

I-285 AND SR 400 RECONSTRUCTION PROJECT

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the “**Agreement**”) is made and entered this 21st day of January, 2016, by and between the **STATE OF GEORGIA DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Georgia (hereinafter referred to as “**GDOT**”), and the **STATE ROAD AND TOLLWAY AUTHORITY**, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (hereinafter referred to as “**SRTA**”), for the purpose of memorializing the rights, roles and responsibilities of each party relating to the herein defined Project.

WITNESSETH THAT:

WHEREAS, 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 Section 32-2-78, *et seq.* of the Official Code of Georgia Annotated (the “**PPP Act**”), which PPP Act forms a part of O.C.G.A. § 32-2-1, *et seq.* (the “**GDOT Act**”); and

WHEREAS, among other powers, GDOT has the authority “to negotiate, let, and enter into contracts with . . . the State Road and Tollway Authority . . . for the construction or maintenance of any public road or any other mode of transportation” as may be provided by applicable law pursuant to O.C.G.A. § 32-2-2(a)(5); and

WHEREAS, GDOT is the owner of that certain property, which forms a part of the State's transportation system and is situated in Dekalb County, Georgia and Fulton County, Georgia, as more particularly described in the herein referenced Estate for Years (the “**Premises**”); and

WHEREAS, SRTA and GDOT are permitted to enter into intergovernmental contracts pursuant to Article IX, Section III, Paragraph I(a) of the Constitution of the State which provides, in pertinent part, as follows:

“[t]he state, or any institution, department, or other agency thereof, and any . . . or other political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide. . .”; and

WHEREAS, pursuant to O.C.G.A. § 32-2-61(a), GDOT is expressly authorized to (i) enter into such intergovernmental contracts and to obligate itself to make payments in connection therewith, and (ii) incur funding obligations in respect of such intergovernmental contracts without having funds appropriated for such obligations; and

WHEREAS, pursuant to the PPP Act, GDOT is authorized to undertake a project on the Premises consisting of the construction of new flyover ramps, new collector-distributor lanes and other related facilities and the reconstruction and widening of several existing bridges to aid east-west travel along Interstate Highway 285 (“**I-285**”) and north-south travel along State Route 400 (“**SR 400**”), as more particularly described in the hereinafter defined DBF Agreement (the “**Project**”); and

WHEREAS, pursuant to O.C.G.A. § 32-10-63, SRTA has been given certain powers, including, but not limited to, (i) the power to construct, erect, lease, own, repair, maintain, add to, extend, improve, operate and manage one or more bridges or a system of roads, bridges and tunnels with access limited or unlimited as determined by SRTA, and such buildings, structures, parking areas, appurtenances and facilities related thereto, including, but not limited to, approaches, cross streets, roads, bridges, tunnels and avenues of access for such systems, and (ii) the power to make such contracts, leases, or conveyances as are legitimate and necessary, including, but not limited to, contracts for construction or maintenance of projects; and

WHEREAS, GDOT and SRTA have each determined that the design, construction and financing of the Project on the Premises is an authorized undertaking by the parties under State law; and

WHEREAS, the State Transportation Board (the “**Board**”) has approved, the final selection of North Perimeter Contractors, LLC (together, the “**Developer**”) to design, construct, partially-finance, and maintain (during construction) the Project; and

WHEREAS, the Board and SRTA have approved, respectively, the conveyance of the Premises by GDOT to SRTA under the terms and conditions set forth in that certain Estate for Years, dated of even date herewith, between the parties hereto (the “**Estate for Years**”), and the entering into of a public-private-partnership pursuant to a Design-Build-Finance Agreement, of even date herewith (the “**DBF Agreement**”), by and between SRTA and the Developer, in order to cause said design, construction, and partial financing of the Project by the Developer; and

WHEREAS, GDOT has agreed to serve as project manager and agent for SRTA during the Project; and

WHEREAS, pursuant to a Joint Resolution adopted by the State Transportation Board on June 18, 2015 and by SRTA on June 24, 2015 (the “**Joint Resolution**”), GDOT has agreed to make available certain funds to SRTA to meet SRTA’s obligations to the Developer under the DBF Agreement; and

WHEREAS, GDOT and SRTA have each found and determined that the undertaking of the transactions and services contemplated herein and the carrying out of the duties and obligations required herein are in their mutual best interests and in the best interests of and for the benefit of the State.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) in hand paid, the mutual public benefit, the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, GDOT and SRTA hereby agree as follows:

ARTICLE I

DEFINITIONS; USE OF PHRASES; INCORPORATION OF RECITALS

Section 1.1 Definitions. Any capitalized terms not defined herein shall have the meanings assigned to them in the DBF Agreement.

Section 1.2 Use of Phrases. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove,” “hereinafter,” and other equivalent words refer to this Agreement and not solely to the particular portion hereof in which any such word is used. The definitions set forth herein or incorporated herein by reference include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

Section 1.3 Incorporation of Recitals. The recitals set forth above are true and correct and said recitals are incorporated herein by reference.

ARTICLE II

UNDERTAKINGS AND REPRESENTATIONS

Section 2.1 Undertakings. GDOT hereby covenants and agrees to serve as SRTA's Agent as that term is defined in Section 2.2(c) of this Agreement.

Section 2.2 Representations, Covenants and Agreements of GDOT. GDOT makes the following representations, covenants and agreements as the basis for the undertakings on its part herein contained:

(a) GDOT was duly created and is a validly existing public agency of the State. Under the provisions of the GDOT Act, the Constitution of the State and resolutions adopted by the Board, GDOT has the requisite power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, subject to the limitations set forth in this Agreement. By proper action, GDOT has been duly authorized to execute and deliver this Agreement.

(b) GDOT has found and hereby declares that the design, construction and financing of the Project will be in furtherance of the public purpose for which GDOT was created.

(c) GDOT hereby accepts its designation as “project manager” and “agent” for SRTA (collectively, the “**Agent**” or “**SRTA's Agent**”) as provided in Section 3.1 below (subject to the Reserved SRTA Rights and Obligations (as defined herein)), and in that capacity, GDOT hereby covenants and agrees that it will use its best efforts to cause the design, construction and financing of the Project as contemplated under, and in accordance with the terms and conditions established within the DBF Agreement and this Agreement during the design and construction of the Project.

(d) GDOT further acknowledges and agrees that as SRTA's Agent, it shall act in a manner consistent with SRTA's and GDOT's mutual best interests and in the best interests of the State.

(e) GDOT hereby covenants and agrees that it will timely perform its obligations as Agent.

(f) The Board duly approved the execution and delivery of this Agreement by GDOT.

(g) GDOT further hereby covenants and agrees to provide SRTA with a copy of any and all Claims and Notices of Claims made in connection with the Project within seven (7) calendar days of GDOT's receipt thereof. In connection with the foregoing, GDOT further covenants and agrees to consult with SRTA on all Claims over \$1,000,000.

Section 2.3 Representations, Covