursuant to TP Section 3.5.8 (NCR Disposition Options).

2.3.2 Developer shall notify Authority that the Nonconforming Work has been corrected promptly (and in any event within five Business Days) after its correction.

2.3.3 If Developer has requested a NCR disposition of "repair" or "accept-as-is", then prior to Authority accepting such disposition, the Parties shall agree:

2.3.3.1 an amount to be paid by Developer to Authority to reimburse Authority for the relevant completed Work not meeting all the requirements of the Project Agreement, taking into account any additional costs which may be incurred by Authority or any Authority-Related Entity as a result of such failure and Developer's cost savings as compared to implementing a "rework" NCR disposition; and

2.3.3.2 any other consequences under the Project Agreement arising from the relevant completed Work not meeting all of the requirements.

2.3.4 Following agreement of the matters referred to in Section 2.3 (*Correction of Nonconforming Work*) and Authority's acceptance of the "repair" or "accept-as-is" NCR disposition, Developer shall pay to Authority the amount agreed under Section 2.3.3.1 (*Correction of Nonconforming Work*) within 10 Business Days. Authority may deduct any unpaid amount only from the next applicable Project Certificate as an offset made further to Authority's rights under PA Section 17.3.3 (*Damages; Offset*) in accordance with PA Exhibit 5 (*Terms for Termination Compensation and Prepayment*) and PA Exhibit 7 (*DBF Contract Sum and Payment Terms*).

2.4 Right to Uncover

2.4.1 Developer shall ensure that Authority is provided with reasonable advance Notice of, and the opportunity to witness, all inspection and test activity with respect to the D&C Work in accordance with the Project Agreement.

2.4.2 If Developer does not provide Authority with the Notice and opportunity pursuant to Section 2.4.1, Developer shall, at the request of Authority, uncover any relevant part of the D&C Work that has been covered up or otherwise put out of view to permit Authority to inspect the relevant D&C Work. Developer shall bear all costs of any uncovering or removal, regardless of whether or not any Defect or Nonconforming Work is discovered in the relevant D&C Work.

2.4.3 In addition to its rights under Section 2.4.2, Authority may give Notice to Developer requiring Developer to uncover and inspect (or to allow Authority to inspect) any part or parts of the D&C Work, or to test any part or parts of the D&C Work, if Authority believes that:

2.4.3.1 such part or parts of the D&C Work contains Defects or Nonconforming Work; or

2.4.3.2 Developer has failed to comply with the requirements of the Project Agreement relevant to such part or parts of the D&C Work.

Such notice must include reasonably detailed reasons for the required uncovering, inspection or tests.

2.4.4 Developer shall comply with any Notice delivered under Section 2.4.3.

2.4.5 If any inspection or test carried out pursuant to Section 2.4.3 and Section 2.4.4 show that:

2.4.5.1 the relevant part or parts of the D&C Work contains Defects or Nonconforming Work; or

2.4.5.2 Developer has failed to comply with the requirements of the Project Agreement relevant to such part or parts of the D&C Work:

then Developer:

(a) shall diligently correct all such Defects, Nonconforming Work or non-compliance at no cost to Authority; and

(b) Developer will not have a right to claim any compensation, relief or extensions of time with respect to the exercise by Authority of its right under Section 2.4.3.

2.4.5.3 If any inspection or test carried out pursuant to Section 2.4.3 and Section 2.4.4 show that:

(a) the relevant part or parts of the D&C Work does not contain Defects or Nonconforming Work; and

(b) Developer has complied with the requirements of this Project Agreement relevant to such part or parts of the D&C Work,

then, the exercise by Authority of its right under Section 2.4.3 will constitute a Compensation Event and a Relief Event, as and to the extent provided in the respective clauses of the definitions thereof.

2.4.5.4 Regardless as to whether the exercise of Authority's right under Section 2.4 constitutes a Compensation Event or a Relief Event, following inspection by Authority (and, if a Defect or Nonconforming Work, correction thereof), Developer shall restore the Work to the standard required by the DBF Documents.

2.5 Failure to Implement Corrective/Preventative Action Report

2.5.1 If Developer is required to submit a Corrective/Preventative Action Report in accordance with TP Section 3.5.11 (Corrective/Preventative Action Report) and fails to diligently implement such Corrective/Preventative Action Report, then Authority may serve a Notice on Developer giving reasonable details of the failure.

2.5.2 If Developer has not corrected the failure to the reasonable satisfaction of Authority within 10 Business Days of receipt of a notification under Section 2.5.1, then a Developer Default will occur under PA Section 17.1.1 (*Developer Default*).

2.6 No Limitation

Nothing contained in the Project Agreement in any way limits the right of Authority to assert claims for damages resulting from defects in the Work for the period of limitations prescribed by applicable Law, and the obligations of Developer under this PA Exhibit 20 (*Nonconforming Work*) are in addition to any other rights or remedies Authority may have under the Project Agreement or under applicable Law.

EXHIBIT 21
FORMS OF P&P BONDS, WARRANTY BOND

Exhibit 21A Form of Performance Bond

Exhibit 21B Form of Payment Bond

Exhibit 21C Form of Warranty Bond (Performance Bond)

Exhibit 21A

FORM OF PERFORMANCE BOND
(Bond No. _____)

[**FORM OF ACTUAL BOND TO BE CONFORMED ACCORDINGLY BASED ON BOND ISSUANCE ON BEHALF OF DEVELOPER OR THE D&C CONTRACTOR**]

KNOW ALL PERSONS BY THESE PRESENTS:

That [***INSTRUCTION NOTE: Insert Legal Name and Address of Developer or D&C Contractor, as appropriate***] an entity duly authorized to do business in the State of Georgia (the "State"), as Bond Principal (hereinafter referred to as "Principal"), and [***INSTRUCTION NOTE: Legal Title and Address of Surety***] duly authorized to do business in the State, as surety (hereinafter referred to as "Surety") are held and firmly bound unto the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia ("SRTA") as obligee (the "Obligee") and [_____][***INSTRUCTION NOTE: Insert Legal Name and Address of (i) the Developer if the Developer is not the Principal, and (ii) the Lender/Collateral Agent for the Lender(s) if the Lender has recourse financing for the transaction]*** ("Lender,"), as co-obligees) (each a "Co-Obligee" and together the Co-Obligees"), in the amount of $[_____] **[*INSTRUCTION NOTE: Insert $[___], the greater of $[_____] and [ ]% of the D&C Amount*]**, to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally to the Obligee and the Co-Obligees.

WHEREAS, the [***INSTRUCTION NOTE: Insert "Principal" if the Developer is the Design-Builder, OR Insert "Developer" if Developer is not the Principal***] has entered into a contract with SRTA bearing the date of [_____, 20__], for designing, constructing, and partially financing the I-285 & I-20 West Interchange Project (the "Project") (the "Design, Build, Finance Agreement" or "DBF Agreement") [***INSTRUCTION NOTE: If Developer is the Principal, insert "***which is incorporated herein by reference and made a part hereof"], and capitalized terms not defined in this Bond have the meanings assigned in such Design, Build, Finance Agreement; and

[WHEREAS, Principal, an entity duly authorized to do business in the State, has entered into a contract with Developer bearing the date of [_____], related to the performance of [_____] under the DBF Agreement (the "Design-Build Contract"), which is incorporated herein by reference and made a part hereof. **[*INSTRUCTION NOTE: delete this paragraph if Developer is the Principal*]**

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that,

1. The recitals above are hereby incorporated by reference as though fully set forth herein.

2. If the Principal shall promptly and faithfully perform and comply with the terms and conditions of the [***INSTRUCTION NOTE: if Developer is the Principal, insert "***DBF Agreement" **OR** ***if Developer is not the Principal, insert*** "Design-Build Contract"]; and shall indemnify and save harmless the Obligee and the Co-Obligee(s), and each of their respective directors, officers, employees and representatives, against and from all cost, expenses, damages, injury or loss to which the Obligee and the Co-Obligee(s) (or any of their respective directors, officers, employees, and representatives) may be subjected by reason of any breach, default or failure of performance on the part of said Principal, its agents, subcontractors or employees, in the execution or performance of [that portion of the Work as defined in the DBF Agreement but exclusive of any Developer Financing Obligation (as defined in the DBF Agreement)]/[the Work as defined in the Design-Build Contract]**[*INSTRUCTION NOTE: delete the*

***appropriate clause depending as to whether Developer is the Principal*]** ("Obligee's Losses"/"Co-Obligee's Losses"); and if the Principal shall reimburse upon demand of the Obligee or the Co-Obligee any sums paid to the Principal that exceed the final payment determined to be due upon final completion and acceptance of the [Project]/[Work as defined in the Design-Build Contract]**[*INSTRUCTION NOTE: delete the appropriate clause depending as to whether Developer is the Principal*]**, then this obligation shall be void, otherwise it shall remain in full force and effect.

3. The Surety agrees that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this bond will not be considered payment bond claims.

4. If the Principal fails to perform the Work as required pursuant to the [DBF Agreement]/[Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***], the Surety shall promptly, at the Surety's expense, take one of the following actions:

(a) remedy such breach or default; or

(b) complete the Work covered by this bond in accordance with the terms and conditions of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***] then in effect; provided, however that completion of such work shall not be effected by the Principal or any affiliate of the Principal, for and on behalf of the Surety, without the Obligee's or Developer's express prior consent, granted in its sole discretion; or

(c) select a qualified contractor or contractors to complete all Work covered by this bond in accordance with the terms and conditions of the [DBF Agreement]/[Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***] then in effect, which qualifications shall include meeting the GDOT prequalification requirements, and to arrange for a contract meeting all the requirements of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***] between such contractor or contractors and the [Obligee OR Developer], and make available as work progresses (even though there should be a breach or default (or a succession thereof) under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price, but not exceeding, including other costs and damages for which Surety is liable hereunder, the penal sum; or

(d) waive its right to remedy such breach or default, perform and complete, arrange for performance and completion, or obtain a new contractor or contractors (under the foregoing clauses (a) to (c)), and after investigation, pay the Obligee and Co-Obligees the Surety's reasonable estimate of the cost to complete the D&C Work pursuant to the [DBF Agreement]/[Design-Build Contract] and any other Obligee's and Co-Obligees' Losses, provided that any such payment shall be on account only and subject to final adjustment and reimbursement based on the total of all Losses incurred by the Obligee and Co-Obligees with reasonable promptness under the circumstances, time being of the essence, in no case to exceed 30 days after receipt of notice of Obligee's declaration of default under the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***].

CONDITIONS OF THIS BOND ARE AS FOLLOWS:

A. The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension(s) of time, alteration(s), addition(s), omission(s) or other modification(s) to the terms of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], or to the work to be performed with respect to the Project, or in the specifications,

plans or drawings accompanying same, or the exercise of the Obligee's right to do Work, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], or any conditions precedent or subsequent in this bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this bond, or any fraud practiced by any other person other than the claimant seeking to recover this bond, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change(s), extension(s) of time, alteration(s), addition(s), omission(s) or other modification(s) to the terms of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***] or to the Work or to the specifications, plans or drawings.

B. Any suit under this bond must be instituted on or prior to the first anniversary of the Substantial Completion Date (as defined in the DBF Agreement) by the Obligee (or the Co-Obligees) pursuant to and as defined in the DBF Agreement.

C. The amount of this Bond is a fixed amount and shall not be changed. The Surety hereunder shall not be liable to the Obligee or the Co-Obligee in the aggregate in excess of the penal sum stated above.

D. If the Surety elects, and Obligee consents, as applicable, to act under Section 3(a), Section 3(b), or Section 3(c), then the responsibilities of the Surety to the Obligee shall not be greater than those of the Principal under the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], and the responsibilities of the Obligee to the Surety shall not be greater than those of the Obligee under the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***]. Subject to the commitment by the Obligee to pay the balance of the contract price, the Surety is obligated, without duplication, for:

(i) the responsibilities of the Principal for correction of defective work and completion of the [Project]/[the Work][***INSTRUCTION NOTE: conform accordingly***] under the terms, and subject to the conditions, of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***] then in effect;

(ii) additional legal, design professional, delay costs, disruption costs, and other additional costs resulting from the Principal's breach or default (to the extent not subject to liquidated damages under clause (C) above), and resulting from the actions or failures to act of the Surety under Section 4; and

(iii) damages claimed by, and due and owing to the Obligee under, the terms of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], including liquidated damages, if any.

For purposes of the foregoing, the "balance of the contract price" is the total amount [to be payable by the Obligee to the Principal, if any, after all adjustments have been made to which the Principal is entitled, collectively reduced by all payments made to or on behalf of the Principal under the DBF Agreement]/[to be payable by the Developer to the Principal, if any, after all adjustments have been made to which the Principal is entitled, collectively reduced by all payments made to or on behalf of the Principal under the Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***].

E. Notwithstanding the existence of the Design-Build Contract, as the same may be amended, it is agreed that the Surety shall not be liable under this Bond to the Obligee or the Co-Obligees, unless the Obligee has (i) made all payments to Developer as and to the extent due under the DBF Agreement, and (ii) agrees, upon an election of Surety to complete or to arrange for completion of

the Work pursuant to subparts (i) or (ii) of this Bond, to remit all payments to become due on account of further Work to be performed. [***INSTRUCTION NOTE: This provision is not intended to be further modified regardless of the Principal being the Developer or the D&C Contractor***]

F. The Surety shall not be liable under this Bond to any of Obligee or Co-Obligee for any Developer Financing Obligations, as defined and as may be required under the DBF Agreement, and the Surety shall not be obligated to provide any security for the financing of the Project as required under the DBF Agreement.

G. Neither any change in or under the DBF Agreement [or the Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***], nor any compliance or noncompliance with any formalities provided in the DBF Agreement [or the Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***] nor the change shall relieve the Surety of its obligations under this Bond.

H. The Co-Obligee shall not be permitted to independently make a claim or demand under this bond without the written consent of Obligee. Each Co-Obligee acknowledges and agrees that the Surety may not make any payment under this bond to such Co-Obligee without the prior written consent of Obligee.

[I]. [[*INSTRUCTION NOTE: **Use in case of multiple or co-sureties***] The co-sureties herein named and executing this bond agree to empower a single representative with authority to act on behalf of all of the co-sureties with respect to this bond, so that the Obligees and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the co-sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligees designating a single new representative, signed by all of the co-sureties. The initial representative shall be [_____], and correspondence to be directed at the following address(es):] [[*INSTRUCTION NOTE: **Use in case of a single surety***] Claims under this bond shall be sent to the Surety at the following address and sent via electronic mail to the indicated email address:]

NAME:_____
TITLE: _____
ADDRESS: _____
CITY:_____ STATE:_____ ZIP CODE:_____
TELEPHONE: _____

[J]. Further, this Bond shall be the performance security furnished under O.C.G.A. §§ 32-2-80.

[remainder of page intentionally left blank]

Signed, sealed and dated this _____ day of _____, 20__.

Principal: [Principal]
By: _____
Name: _____
Its: _____ (Seal)

Surety: [Surety]
By: _____
Name: _____
Its: _____ (Seal)

Exhibit 21B

FORM OF PAYMENT BOND
(Bond No. _____)

[**FORM OF ACTUAL BOND TO BE CONFORMED ACCORDINGLY BASED ON BOND ISSUANCE ON BEHALF OF DEVELOPER OR THE D&C CONTRACTOR**]

KNOW ALL PERSONS BY THESE PRESENTS:

That [***INSTRUCTION NOTE: insert Legal Name and Address of Developer or D&C Contractor, as appropriate***] an entity duly authorized to do business in the State of Georgia (the "State"), as Bond Principal (hereinafter referred to as "Principal"), and [***INSTRUCTION NOTE: Legal Title and Address of Surety***] duly authorized to do business in the State, as surety (hereinafter referred to as "Surety") are held and firmly bound unto the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia ("SRTA") as obligee (the "Obligee") and [_____][***INSTRUCTION NOTE: insert Legal Name and Address of (i) the Developer if the Developer is not the Principal, and (ii) the Lender/Collateral Agent for the Lender(s) if the Lender has recourse financing for the transaction]*** ("Lender,"), as co-obligees) (each, a "Co-Obligee" and together the "Co-Obligees"), in the amount of $[_____] **[*INSTRUCTION NOTE: insert $[___], the greater of $[_____] and [ ]% of the D&C Amount*]**, to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally to the Obligee and the Co-Obligees.

WHEREAS, the [***INSTRUCTION NOTE: Insert "Principal" if the Developer is the Design-Builder, OR Insert "Developer" if Developer is not the Principal***] has entered into a contract with SRTA bearing the date of [_____, 20__], for designing, constructing, partially financing the I-285 & I-20 West Interchange Project (the "Project") (the "Design, Build, Finance Agreement" or "DBF Agreement"); which is incorporated herein by reference and made a part hereof, and capitalized terms not defined in this Bond have the meanings assigned such terms in the Design, Build, Finance Agreement; and

[WHEREAS, Principal, an entity duly authorized to do business in the State, has entered into a contract with Developer bearing the date of [_____], related to the performance of [_____] under the DBF Agreement (the "Design-Build Contract"). **[*INSTRUCTION NOTE: delete this paragraph if Developer is the Principal*]**

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully make payment to all claimants, for all labor, equipment and materials supplied in the prosecution of the work provided for in the DBF Agreement [Design-Build Contract]**[*INSTRUCTION NOTE: conform accordingly*]**; then this obligation shall be void, otherwise it shall remain in full force and effect.

CONDITIONS OF THIS BOND ARE AS FOLLOWS:

A. Each said claimant shall have a right of action against the Principal and Surety for the amount due him or her due under the claimant's contract.

B. Every person entitled to the protection hereunder and who has not been paid in full for labor or materials furnished in the prosecution of the work referred to in said bond before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him or her, or materials or equipment or machinery was furnished or supplied by him or her for which claim is made, shall have the right to sue on such payment bond for the amount, or the

balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due him or her, provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal furnishing said payment bond shall have (a) given written notice to said Principal within ninety (90) days from the day on which such person did or performed the last of the labor, or furnished the last of the materials or machinery or equipment for which such claim is made stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied or for whom the labor was performed or done; and (b) if the Principal has filed a Notice of Commencement in accordance with the requirements of O.C.G.A. § 13-10-62, given to said contractor a written Notice to Contractor within 30 days from the filing of the Notice of Commencement or 30 days following the first delivery of labor, materials, machinery or equipment, whichever is later, setting forth:

1. the name, address, and telephone number of the person providing labor, material, machinery, or equipment;

2. the name and address of each person at whose instance the labor, material, machinery or equipment is being furnished;

3. the name and the location of the public work; and

4. a description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

C. It is provided further that nothing contained herein shall limit the right of action to said ninety (90) day period. Notice may be served by the depositing of a notice, registered mail, postage paid, duly addressed to the Principal at any place it maintains an office or conducts its business, or its residence, in any post office or branch post office or any letter box under the control of the Post Office Department or notice may be served in any manner in which the sheriffs of Georgia are authorized by law to serve summons or process. Every suit instituted under this section shall be brought in the name of the claimant without Obligee or Co-Obligees being made a party thereof. The official who has custody of said bond is authorized and directed to furnish, to any person making application thereof who submits an affidavit that it has supplied labor or materials for such work and payment therefore has not been made, or that it is being sued on any such bond, a copy of such bond and the contract for which it was given, certified, by the official who has custody of said bond and contract shall be admitted in evidence without further proof. Applicants shall pay for such certified statements and such fees as the official fixes to cover the cost of preparation thereof, but in no case shall the fixed fee exceed the fees that the clerks of the superior courts are permitted to charge for similar copies.

D. An action must be instituted by a claimant, whether in privity with the Principal or not, against the Principal or the Surety on this Bond within on this Bond within one year following Substantial Completion (as defined in the DBF Agreement) on account of any claim for payment. A claimant may not waive in advance his or her right to bring an action under this Bond against the Surety. In any action brought to enforce a claim against this Bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

E. The amount of this Bond is a fixed amount and shall not be changed. The Surety hereunder shall not be liable to the Obligee or the Co-Obligees in the aggregate in excess of the penal sum stated

above. The Co-Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Obligee.

F. The Surety shall not be liable under this Bond to the Obligee or the Co-Obligees for any Developer Financing Obligations, as defined and as may be required under the DBF Agreement, and Surety shall not be obligated to provide any security for the financing of the Project as required under the DBF Agreement.

G. The Surety shall not be liable under this Bond to the Obligee or the Co-Obligees, unless the Obligee or the Co-Obligees, has made all payments to the Principal as and to the extent due under the DBF Agreement, and otherwise agrees to perform all the other obligations pursuant to said DBF Agreement.

H. The Surety shall not be liable under this Bond to the Obligee or the Co-Obligees, unless the Co-Obligees, whether the Obligee or the Co-Obligees, or any of them, shall make payments to Developer (or in the case the Surety arranges for completion of the Design-Build Contract, to the Surety) substantially in accordance with the terms of the Design-Build Contract as to payments and shall perform all other obligations to be performed under the Design-Build Contract at the time and in the manner therein set forth.

I. Neither any change in or under the DBF Agreement, nor any compliance or noncompliance with any formalities provided in the DBF Agreement nor the change shall relieve the Surety of its obligations under this Bond.

J. Notwithstanding the existence of the Design-Build Contract as the same may be amended, it is agreed by the Principal, the Co-Obligees, and the Surety that, in addition to any other exclusions contained in the Bond, the Bond does not provide any security for the financing of the construction project at issue herein.

K. It is expressly agreed by the Principal and the Surety that the Obligee or the Co-Obligees, is at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the work.

L. For the purposes of this bond, the name and address of the responsible official of the Surety's claims department, to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

NAME: _____
TITLE:_____
ADDRESS:_____
CITY: _____STATE:_____ ZIP CODE:_____
TELEPHONE:_____

M. A claimant as set forth pursuant to this Bond shall include only those individuals or entities having a direct contract with the Principal, or any subcontractor of any tier thereof, to furnish labor, materials, equipment or other elements of the Work. The term claimant shall exclude any bank or financing institution.

N. Further, this bond shall be the payment security furnished under O.C.G.A. §§ 32-2-80.

[remainder of page intentionally left blank]

Signed, sealed and dated this _____ day of _____, 20__.

Principal:	[Principal] By: _____ Name: _____ Its: _____	(Seal)
Surety:	[Surety] By: _____ Name: _____ Its: _____	(Seal)

Exhibit 21C

FORM OF WARRANTY BOND
(Bond No. _____)

[**FORM OF ACTUAL BOND TO BE CONFORMED ACCORDINGLY BASED ON BOND ISSUANCE ON BEHALF OF DEVELOPER OR THE D&C CONTRACTOR**]

KNOW ALL PERSONS BY THESE PRESENTS:

That [***INSTRUCTION NOTE: Insert Legal Name and Address of Developer or D&C Contractor, as appropriate***] an entity duly authorized to do business in the State of Georgia (the "State"), as Bond Principal (hereinafter referred to as "Principal"), and [***INSTRUCTION NOTE: Legal Title and Address of Surety***] duly authorized to do business in the State, as surety (hereinafter referred to as "Surety") are held and firmly bound unto the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia ("SRTA") as obligee (the "Obligee") and [_____][***INSTRUCTION NOTE: Insert Legal Name and Address of (i) the Developer if the Developer is not the Principal, and (ii) the Lender/Collateral Agent for the Lender(s) if the Lender has recourse financing for the transaction***] ("Lender,") as co-obligees (each a "Co-Obligee" and together the Co-Obligees")), in the amount of $[_____] **[*INSTRUCTION NOTE: Insert $[___], 10% of the D&C Amount*]**, to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally to the Obligee and the Co-Obligees.

WHEREAS, the [***INSTRUCTION NOTE: Insert "Principal" if the Developer is the Design Builder, OR Insert "Developer" if Developer is not the Principal*** has entered into a contract with SRTA bearing the date of [_____, 20__], for designing, constructing, and partially financing the I-285 & I-20 West Interchange Project (the "Project") (the "Design, Build, Finance Agreement" or "DBF Agreement") [***INSTRUCTION NOTE: If Developer is the Principal, insert "***which is incorporated herein by reference and made a part hereof"] , and capitalized terms not defined in this Bond have the meanings assigned such terms in the Design, Build, Finance Agreement; and

[WHEREAS, Principal, an entity duly authorized to do business in the State, has entered into a contract with Developer bearing the date of [_____], related to the performance of [_____] under the DBF Agreement (the "Design-Build Contract"), which is incorporated herein by reference and made a part hereof. **[*INSTRUCTION NOTE: delete this paragraph if Developer is the Principal*]**

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that,

1. The recitals above are hereby incorporated by reference as though fully set forth herein.

2. If the Principal shall promptly and faithfully perform and comply with the terms and conditions of the [***INSTRUCTION NOTE: if Developer is the Principal, insert "***DBF Agreement" ***OR if Developer is not the Principal, insert*** "Design-Build Contract"] arising on and after Final Acceptance (as defined under the [DBF Agreement]/[Design-Build Contract])[***INSTRUCTION NOTE: conform accordingly***]; and shall indemnify and save harmless the Obligee and the Co-Obligee(s), and each of their respective directors, officers, employees and representatives, against and from all cost, expenses, damages, injury or loss to which the Obligee and the Co-Obligee(s) (or any of their respective directors, officers, employees, and representatives) may be subjected by reason of any wrongdoing, including misconduct, want of care or skill, default or failure of performance on the part of said Principal, its agents, subcontractors or employees, in the execution or performance of such portion of the Work as defined in the [DBF Agreement]/[Design-Build Contract] arising on or after Final Acceptance ([***INSTRUCTION NOTE: conform accordingly***]

("Obligee's Losses/Co-Obligee's Losses"); and if the Principal shall reimburse upon demand of the Obligee or the Co-Obligee any sums paid to the Principal that exceed the final payment determined to be due upon final completion and acceptance of the [Project]/Work as defined in the Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], then this obligation shall be void, otherwise it shall remain in full force and effect.

3. The Surety agrees that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this bond will not be considered payment bond claims.

4. If the Principal fails to perform the Work as required pursuant to the [DBF Agreement]/[Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***], the Surety shall promptly, at the Surety's expense, take one of the following actions:

(a) remedy such breach or default; or

(b) complete the Work covered by this bond in accordance with the terms and conditions of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***] then in effect; provided, however that completion of such work shall not be effected by the Principal or any affiliate of the Principal, for and on behalf of the Surety, without the Obligee's or Developer's express prior consent, granted in its sole discretion; or

(c) select a qualified contractor or contractors to complete all Work covered by this bond in accordance with the terms and conditions of the [DBF Agreement]/[Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***] then in effect, which qualifications shall include meeting the GDOT prequalification requirements, and to arrange for a contract meeting all the requirements of the [DBF Agreement]/[Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***] between such contractor or contractors and the [Obligee OR Developer], and make available as work progresses (even though there should be a breach or default (or a succession thereof) under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price, but not exceeding, including other costs and damages for which Surety is liable hereunder, the penal sum; or

(d) Waive its right to remedy such breach or default, perform and complete, arrange for performance and completion, or obtain a new contractor or contractors (under the foregoing clauses (a) to (c)), and after investigation, pay the Obligee and Co-Obligees the Surety's reasonable estimate of the cost to complete the D&C Work pursuant to the [DBF Agreement]/[Design-Build Contract] and any other Obligee's and Co-Obligees' Losses, provided that any such payment shall be on account only and subject to final adjustment and reimbursement based on the total of all Obligee's and Co-Obligees' Losses incurred by the Obligee and Co-Obligees with reasonable promptness under the circumstances, time being of the essence, in no case to exceed 30 days after receipt of notice of Obligee's declaration of default under the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***].

CONDITIONS OF THIS BOND ARE AS FOLLOWS:

A. The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension(s) of time, alteration(s), addition(s), omission(s) or other modification(s) to the terms of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], or to the work to be performed with respect to the Project, or in the specifications, plans or drawings accompanying same, or the exercise of the Obligee's right to do Work, or any

change or modification of any terms of payment or extension of time for any payment pertaining or relating to the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], or any conditions precedent or subsequent in this bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this bond, or any fraud practiced by any other person other than the claimant seeking to recover this bond, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change(s), extension(s) of time, alteration(s), addition(s), omission(s) or other modification(s) to the terms of the [DBF Agreement]/[Design-Build Contract]***[INSTRUCTION NOTE: conform accordingly]*** or to the Work or to the specifications, plans or drawings.

B. Any suit under this bond must be instituted on or prior to the expiration of the Warranty Period (as defined in the DBF Agreement) by the Obligee (or the Co-Obligee(s)) pursuant to and as defined in the DBF Agreement.

C. The amount of this Bond is a fixed amount and shall not be changed. The Surety hereunder shall not be liable to the Obligee or the Co-Obligee in the aggregate in excess of the penal sum stated above.

D. If the Surety elects, and Obligee consents, as applicable, to act under Section 4(a), Section 4(b), or Section 4(c), then the responsibilities of the Surety to the Obligee shall not be greater than those of the Principal under the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], and the responsibilities of the Obligee to the Surety shall not be greater than those of the Obligee under the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***]. Subject to the commitment by the Obligee to pay the balance of the contract price, the Surety is obligated, without duplication, for:

(i) the responsibilities of the Principal for correction of defective work and completion of the [Project]/[Work] [***INSTRUCTION NOTE: conform accordingly***] under the terms, and subject to the conditions, of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***] then in effect;

(ii) additional legal, design professional, delay costs, disruption costs, and other additional costs resulting from the Principal's breach or default (to the extent not subject to liquidated damages under clause (C) above), and resulting from the actions or failures to act of the Surety under Section 4; and

(iii) damages claimed by, and due and owing to the Obligee under, the terms of the [DBF Agreement]/[Design-Build Contract][***INSTRUCTION NOTE: conform accordingly***], including liquidated damages, if any.

For purposes of the foregoing, the "balance of the contract price" is the total amount [to be payable by the Obligee to the Principal, if any, after all adjustments have been made to which the Principal is entitled, collectively reduced by all payments made to or on behalf of the Principal under the DBF Agreement]/[to be payable by the Developer to the Principal, if any, after all adjustments have been made to which the Principal is entitled, collectively reduced by all payments made to or on behalf of the Principal under the Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***].

E. Notwithstanding the existence of the Design-Build Contract, as the same may be amended, it is agreed that the Surety shall not be liable under this Bond to the Obligee or the Co-Obligee(s), unless the Obligee has (i) made all payments to Developer as and to the extent due under the DBF Agreement, and (ii) agrees, upon an election of Surety to complete or to arrange for completion of the Work pursuant to subparts (i) or (ii) of this Bond, to remit all payments to become due on

account of further Work to be performed. [***INSTRUCTION NOTE: This provision is not intended to be further modified regardless of the Principal being the Developer or the D&C Contractor***]

F. Neither any change in or under the DBF Agreement [or the Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***], nor any compliance or noncompliance with any formalities provided in the DBF Agreement [or the Design-Build Contract] [***INSTRUCTION NOTE: conform accordingly***] nor the change shall relieve the Surety of its obligations under this Bond.

G. The Co-Obligee shall not be permitted to independently make a claim or demand under this bond without the written consent of Obligee. Each Co-Obligee acknowledges and agrees that the Surety may not make any payment under this bond to such Co-Obligee without the prior written consent of Obligee.

[H]. [***INSTRUCTION NOTE: Use in case of multiple or co-sureties***] The co-sureties listed in the attached (the "Co-Sureties") agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this bond, so that the Obligees and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligees designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be [_____], and correspondence to be directed at the following address(es):

NAME:_____
TITLE: _____
ADDRESS: _____
CITY:_____ STATE:_____ ZIP CODE:_____
TELEPHONE: _____

[I]. Further, this Bond shall be the performance security furnished under O.C.G.A. §§ 32-2-80.

[remainder of page intentionally left blank]

Signed, sealed and dated this _____ day of _____, 20__.

Principal: [Principal]
By: _____
Name: _____
Its: _____ (Seal)

Surety: [Surety]
By: _____
Name: _____
Its: _____ (Seal)

EXHIBIT 22
INITIAL LIST OF DEVELOPER FINANCING AGREEMENTS, SECURITY DOCUMENTS

Those "Developer Financing Agreements" and "Security Documents" (as such terms are defined in the Project Agreement) listed on Schedule A (*Developer Financing Agreements*) to the Direct Agreement), as such schedule may be updated from time to time by Developer, Lender and Authority under PA Section 4.6.4.3 (*Refinancing Documents and Data*), which schedule, as updated, is incorporated by reference without further action of the parties into this Agreement.

EXHIBIT 23
DRB REVIEW PROCEDURES

Part A– DISPUTE REVIEW BOARD APPOINTMENT DRB REVIEW PROCEDURES

1 ESTABLISHMENT OF DISPUTE REVIEW BOARD

The Dispute Review Board shall be established in accordance with the requirements set out in this PA Exhibit 23, Part A, Section 1.

1.1 Dispute Review Board Appointment

(a) The Dispute Review Board shall be comprised of three members.

(b) The Dispute Review Board will consist of one member selected by Authority, one member selected by Developer and a third member selected in accordance with section 1.1(e) and (f) below. The third member will act as Chair. Once established, the Dispute Review Board will remain appointed and in full force and effect until the later of: (i) the date on which all Disputes submitted to the Dispute Review Board have been decided or otherwise withdrawn; or (ii) the Final Acceptance Date.

(c) The Parties shall each select a nationally recognized expert in engineering and construction matters pertinent to the Project, and shall endeavor to select individuals with a range of expertise and experience sufficient to render the Dispute Review Board capable of providing expert-level review and recommendations with respect to potential Technical Disputes involving all major elements of the Work. Each member of the Dispute Review Board shall meet the requirements set out in PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2 (*Board Membership Criteria*).

(d) Authority and Developer shall each select its proposed member for the Dispute Review Board and convey the selected member's name and reference information to the other Party not more than ten Business Days following NTP1. If either Party reasonably believes that the member appointed by the other Party does not meet the criteria for membership as set forth in this PA Exhibit 23 (*DRB Review Procedures*), that Party shall notify the other Party of such failure and the reason therefor within five Business Days of receiving notice of the Party's selection. If either Party's member fails to meet the criteria, the other Party may require substitution of that member pursuant to PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.4 (*Disqualification and Replacement of Board Members*). If within five Business Days of one Party raising an objection regarding the other Party's Dispute Review Board member nomination the Parties cannot come to an agreement regarding such nomination or agree upon an alternate nomination, such Dispute shall be referred to the International Institute for Conflict Prevention and Resolution upon the request of either Party, or by another dispute resolution organization by mutual agreement of the Parties, which organization shall either: (i) determine that the nominee in question satisfies the criteria set forth in this PA Exhibit 23 (*DRB Review Procedures*) in which case such party shall be appointed to the Dispute Review Board; or (ii) determine that the nominee in question does not satisfy the criteria set forth in this PA Exhibit 23 (*DRB Review Procedures*), and may suggest an alternative Dispute Review Board member. Any costs associated with a referral to the International Institute for Conflict Prevention and Resolution or any other dispute resolution organization pursuant to this PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.1(d) (*Dispute Review Board Appointment*) shall be paid by the non-prevailing Party.

(e) The first two members of the Dispute Review Board shall select the final member, who must be an attorney licensed in any US state who is nationally recognized as an expert in matters

pertinent to the resolution of commercial disputes and who has served on at least one dispute review board. Such selection shall be made within ten Business Days of appointment of the first two Dispute Review Board Members.

(f) If the first two members of any Dispute Review Board do not select a final member within ten Business Days, Authority and Developer shall select the third member by mutual agreement. In so doing, the Parties may, but are not required to, consider nominees offered by the first two members of the Dispute Review Board. In the event of a failure by the Parties to agree on the appointment of the third member of the Dispute Review Board within ten Business Days, such member shall be appointed by the International Institute for Conflict Prevention and Resolution upon the request of either Party, or by another dispute resolution organization by mutual agreement of the Parties.

(g) Such third member selected for the Dispute Review Board shall serve as its chair (a "Chair"). The Chair's duties include conducting the Dispute Review Board meetings and hearings, resolving procedural issues, ensuring that all parties are notified of the Dispute Review Board's meeting and hearing schedule, and performing other tasks as necessary for the operation of the Dispute Review Board.

1.2 Board Membership Criteria

Each member of the Dispute Review Board shall meet the following criteria:

(a) Each member of the Dispute Review Board shall be neutral, act impartially, and not have any conflict of interest (as further described in PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2(c) (*Board Membership Criteria*)).

(b) The first two members of the Dispute Review Board shall each be a nationally recognized expert in engineering and construction, and the Chair shall be an attorney licensed in any US state who is nationally recognized as an expert in matters pertinent to the resolution of commercial disputes who has served on at least one dispute review board.

(c) Each member of the Dispute Review Board shall meet the following requirements:

(i) No member (or any current primary or full-time employer of such member) shall have a conflict of interest with or an ownership interest in any party involved in this Project (including involvement by way of contractual relationship with Authority, any Authority-Related Entity, Developer or any Developer-Related Entity), or a financial interest in this Project, except for payment for services of the Dispute Review Board.

(ii) Except for fee-based consulting services on other projects or service on a dispute resolution panel or board in accordance with PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2(d) (*Board Membership Criteria*), no member shall have been previously employed by, or have had financial ties to, any party involved in the Project within a period of eight years prior to the date of this Agreement.

(iii) No member shall have provided to either Party (or any Affiliate or Developer Member) fee-based consulting services within the two years prior to the date of this Agreement, where the consulting fees paid by that Party have exceeded 20% of that member's total consulting revenue in either year.

(iv) No member shall have had a close professional or personal relationship with any Key Personnel or any other key member of any party involved in the Project which, in the judgment of the other Party, could suggest partiality, or give an appearance of impropriety.

(v) No member shall have had prior involvement in the Project of a nature which could compromise such member's ability to participate impartially in the activities of a Dispute Review Board.

(vi) Except as permitted by PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2(d) (*Board Membership Criteria*), during a member's tenure as a member of the Dispute Review Board, no member shall be employed, including fee-based consulting services, by any party involved in the Project including either Party, or Contractor, Subcontractor, or material supplier on the Project, except with express approval of both Parties.

(vii) During a member's tenure as a member of the Dispute Review Board, no member shall engage in any discussion or make any agreement with any Party regarding employment after the Project is completed.

(d) A Dispute Review Board member is permitted to serve on a dispute review panel or board in relation to any non-Project matter, provided that:

(i) such service does not materially interfere with the Dispute Review Board member's responsibilities on the Dispute Review Board or the Dispute Review Board member's obligations under the Dispute Review Board Agreement;

(ii) such service does not result in any breach of the requirements of PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2(c)(ii)-(vii) (*Board Membership Criteria*); and

(iii) no Dispute Review Board member may serve on a dispute review panel or board in relation to any non-Project matter where: (A) Authority, any Authority-Related Entity, Developer, or any Developer-Related Entity are party to such non-Project matter; and (B) the construction phase of such non-Project matter is concurrent with or will overlap with the Construction Phase of the Project.

1.3 Disclosure Statement

Before a Dispute Review Board member's appointment is final, each prospective member of the Dispute Review Board shall submit complete disclosure statements for the approval of both Authority and Developer. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships (including indirect relationships through the prospective member’s primary or full-time employer) to the Project and with both Parties. This disclosure shall also include any financial relationship relative to the criteria in PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2(c) (*Board Membership Criteria*) and disclosure of close relationships, either professional or personal, with all Key Personnel and any other key members of either Party.

1.4 Disqualification and Replacement of Board Members

(a) If any member of the Dispute Review Board:

(i) has a discussion regarding employment or enters into any employment agreement with Developer, a Developer-Related Entity, Authority or any Authority-Related Entity during the member's tenure on the Dispute Review Board; or

(ii) cannot continue to serve because of death, illness or permanent disability, that member will be disqualified from serving on the Dispute Review Board.

(b) If any member of the Dispute Review Board is discovered not to meet the relevant criteria set out in PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.2 (*Board Membership Criteria*) such member shall be disqualified from the Dispute Review Board unless such non-compliance is mutually waived in writing by Developer and Authority.

(c) In the event of disqualification under this PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 1.4(a) (*Disqualification and Replacement of Board Members*) or Section 1.4(b) (*Disqualification and Replacement of Board Members*), a replacement member meeting the criteria of this PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*) shall be selected between Authority and Developer in accordance with the procedures set forth for initial selection of Dispute Review Board members set forth in this PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*).

2 Dispute Review Board Proceedings

2.1 Written Recommendation

The Parties may mutually request in writing that the Dispute Review Board issues a written recommendation without holding any hearing. In such case, the Dispute Review Board may request any additional documentation or evidence from the Parties in support of preparation of such written recommendation, provided that neither Party nor the Dispute Review Board shall have the right to compel discovery in relation to any DRB Review nor shall any such request frustrate the timeliness of the delivery of the written recommendation. Either Party may decline any Dispute Review Board document request in part or in full, or may object to the timing, volume, or content of the requested additional documentation. Neither party shall be compelled to furnish to the Dispute Review Board any documentation that is confidential attorney work product or otherwise subject to the attorney-client privilege. If either Party furnishes information to the Dispute Review Board as provided for under this PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.1 (*Written Recommendation*), such Party shall simultaneously furnish copies of such information to the other Party.

2.2 Hearing Requirements

(a) Unless the Parties request that the Dispute Review Board issue a written recommendation pursuant to PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.1 (*Written Recommendation*), the Dispute Review Board shall hold a hearing in connection with the DRB Review. The Dispute Review Board shall be responsible for scheduling each hearing held in connection with the DRB Review as set forth under the Dispute Review Board Agreement; *provided*, that the deadline set forth under the Dispute Review Board Agreement for holding any such hearing may be extended by mutual written agreement of the Parties.

(b) The Dispute Review Board may request any additional documentation or evidence prior to, during, or after any hearing; provided that neither the Parties nor the Dispute Review Board shall have the right to compel discovery in connection with any DRB Review or related hearing held nor shall

any such request frustrate the timeliness of the hearing schedule. Either Party may decline any Dispute Review Board document request in part or in full, or may object to the timing, volume, or content of the requested additional documentation. Neither party shall be compelled to furnish to the Dispute Review Board any documentation that is confidential attorney work product or otherwise subject to the attorney-client privilege. If either Party furnishes information to the Dispute Review Board as provided for under this PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.2(b) (*Hearing Requirements*), such Party shall simultaneously furnish copies of such information to the other Party.

(c) Developer and Authority will each be afforded a reasonable opportunity to be heard by the Dispute Review Board and to offer evidence. Neither Authority nor Developer may present information at a hearing that was not previously distributed to both the Dispute Review Board and the other Party.

(d) Neither Party nor the Dispute Review Board may exclude Authority, GDOT, the Attorney General, any Contractor(s) relevant to the Dispute, or legal counsel for either Party, from attending any hearing, and, if any Contractor or Subcontractor relevant to the Dispute is a Key Contractor, then Developer shall compel such Key Contractor(s) to attend and participate in such hearing upon the request of Authority.

2.3 Developer Responsibilities

Subject to PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.1 (*Written Recommendation*) and Section 2.22.2(b), Developer shall:

(a) furnish to each Dispute Review Board member a set of all pertinent documents which are or may become necessary for the Dispute Review Board to perform its function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents used in the performance of the Work or in justifying or substantiating Developer's position regarding a particular Dispute. Developer shall simultaneously furnish a copy of such documents to Authority; and

(b) arrange or provide conference facilities at or near the Project Limits and provide secretarial and copying services for the Dispute Review Board.

2.4 **Authority Responsibilities**

Subject to PA Exhibit 23 (*DRB Review Procedures*), Part A (*Dispute Review Board Appointment DRB Review Procedures*), Section 2.1 (*Written Recommendation*) and Section 2.22.2(b) (*Hearing Requirements*), Authority shall furnish each Dispute Review Board member and Developer with a copy of any:

(a) relevant DBF Documents; and

(b) other document which in the sole judgement of Authority is pertinent to the performance of this Agreement and necessary for the Dispute Review Board to perform its function.

Part B – FORM OF DISPUTE REVIEW BOARD AGREEMENT

DISPUTE REVIEW BOARD AGREEMENT

This Dispute Review Board Agreement ("**DRB Agreement**") is made and entered into this ___ day of _____, 202__ (the "**DRB Agreement Effective Date**"), among the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (the "**Authority**"), Legacy Infrastructure Contractors, LLC, a Georgia limited liability company (the "**Developer**"), and [_____] (collectively, the "**Dispute Review Board Members**") (Authority, Developer and Dispute Review Board Members being each a "**Party**" and collectively the "**Parties**"), with reference to the following facts:

A. Authority and Developer have entered into that certain Design, Build, and Finance Agreement for the I-285 / I-20 West Interchange Project dated _____, 202_ (the "**Project Agreement**"). Pursuant to the Project Agreement, Developer has agreed, among other things, to design, construct, and finance the I-285 / I-20 West Interchange Project ("**Project**").

B. PA Section 17.9.2.1 and PA Section 17.9.3 of the Project Agreement provide for the establishment and operation of a Dispute review board (the "**Dispute Review Board**") to assist in resolving Disputes that may arise among Authority and Developer with respect to the Project which Authority and Developer agree are of a predominantly technical nature and arise before the Final Acceptance Date (a "**Technical Dispute**").

NOW, THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, the Parties hereto agree as follows:

ARTICLE 1. ESTABLISHMENT AND TERM OF DISPUTE REVIEW BOARD

1.1 The Dispute Review Board shall be formed upon the DRB Agreement Effective Date.

1.2 The Dispute Review Board shall be dissolved upon termination of this DRB Agreement in accordance with Section 1.3.

1.3 This DRB Agreement shall terminate upon the later of: (a) the date on which all Disputes referred to any Dispute Review Board have either been decided by the Dispute Review Board and a recommendation has been issued in accordance with Section 3.9, or withdrawn in accordance with Section 3.8; and (b) the Final Acceptance Date.

1.4 In the event that a Dispute Review Board Member withdraws from the Dispute Review Board in accordance with Section 4.4, or a Dispute Review Board Member's tenure is terminated pursuant to Section 4.3, this DRB Agreement shall be terminated as between such Dispute Review Board Member on the one hand, and the remaining Parties on the other hand, and shall continue in full force and effect as among Authority, Developer and all other remaining Dispute Review Board Members. The Parties hereby acknowledge and agree that new members on the Dispute Review Board may be added at some future date in accordance with Section 4.5.

ARTICLE 2. DISPUTE REVIEW BOARD MEMBER ELIGIBILITY AND CONDUCT

2.1 The Parties acknowledge and agree that each Dispute Review Board Member has submitted, and Authority and Developer have approved, a disclosure statement iin accordance with the requirements of Section 1.3 (*Disclosure Statement*) of Part A (*Dispute*

Review Board Appointment and DRB Review Procedures) of Exhibit 23 (*DRB Review Procedures*) ("**Disclosure Statement**"), which includes a resume of experience, a declaration describing all past, present and anticipated or planned future relationships (including indirect relationships through the prospective member's primary or full-time employer) to the Project and with both Authority and Developer, and includes disclosure of any financial relationship relating to the representations and warranties set out in Section 2.2 and close relationships, either professional or personal, with all Key Personnel and any other key members of either Authority or Developer.

2.2 Each Dispute Review Board Member hereby represents and warrants to Authority and Developer as follows:

2.2.1 such Dispute Review Board Member (or any current primary or full-time employer of such Dispute Review Board Member) has no conflict of interest with or an ownership interest in any party involved in this Project (including involvement by way of contractual relationship with Authority, any Authority-Related Entity, Developer or any Developer-Related Entity), or a financial interest in this Project, except for payment for services in accordance with Article 5;

2.2.2 except for fee-based consulting services on other projects or service on a dispute resolution panel or board in accordance with Section 2.5, such Dispute Review Board Member has not been previously employed by, and does not have financial ties to, any party involved in the Project within a period of eight years prior to the date of this DRB Agreement;

2.2.3 such Dispute Review Board Member has not provided to either Party (or any Affiliate or any Constituent of Developer, if applicable) fee-based consulting services within the two years prior to the date of this DRB Agreement, where the consulting fees paid by that Party have exceeded twenty percent (20%) of that Dispute Review Board Member's total consulting revenue in either year;

2.2.4 such Dispute Review Board Member has no prior or continuing close professional or personal relationship with any Key Personnel or any other key member of any party involved in the Project which, in the judgment of the other Party, could suggest partiality, or give an appearance of impropriety; and

2.2.5 such Dispute Review Board Member has no prior involvement in the Project, of a nature which could compromise such member's ability to participate impartially in the activities of a Dispute Review Board.

2.3 In the event that any of (i) the statements in the Disclosure Statement; or (ii) the representations and warranties set out in Section 2.2, are no longer complete, accurate and current in all material respects in respect of any Dispute Review Board Member, such Dispute Review Board Member must promptly (or, in the event of selection for a Dispute Review Board, immediately) notify Authority and Developer in writing.

2.4 During a Dispute Review Board Member's tenure as a member of the Dispute Review Board, no Dispute Review Board Member shall:

2.4.1 except as permitted by Section 2.5, be employed, including fee-based consulting services, by any party involved in the Project including either Authority or

Developer, or Contractor, Subcontractor, or material supplier on the Project, except with express approval of both Authority and Developer; or

2.4.2 engage in any discussion or make any agreement with either Authority or Developer regarding employment after the Project is completed.

2.5 A Dispute Review Board Member is permitted to serve on a dispute review panel or board in relation to any non-Project matter, provided that:

2.5.1 such service does not materially interfere with the Dispute Review Board Member's responsibilities on the Dispute Review Board or the Dispute Review Board Member's obligations under this DRB Agreement;

2.5.2 such service does not result in any breach of the representations and warranties contained in Section 2.2.2-2.2.5 or the requirements of Section 2.4; and

2.5.3 no Dispute Review Board member may serve on a dispute review panel or board in relation to any non-Project matter where: (A) Authority, any Authority-Related Entity, Developer, or any Developer-Related Entity are party to such non-Project matter; and (B) the construction phase of such non-Project matter will overlap with the Construction Phase of the Project.

ARTICLE 3. DISPUTE REVIEW

3.1 The Parties acknowledge and agree that, in accordance with Section 17.9.2.1 of the Project Agreement, Authority or Developer may require that a Technical Dispute be referred to a Dispute Review Board for review and recommendation ("**DRB Review**").

3.2 Each Dispute Review Board Member shall be provided with a bi-monthly progress report (i.e., every other month) with respect to the Project (a "**Progress Report**") and shall be invited to bi-monthly progress meetings (each a "**Progress Meeting**") for the purpose of keeping such Dispute Review Board Member informed of Project-related activity. For the avoidance of doubt, failure of any such Progress Report to be provided to any Dispute Review Board Member, or failure of a Dispute Review Board Member to attend a Progress Meeting or for a Progress Meeting to be held shall not be grounds for any Dispute Review Board Member's nonperformance under this Agreement. While attending any Progress Meeting or subsequently thereafter (except in the event of referral to the Dispute Review Board in accordance with Section 17.9.3 of the Project Agreement), the Dispute Review Board Members shall not provide any opinion or recommendation with respect to any Dispute, potential Dispute or any matter that, by virtue of the questions or commentary, may become a Dispute.

3.3 In consideration of the fee payable to each Dispute Review Board Member pursuant to Section 5.1 of this DRB Agreement, each Dispute Review Board Member shall: (a) review each Progress Report and maintain a reasonable familiarity with the contents thereof; (b) attend each Progress meeting; and (c) perform the services necessary to fully participate in the Dispute Review Board in accordance with the requirements of this DRB Agreement.

3.4 Each referral of a Dispute to the Dispute Review Board by Developer and Authority shall be in writing and include: (a) a brief overview of the subject Technical Dispute; and (b) Developer and Authority's election as to whether the Dispute Review Board shall: (i)

provide a written-only recommendation as to the Technical Dispute; or (ii) conduct a hearing in accordance with the procedures set forth below (a "**Dispute Notice**").

3.5 Unless Developer and Authority shall have requested a written-only recommendation under Section 3.4, upon referral of a Technical Dispute for DRB Review, the Dispute Review Board will work in good faith with both Developer and Authority to schedule a hearing to review the subject Dispute; provided that the Dispute Review Board shall hold any such hearing within 15 Business Days of its receipt of the Dispute Notice for the subject Dispute, unless Developer and Authority mutually agree upon a longer time period. For the avoidance of doubt, the Dispute Review Board's receipt of the Dispute Notice for a given Technical Dispute, the Dispute resolution process for the subject Technical Dispute shall be considered initiated for the purpose of confidentiality and work product considerations.

3.6 The Dispute Review Board may request any additional documentation or evidence in support of preparation of a written recommendation and prior to, during, or after any hearing; provided that none of Developer, Authority or the Dispute Review Board shall have the right to compel discovery in connection with any DRB Review or related hearing held nor shall any such request frustrate the timeliness of the delivery of a written recommendation.

3.7 At each Dispute Review Board hearing, Developer and Authority will each be afforded a reasonable opportunity to be heard by the Dispute Review Board and to offer evidence. Neither Authority nor Developer may present information at a hearing that was not previously distributed to both the Dispute Review Board and the other Party.

3.8 No Party may exclude Authority, GDOT, the Attorney General, any Contractor(s) relevant to the Dispute, or legal counsel for either Developer or Authority, from attending any hearing, and, if any Contractor or Subcontractor relevant to the Dispute is a Key Contractor or Independent Quality Firm, then Developer shall compel such Key Contractor(s) and Independent Quality Firm to attend and participate in such hearing upon the request of Authority.

3.9 At any time during a DRB Review process, Authority and Developer may mutually agree to withdraw the Dispute in question from the DRB Review process.

3.10 The Dispute Review Board shall fairly and impartially consider the subject Technical Dispute, and provide a written recommendation for resolution thereof ("**DRB Recommendation**"). The Dispute Review Board shall issue its DRB Recommendations in writing to both Developer and Authority within 10 Business Days of the Dispute Review Board's receipt of the Dispute Notice for the subject Technical Dispute (if the Parties request that the Dispute Review Board issues a written recommendation without holding a hearing), or otherwise within 10 Business Days after completion of the hearing, in either case unless Developer and Authority agree in writing to a longer time period).

ARTICLE 4. CONDUCT OF DISPUTE REVIEW BOARD MEMBERS

4.1 All Dispute Review Board Members shall be neutral, act impartially, and must not have any conflict of interest concerning the facts and conditions surrounding any Dispute in relation to which they are to serve on a Dispute Review Board.

4.2 No Dispute Review Board Member(s) shall under any circumstances offer or otherwise provide Developer or Authority any advice or consultation in relation to the Project other than in the context of a DRB Recommendation issued pursuant to Section 17.9.3 of the Project Agreement. Any Dispute Review Board Member who has ex parte communication with Authority or Developer, or a representative of either party, in contravention of this Section 4.2 shall be subject to removal from the Dispute Review Board for cause.

4.3 A Dispute Review Board Member may be terminated by Authority or Developer if at any time such Dispute Review Board Member fails to comply with the terms of this DRB Agreement (including where the representations and warranties set out in Section 2.2 and/or the Disclosure Statement are no longer complete, accurate and current in all material respects), or is disqualified from serving on the Dispute Review Board pursuant to Section 1.4 (*Disqualification and Replacement of Dispute Review Board Members*) of Part A (*Dispute Review Board Appointment and DRB Review Procedures*) of PA Exhibit 23 (*DRB Review Procedures*).

4.4 Dispute Review Board Members may withdraw from the Dispute Review Board upon delivery of written notice of withdrawal to Authority, Developer and the other Dispute Review Board Members, which notice shall specify a withdrawal date at least 30 calendar days following the date of delivery of such notice.

4.5 Should Developer and Authority determine it necessary to replace a Dispute Review Board Member who withdraws pursuant to Section 4.4 or is terminated pursuant to Section 4.3, Developer and Authority shall notify the existing Dispute Review Board Members in writing of such determination, and the replacement Dispute Review Board Member shall be appointed to the Dispute Review Board by the new Dispute Review Board Member's signature on this DRB Agreement.

4.6 Each Dispute Review Board Member will keep matters related to the DRB Agreement (including communications between Authority or Developer and the Dispute Review Board, transcripts of Dispute Review Board hearings, and the written recommendations of any Dispute Review Board) confidential, and under no circumstances shall any such materials be admissible in any administrative, alternative dispute resolution, or judicial proceeding, nor disclosed to the public. Each Dispute Review Board member acknowledges that any disclosure to the public will be controlled by the Open Records Act, O.C.G.A. § 50-18-1 *et seq*.

ARTICLE 5. PAYMENT

5.1 As compensation for their participation on the Dispute Review Board, Developer shall pay each Dispute Review Board Member bi-monthly as follows:

5.1.1 [_____]: (1) a monthly fee based on an hourly billing rate of ($_____) multiplied by the hours expended in respect of DRB activities not to exceed four (4) hours per month throughout the term of this DRB Agreement; and (2) a fee based on the hourly billing rate specified herein multiplied by the hours expended in respect to each bi-monthly Progress Meeting attended not to exceed (____) hours per Progress Meeting, and [_____]'s direct, reasonable, non-salary expenses;

5.1.2 [_____]: (1) a monthly fee based on an hourly billing rate of ($_____) multiplied by the hours expended in respect of DRB activities not to exceed four

(4) hours per month throughout the term of this DRB Agreement; and (2) a fee based on the hourly billing rate specified herein multiplied by the hours expended in respect to each bi-monthly Progress Meeting attended not to exceed (____) hours per Progress Meeting, and [_____]'s direct, reasonable, non-salary expenses; and

5.1.3 [_____]: (1) a monthly fee based on an hourly billing rate of ($_____) multiplied by the hours expended in respect of DRB activities not to exceed four (4) hours per month throughout the term of this DRB Agreement; and (2) a fee based on the hourly billing rate specified herein multiplied by the hours expended in respect to each bi-monthly Progress Meeting attended not to exceed (____) hours per Progress Meeting, and [_____]'s direct, reasonable, non-salary expenses;

5.2 In respect of each Technical Dispute reviewed by the Dispute Review Board, each Dispute Review Board Member shall be paid for services rendered to the Dispute Review Board. Such payment shall be calculated based on the individual Dispute Review Board Member's billing rate outlined in Article 5.1, multiplied by the hours expended for such Dispute Review Board Member agreed to among Developer, Authority and the Dispute Review Board Member, and the Dispute Review Board Member's direct, reasonable, non-salary expenses. Promptly following issuance of a DRB Recommendation in accordance with Section 3.9, each Dispute Review Board Member must submit an invoice in a format approved by Authority and Developer. If the invoice includes billings for expenses it must include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.[1]

5.3 Each Dispute Review Board Member shall keep available for inspection, for a period of five years after the termination of the Dispute Review Board Members' tenure in accordance with Section 1.3, the cost records and accounts pertaining to this DRB Agreement.

ARTICLE 6. MISCELLANEOUS

6.1 Capitalized terms used but not defined in this DRB Agreement shall have the meanings given in the Project Agreement.

6.2 Each Dispute Review Board Member, in the performance of his or her duties on the Dispute Review Board, is acting as an independent contractor and not as an employee of either Authority or Developer. No Dispute Review Board Member will be entitled to any employee benefits.

6.3 The personal services of the Dispute Review Board Members are a condition to receiving payment hereunder. No Dispute Review Board Member shall assign any of his or her work pursuant to this DRB Agreement without the prior written consent of both Authority and Developer.

6.4 The Parties intend for Section 17.9.3 and PA Exhibit 23 (*DRB Review Procedures*) and the other terms of this DRB Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this DRB Agreement and Section

[1] Note: approach for payment of Dispute Review Panel Members to be determined at engagement by Authority, in coordination with Developer.

17.9.3 and PA Exhibit 23 (*DRB Review Procedures*), Part A, Section 17.9.3 and PA Exhibit 23 (*DRB Review Procedures*), Part A shall control.

6.5 Notices required hereunder shall be delivered as provided in PA Section 13.1 (*Notices*), and with respect to Developer and Authority, to the notice addresses set forth in PA Section 13.1 (*Notices*). The addresses for the Dispute Review Board Members are set forth on the signature pages of this DRB Agreement.

6.6 Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the Superior Court of Fulton County, Georgia for the settlement of any dispute for damages in connection with this DRB Agreement. The Superior Court of Fulton County, Georgia is the most appropriate and convenient court to settle any such dispute and each of the Parties hereto waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this DRB Agreement.

6.7 This DRB Agreement shall be governed by and construed in accordance with the laws of the State of Georgia (without regard to conflict of laws principles thereunder).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this DRB Agreement[2] as of the day and year first above written.

DEVELOPER	Legacy Infrastructure Contractors, LLC, a Georgia limited liability company
APPROVED AS TO FORM	By: _____
By: _____	Name: _____
	Title: _____
THE AUTHORITY	STATE ROAD AND TOLLWAY AUTHORITY, a body corporate and politic and an instrumentality and public corporation of the State of Georgia
ATTEST:	By: _____
	Name: _____
By:_____	Title: _____
Name_____	
Title: _____	
APPROVED AS TO FORM	
By: _____	

[Dispute Review Board Member signature begins on the succeeding page]

[2] Note that these signature pages are subject to continuing SRTA/GDOT review and comment.

Dispute Review Board Members

Member #1

_____

Name/Address:

_____

_____

_____

Member #2

_____

Name/Address:

_____

_____

_____

Member #3

_____

Name/Address:

_____

_____

_____

EXHIBIT 24
DIRECT AGREEMENT OPINIONS

Legal opinions of separate external legal counsel to each of Authority and GDOT, containing reasonable and customary qualifications and assumptions, which collectively provide opinions as to:

i. the organization and existence of each of GDOT and Authority;

ii. the power and authority of Authority to enter into, and to perform its obligations under, the Direct Agreement;

iii. the due authorization, execution and delivery by Authority of the Direct Agreement;

iv. the Direct Agreement being a valid and binding obligation of Authority enforceable against Authority;

v. that all required consents and approvals of relevant Governmental Entities, if any, have been obtained with respect to the execution and delivery by Authority of, and the performance by Authority under, the Direct Agreement;

vi. no violation of applicable United States federal or State of Georgia constitutions, statutes, rules and regulations;

vi. no breach or default under any material written agreement to which Authority is a party; and

vii. no violation of any judicial or administrative decree, writ, judgment or order to which Authority is a party.

EXHIBIT 25
MATERIAL INDEXATION ADJUSTMENTS

Unless expressly stated otherwise, references to sections and attachments under this PA Exhibit 25 (*Material Indexation Adjustments*) are internal to this PA Exhibit 25 (*Material Indexation Adjustments*).

1. Definitions. For purposes of this PA Exhibit 25 (*Material Indexation Adjustments*) only, the following capitalized terms have the meanings ascribed below. Other capitalized terms have the meanings given in PA Exhibit 1 (*Abbreviations and Definitions*) or as are titled or defined within the cited indexing reference within these definitions.

"**Base Index Value**" or "**BIV**" means the Base Index Value Asphalt.

"**Base Index Value Asphalt**" means the index value for asphalt cement of $ / ton obtained from https://www.dot.ga.gov/GDOT/pages/AsphaltCementFuelPriceIndex.aspx and set forth in Authority's Notice to Proposers on the Base Index Value Date.

"**Base Index Value Date**" means the date of May 13, 2024, on which Authority's Notice to Proposers setting forth the base index value for the Base Material was issued.

"**Base Material**" means asphalt cement incorporated directly into the Project for which Material Indexation Adjustments are to be calculated.

"**Maximum Indexation Quantity**" means the material quantity for each Base Material set forth on the Developer's Form EE submitted with their Proposal that is attached hereto as Attachment 1.

"**Material Indexation Adjustment**" **or** "**MIA**" means a periodic determination, positive or negative, in dollars for the Base Material in accordance with Section 2.

"**Material Indexation Payments Cap**" has the meaning provided in Section 4(a).

"**Material Indexation Payment Excess**" has the meaning provided in Section 3(b)(ii).

"**Material Indexation Remainder**" has the meaning provided in Section 3(c).

"**Material Indexation Remainder Payment Cap**" has the meaning provided in Section 4(b).

"**Periodic Index Value**" or "**PIV**" means the Periodic Index Value Asphalt. For purposes of each Periodic Index Value, the "most recent index value" is that published (e.g., monthly), such that, for example, a monthly value, set in June of year X but not yet set for July would be the Periodic Index Value as to the Base Material where the Project Certificate Period covers July to August of the same year.

"**Periodic Index Value Asphalt**" means the most recent index value for asphalt cement obtained from https://www.dot.ga.gov/GDOT/pages/AsphaltCementFuelPriceIndex.aspx prior to the Project Certificate Period.

"**Periodic Quantity**" or "**PQ**" means the amount delivered to the Site of the Base Material for use on the Project. The Periodic Quantity is the quantity of Base Material incorporated into the Project during the Project Certificate Period calculated in accordance with GDOT Standard Specifications Subsection 109.11.A.2.b.

"**Project Certificate Period Material Indexation Adjustment**" has the meaning provided in Section 3(a).

2. Determination of Material Indexation Adjustments.

Commencing at NTP3 and continuing until the earlier of the Substantial Completion Deadline and the Early Termination Date, for each Project Certificate Period, Developer shall use the provisions of this PA Exhibit 25 (*Material Indexation Adjustments*) to determine Material Indexation Adjustments for the Base Material, to be included in the Project Certificate Support Package, for consideration at each Project Certificate Review Meeting. The Periodic Index Value for the Base Material shall be assessed as of the last day of the preceding month.

If the Periodic Index Value is within 95% and 105% of its respective Base Index Value (to include equaling 95% and 105%), then no Material Indexation Adjustment will be made for the relevant Project Certificate Period.

If the Periodic Index Value is less than 95% of the Base Index Value, a negative Material Indexation Adjustment shall be calculated as follows: the Periodic Index Value minus 0.95 times the Base Index Value with the result multiplied by the Periodic Quantity.[1] For the avoidance of doubt, a ratio of Periodic Index Value to Base Index Value of 0.94 would result in a negative 1 percent Material Indexation Adjustment with respect to the subject Base Material.

If the Periodic Index Value is greater than 105% of the Base Index Value, a positive Material Indexation Adjustment shall be calculated as follows: the Periodic Index Value minus 1.05 times the Base Index Value with the result multiplied by the Periodic Quantity.[2] For the avoidance of doubt, a ratio of Periodic Index Value to Base Index Value of 1.06 would result in a positive 1 percent Material Indexation Adjustment.

3. Accumulation of Material Indexation Adjustments.

(a) For each Project Certificate Period, the Project Certificate Period Material Indexation Adjustment shall be:

(i) the Material Indexation Adjustment for the Base Material for such Project Certificate Period;

PLUS EITHER

(ii) any Material Indexation Remainder from the preceding Project Certificate Period (denoted as a negative number); or

(iii) any Material Indexation Excess from the preceding Project Certificate Period (denoted as a positive number).

For the first Project Certificate Period, the Material Indexation Remainder and the Material Indexation Excess from the preceding Material Indexation Period shall be zero.

(b) If the Project Certificate Period Material Indexation Adjustment is positive, then:

(i) such amount shall constitute a "**Material Indexation Payment**", payable by the Authority to the Developer in accordance with Section 3(d) of this PA Exhibit 25

[1] $MIA = [PIV – (0.95 \times BIV)] \times PQ_x$
[2] $MIA = [PIV_x – (1.05 \times BIV)] \times PQ_x$

(*Material Indexation Adjustments*) subject to the Materials Indexation Payments Cap; or

(ii) if the aggregate of the Material Indexation Payments paid by the Authority has reached the Material Indexation Payments Cap, such amount in excess of the Material Indexation Payments Cap shall constitute the "**Material Indexation Excess**" for that Project Certificate Period.

(c) If the Project Certificate Period Material Indexation Adjustment is negative, then such amount shall constitute the "**Material Indexation Remainder**" for that Project Certificate Period.

(d) The total of Project Certificate Material Indexation Adjustments accruing during each Fiscal Year of the Term shall be determined as of June 30 of each Fiscal Year. If the total on June 30th of a Fiscal Year is positive, the total Material Indexation Payment for such Fiscal Year shall be paid through a Supplemental Agreement on August 15th of the next Fiscal Year.

(e) If there is a Material Indexation Remainder as of June 30th of a Fiscal Year, then no immediate action regarding Material Indexation Adjustments shall be taken. If a Material Indexation Remainder exists as of Substantial Completion, then (a) this Material Indexation Remainder shall be deducted from the Final Certificate and (b) Authority shall be responsible to pay any Breakage Cost, less any Breakage Benefit, if any, associated with the financing attributable to the negative balance deducted from the Final Certificate. Any remaining negative balance exceeding the amount of the Final Certificate shall become due and payable to Authority in accordance with PA Section 17.3.3 (*Damages; Offset*).

(f) Project Payments owed by Authority to Developer pursuant to a Supplemental Agreement as contemplated in this PA Exhibit 25 (*Material Indexation Adjustments*) shall be paid in accordance with the applicable Supplemental Agreement, and the provisions of PA Exhibit 7 (*DBF Contract Sum and Payment Terms*) shall not apply to such Project Payments unless otherwise agreed by the Parties in the applicable, executed Supplemental Agreement. For avoidance of doubt, notwithstanding the Material Indexation Adjustments being evaluated during Project Certificate Review Meetings, the Material Indexation Adjustments themselves shall be paid in accordance with Supplemental Agreements, except as relates to the Final Certificate.

4. Limitations on Material Indexation Adjustments.

(a) The aggregate of all Material Indexation Payments paid by the Authority under this PA Exhibit 25 (*Material Indexation Adjustments*) shall not exceed $25,000,000 ("**Material Indexation Payments Cap**").

(b) The total amount of all Material Indexation Adjustments to be deducted from the Final Certificate (or for which Developer is obligated to pay or repay Authority under this PA Exhibit 25 (*Material Indexation Adjustments*)) shall not exceed $25,000,000 plus the aggregate of Material Indexation Payments paid by the Authority up to the Materials Indexation Payments Cap ("**Material Indexation Remainder Payment Cap**").

(c) The total quantity of the Base Material used for Material Indexation Adjustments during the Term may not exceed the Maximum Indexation Quantity for the Base Material.

(d) Notwithstanding the foregoing, Developer shall not be entitled to any Material Indexation Adjustments after the Substantial Completion Deadline.

5. Record Keeping Requirements.

(a) For each Project Certificate Period, Developer shall submit the applicable updated tables and forms required by TP 2-11, Attachment 1.

(b) Developer shall retain records pertinent to the Material Indexation Adjustments including true and complete copies of material orders, deliveries, invoices, contracts and other such documents, in each case, as is necessary to demonstrate that the quantities for which Material Indexation Adjustments are sought are actual and necessary for the Work. Supporting documentation shall be available for review at each Project Certificate Review Meeting or upon request by Authority.

(c) If at any time (A) the aggregate of the Project Certificate Period Material Indexation Payments paid by the Authority reaches the Material Indexation Payments Cap, or (B) the Material Indexation Remainder reaches the Material Indexation Remainder Payment Cap (at such time), the Parties will continue documenting the Monthly Indexation Adjustment for every Project Certificate Period until Substantial Completion in order to determine:

(i) the Material Indexation Remainder or Material Indexation Excess for each subsequent Project Certificate Period; and

(ii) the Material Indexation Remainder Payment (if any) payable by the Developer in accordance with the penultimate paragraph of Section 3 (Accumulation of Material Indexation Adjustments) of this PA Exhibit 25 (*Material Indexation Adjustments*).

Form EE

MAXIMUM PROPOSAL QUANTITIES

Base Material	Total Quantity*	Maximum Indexation Quantity**	Unit
Asphalt Cement	14,346	14,346	Ton
Fuel (Regular)	0	0	Gallon
Fuel (Diesel)	0	0	Gallon
Steel (Reinforcing Bars)	0	0	CWT
Steel (Hot-Rolled Carbon-Steel Plate	0	0	CWT
Steel (H-Piles)	0	0	CWT
Portland Cement	0	0	Ton

* The Total Quantity is the Developer's true estimate based on Developer's design and construction plan submitted with its Proposal, of the quantities of Base Materials required for the Project.

** Maximum Indexation Quantities are the material quantity for each Base Material subject to the Materials Indexation Adjustment regime.

EXHIBIT 26
FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of October 10, 2024 by MATSCO Incorporated, a Delaware Corporation (the "Guarantor"), in favor of the State Road and Tollway Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia ("SRTA") and the Georgia Department of Transportation ("GDOT") (collectively, the "Guaranteed Parties").

R E C I T A L S

A. Legacy Infrastructure Contractors, LLC, a Georgia limited liability company ("Developer"), and SRTA are parties to that certain Design, Build, and Finance Agreement, dated as of October 10, 2024 (the "Project Agreement"), pursuant to which the Developer has agreed to design, construct, and finance the I-285/I-20 West Interchange Project (the "Project") in accordance with the requirements of the Project Agreement and other DBF Documents (as such form is defined in the Project Agreement). The Work contemplated in the Project Agreement includes the design and construction of the Project and/or the Utility Adjustments included in the Design Work and/or the Construction Work (collectively, the "Design-Build Work").

B. Initially capitalized terms used herein without definition will have the meaning given such term in the DBF Documents.

C. To induce SRTA to (i) enter into the Project Agreement; and (ii) consummate the transactions contemplated thereby, the Guarantor has agreed to enter into this Guaranty.

D. Guarantor is the parent company of C.W. Matthews Contracting Co., Inc., which is the sole equity member and sponsor of Developer.

E. The execution of the Project Agreement by SRTA and the consummation of the transactions contemplated thereby will materially benefit the Guarantor. Without this Guaranty, SRTA would not have entered into the Project Agreement with the Developer. Therefore, in consideration of SRTA's execution of the Project Agreement and consummation of the transactions contemplated thereby, the Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

1. **Guaranty**.

a. The Guarantor, as primary obligor and not as surety, unconditionally and absolutely (except as provided in Section 4(e) and Section 20 of this Guaranty) guarantees to the Guaranteed Parties and each of their successors and assigns, the full and prompt payment and performance when due (whether at maturity, upon a default, upon resolution of a dispute, by acceleration, or otherwise under the Project Agreement) of all of the obligations (including payment obligations) of the Developer arising out of, in connection with, under or related to the Design-Build Work (including, without limitation, the Developer's warranty, indemnification, liquidated damages, and stipulated damages payments obligations) and under the DBF Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

b. The Guarantor covenants to the Guaranteed Parties that, if at any time the Developer should default in the performance when due of, observance when due of, or should commit a breach of, any of the Guaranteed Obligations, the Guarantor shall promptly, upon written notice by the Guaranteed Parties, fully perform or pay the Guaranteed Obligations or cause the performance or payment of the Guaranteed Obligations.

c. The Guarantor expressly agrees that, to the extent the Guarantor's obligations hereunder relate to obligations of the Developer which require performance other than the payment of money, the Guaranteed Parties may proceed against the Guarantor to affect specific performance thereof (to the extent that such relief is available). The Guarantor hereby covenants and agrees to assume or to procure the assumption of the DBF Documents, and to perform or to procure the performance of all of the terms and conditions thereunder should any of the DBF Documents be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving the Developer, or, at the option of the Guaranteed Parties, the Guarantor shall, in the event of the Developer's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to the Guaranteed Parties, new contract documents for the balance of the term of the DBF Documents, which new contract documents shall be in form and substance identical to the replaced DBF Documents.

2. **Unconditional Obligations**. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 4(e) and Section 20 of this Guaranty, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against the Developer. If any payment made by the Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of the Guarantor will be and remain in full force and effect as fully as if such payment had never been made. The Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or the Guarantor under this Guaranty. Without limiting the generality of the foregoing, the Guarantor's obligations hereunder will not be released, discharged or otherwise affected by:

a. any change in the DBF Documents or the obligations thereunder, any change in the existence, structure or ownership of the Guarantor or the Developer, or any dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or similar proceeding affecting the Developer, the Guarantor or their respective assets or any defense that may arise in connection with or as a result of such dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or other proceeding;

b. the existence of any claim or set-off which the Developer has or the Guarantor may have against the Guaranteed Parties, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by the Guarantor of any claim or prevent the assertion of any claim by separate suit;

c. any failure of consideration or lack of authority of the Developer, any lack of validity or enforceability, defect or deficiency, or any other defense to formation of the DBF Documents (or any term, condition or covenant thereof);

d. any change in the time, manner, terms, place of payment of, or any other term of all or any of the Guaranteed Obligations, or any other modification, extension, amendment, waiver of, or any consent to departure from any DBF Document executed in connection therewith;

e. the incapacity or lack of power or authority of, or dissolution or change in, the [members or shareholders] of the Developer; or

f. any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Guarantor with respect to the Guaranteed Obligations, other than performance or payment in full of the Guaranteed Obligations.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 4(e) and Section 20 of this Guaranty.

3. **Independent Obligations**. The Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against the Guarantor whether or not the Developer is joined therein. The Guaranteed Parties may maintain successive actions for other defaults of the Guarantor. The rights of the Guaranteed Parties hereunder will not be exhausted by the exercise of any of their rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been indefeasibly paid and fully performed.

a. The Guarantor agrees that the Guaranteed Parties may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Developer. Guarantor hereby waives the right to require the Guaranteed Parties to proceed against the Developer, to exercise any right or remedy under any of the DBF Documents or to pursue any other remedy or to enforce any other right.

b. The Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between the Developer and the Guaranteed Parties, or either of their respective successors and assigns, with respect to any of the DBF Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in any of the DBF Documents or any modification thereof; (iii) any release of the Developer from any liability with respect to any of the DBF Documents; (iv) any release or subordination of any collateral then held by the Guaranteed Parties as security for the performance by the Developer of the Guaranteed Obligations; or (v) any payment or performance of any of the Guaranteed Obligations, if the same is rescinded or performance is rightfully rejected or must otherwise be returned by any Guaranteed Party to any other upon the insolvency, bankruptcy, or reorganization of the Developer or the Guarantor, all to be treated as though such Guaranteed Obligations had not been paid or performed.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the DBF Documents or the pursuit by the Guaranteed Parties of any remedies which the Guaranteed Parties either now have or may hereafter have with respect thereto under any of the DBF Documents.

d. The Developer and the Guarantor acknowledge and agree that the Guarantor's undertakings and obligations hereunder are derivative of, and not in excess of, the Guaranteed Obligations and the Guarantor shall be entitled to the benefit of all rights, remedies, limitations and defenses of the Developer except as expressly waived or disclaimed in this Guaranty. Notwithstanding any other term or provision of this Guaranty, in the event that the Developer's obligations have been changed by any modification, agreement or stipulation between the Developer and the Guaranteed Parties, or either of their respective successors or assigns, the term "Guaranteed Obligations" as used herein shall mean the

Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which the Developer is the debtor, unless otherwise specified in the modification, agreement or stipulation.

4. **Liability of the Guarantor and Liability Cap**.

a. The Guaranteed Parties may enforce this Guaranty upon the occurrence of a breach by the Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between the Guaranteed Parties and the Developer with respect to the existence of such a breach.

b. The Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge the Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. The Guaranteed Parties, upon such terms as they deem appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of the Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Developer, if and as permitted by the Project Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of the Guaranteed Parties in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that the Guaranteed Parties may have against any such security, as the Guaranteed Parties in their discretion may determine, and (vi) exercise any other rights available to them under the DBF Documents.

d. This Guaranty and the obligations of the Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not the Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the DBF Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the DBF Documents or any agreement or instrument executed pursuant thereto; (iii) the Guaranteed Parties' knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of the Developer; and (iv) any defenses, set-offs or counterclaims that the Developer may allege or assert against the Guaranteed Parties in respect of the Guaranteed Obligations, except as provided in Section 20 hereof.

e. Notwithstanding any other provision hereof to the contrary, the Guarantor's aggregate maximum liability under this Guaranty (net of all applicable surety bond proceeds that have been paid) shall not exceed $[_____] [**NOTE: AMOUNT EQUAL TO 60% OF THE DBF CONTRACT SUM TO BE INSERTED BY GUARANTOR WHEN FINAL GUARANTY IS ISSUED FOR THE SELECTED DEVELOPER]** (the "Liability Cap"), provided that the exclusion from the "Developer Liability Cap" listed in PA Section 7.16 (*Developer's Limitation of Liability*) shall likewise be disregarded for the purposes of calculating, and shall not count towards, such Liability Cap, as well as amounts payable under Section 18 hereof. [**NOTE: IN THE EVENT THERE IS MORE THAN ONE GUARANTY, THE COMBINED MAXIMUM NET LIABILITY OF ALL GUARANTORS UNDER SUCH GUARANTIES SHALL NOT EXCEED THE LIABILITY CAP (AS CALCULATED ABOVE) AND THE FORMS OF SUCH GUARANTIES SHALL BE MODIFIED ACCORDINGLY.**]

5. **Waivers**. To the fullest extent permitted by law, the Guarantor hereby waives and agrees not to assert or take advantage of:

a. any right to require the Guaranteed Parties to proceed against the Developer or any other Person or to proceed against or exhaust any security held by the Guaranteed Parties at any time or to pursue any right or remedy under any of the DBF Documents or any other remedy in the Guaranteed Parties' power before proceeding against the Guarantor;

b. any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;

c. any right or defense arising out of an election of remedies by the Guaranteed Parties even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Developer by the operation of O.C.G.A. § 44-14-161(a) or otherwise;

d. all defenses that may arise relating to notices to and confirmation by the Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, amendment, accrual of any of the obligations of the Developer under any of the DBF Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto;

e. any defense based upon any act or omission of the Guaranteed Parties which directly or indirectly results in or aids the discharge or release of the Developer, the Guarantor or any security given or held by the Guaranteed Parties in connection with the Guaranteed Obligations; any duty on the part of the Guaranteed Parties to disclose to the Guarantor;

f. any facts the Guaranteed Parties may now or hereafter know about the Developer, regardless of whether the Guaranteed Parties have reason to believe that any such facts materially increase the risk beyond that which the Guarantor intends to assume, have reason to believe that such facts are unknown to the Guarantor, or have a reasonable opportunity to communicate such facts to the Guarantor. The Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of the Developer and of all circumstances bearing on the risk of non-payment of any Guaranteed Obligations;

g. the fact that the Guarantor may at any time in the future dispose of all or part of its direct or indirect ownership or economic interests in the Developer; and

h. any and all suretyship defenses under applicable Law.

6. **Waiver of Subrogation and Rights of Reimbursement**. Until the Guaranteed Obligations have been indefeasibly paid in full, the Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Developer that arises from the performance of the Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of the Guaranteed Parties against the Developer, or any other security or collateral that the Guaranteed Parties now have or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of the Developer or any shareholders, partners, members, joint venturers of the Developer to the Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as the Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Developer or any shareholders, partners, members, joint venturers of the Developer to the Guarantor without the prior written consent of the Guaranteed Parties. Any payment by the Developer or any shareholders, partners, members, joint venturers of the Developer to the Guarantor in violation of this provision shall be deemed to have been received by the Guarantor as trustee for the Guaranteed Parties.

7. **Cumulative Rights**. All rights, powers and remedies of the Guaranteed Parties hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to the Guaranteed Parties, whether at law, in equity or otherwise.

8. **Representations and Warranties**. The Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing and in good standing under the laws of Delaware and is qualified to do business under the laws of said jurisdiction;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by the Guarantor of this Guaranty have been duly authorized by all necessary [corporate] action on the part of the Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (i) the [certificate of incorporation or by-laws] of the Guarantor, (ii) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right, restriction, or obligation to which the Guarantor is a party or any of its property is subject or by which the Guarantor is bound, or (iii) any federal, state, or local law, statute, ordinance, rule or regulation applicable to the Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the DBF Documents or referred to therein, the

financial status of the Developer and the ability of the Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed copies of the DBF Documents and is fully informed of the remedies the Guaranteed Parties may pursue, with or without notice to the Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Developer and will keep itself fully informed as to all aspects of the financial condition of the Developer, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. The Guarantor hereby waives and relinquishes any duty on the part of the Guaranteed Parties to disclose any matter, fact or thing relating to the business, operations or conditions of the Developer now known or hereafter known by the Guaranteed Parties;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which the Guarantor is a party or by which the Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by the Guarantor, except as have been obtained prior to the date hereof;

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity which challenges the validity or enforceability of this Guaranty;

k. it is not subject to any outstanding judgment, rule, writ, injunction or decree of any Governmental Entity that adversely affects its ability to perform its obligations under this Guaranty; and

l. it derives a substantial direct or indirect economic benefit from the Project Agreement.

9. **Governing Law**. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Georgia applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. The Guarantor consents to the jurisdiction of the State of Georgia with regard to this Guaranty. The venue for any action regarding this Guaranty shall be the Superior Court of Fulton County, Georgia.

10. **Entire Document**. This Guaranty contains the entire agreement of the Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by the Guaranteed Parties referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

11. **Severability**. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

12. **Notices**. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to SRTA:
State Road and Tollway Authority
245 Peachtree Center Ave. NE, Suite 2200
Atlanta, Georgia 30303-1223
Attention: Executive Director
Telephone: (404) 893-6100
Email: jmiller@srta.ga.gov

With a copy to:
General Counsel.
State Road and Tollway Authority
245 Peachtree Center Ave. NE, Suite 2200
Atlanta, Georgia 30303-1224
Attention: General Counsel
Telephone: (404) 393-1081
Email: mmandus@srta.ga.gov

If to GDOT:
Georgia Department of Transportation
Office of the Chief Engineer
600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1004
Email:mpirkle@dot.ga.gov

With a copy to:
Division of General Counsel/Administration.
Georgia Department of Transportation
600 West Peachtree Street, Suite 2300
Atlanta, Georgia 30308
Attention: Division of General Counsel/Administration
Telephone: (404) 631-1496
Email: jivy@dot.ga.gov @dot.ga.gov

If to the Guarantor:
MATSCO, Incorporated
P.O. Drawer 970
Marietta, Georgia 30061
Attention: Michael D. Bell, President
Telephone: (770) 422-7520
Telecopy: (770) 422-1068
Email: Michaelb@cwmatthews.com

The Guarantor or the Guaranteed Parties may from time to time change their address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 12 are effective upon delivery, if delivered personally or by overnight

mail, and, are effective 5 days following deposit in the United States mail, postage prepaid if delivered by mail.

13. **Captions**. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

14. **Assignability**. This Guaranty is binding upon and inures to the benefit of the successors and assigns of the Guarantor and the Guaranteed Parties, but is not assignable by the Guarantor without the prior written consent of the Guaranteed Parties, which consent may be granted or withheld in the Guaranteed Parties' sole discretion. Any assignment by the Guarantor effected in accordance with this Section 14 will not relieve the Guarantor of its obligations and liabilities under this Guaranty.

15. **Construction of Agreement**. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

16. **No Waiver**. Any forbearance or failure to exercise, and any delay by the Guaranteed Parties in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

17. **Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty**.

(a) The obligations of the Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Developer or by any defense which the Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. The Guaranteed Parties are not obligated to file any claim relating to the Guaranteed Obligations if the Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of the Guaranteed Parties to so file will not affect the Guarantor's obligations under this Guaranty.

(b) The Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of the Guarantor and the Guaranteed Parties that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve the Developer of any portion of such Guaranteed Obligations. The Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay the Guaranteed Parties, or allow the claim of the Guaranteed Parties in respect of, any such interest accruing after the date on which such proceeding is commenced.

18. **Attorneys' Fees**. The Guarantor agrees to pay to the Guaranteed Parties without demand reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by the Guaranteed Parties in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against the Guarantor or in attempting to do any or all of the foregoing.

19. **Joint and Several Liability**. If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to the Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

20. **Defenses**. Notwithstanding any other provision to the contrary, the Guarantor shall be entitled to the benefit of all defenses available to the Developer under the Project Agreement except (a) those expressly waived in this Guaranty (provided however, for the avoidance of doubt and without limiting the waivers specified in Section 5 of this Guaranty, that Guarantor does not waive the right to assert those defenses available to Developer as to material breach of the Project Agreement), (b) failure of consideration, lack of authority of the Developer and any other defense to formation of the Project Agreement, and (c) defenses available to the Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against the Guarantor under this Guaranty shall be subject to no prior notice or demand.

21. **Additional Guarantor Waivers and Acknowledgements**.

a. The Guarantor hereby waives any and all defenses it might have that liquidated damages or stipulated damages constitute a penalty or that they do not bear a reasonable relation to the actual damages.

b. THE GUARANTOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, THE GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON EXECUTION OF THIS GUARANTY. NO FORMAL ACCEPTANCE BY THE GUARANTEED PARTIES IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS EFFECTIVE AS OF THE DATE HEREOF.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the date first written above.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 27
FORM OF CERTIFICATE REGARDING RELIEF EVENT AND COMPENSATION EVENT

I, [Name], the [Title] of [Name of Developer, Contractor or Subcontractor, as applicable] (the "Company"), do hereby certify as of [Date] that:

(a) This certificate is being executed and delivered in connection with the [the Relief Event Package for Detailed Relief Event Notice No.[·] *OR* [the Compensation Event Package for Detailed Compensation Event Notice No. [·];

(b) The claim that the events described in the relevant Detailed Relief Event Notice or Detailed Compensation Event Notice constitute a Relief Event or Compensation Event, as applicable pursuant to the DBF Documents is made in good faith and in accordance with the terms of the DBF Documents;

(c) The amount of time and compensation requested accurately reflects the appropriate adjustments to the Project Schedule and the DBF Contract Sum, as applicable, justified pursuant to the terms and conditions of the Project Agreement;

(d) The Relief Event Package and the Compensation Event Package, respectively, include all known and anticipated impacts or amounts whatsoever that may be incurred as a result of the event giving rise to the asserted Relief Event or the asserted Compensation Event;

(e) The Relief Event Package and the Compensation Event Package, as applicable, addresses any and all costs and delays arising out of the relevant Relief Event or Compensation Event; and

(f) The Developer (and Contractor(s) and Subcontractor(s), as applicable) has/have no reason to believe and does/do not believe that the factual basis for the claim of Relief Event or Compensation Event, as applicable, is falsely represented.

IN WITNESS WHEREOF, the undersigned is/are the [ ], [ ] and [ ] of the entity(ies) to which this Form relates, [respectively] and has/have duly executed this certificate as of the date first written above.

By:_____ Print Name:_____

Title:_____

By:_____ Print Name:_____

Title:_____

By:_____ Print Name:_____

Title:_____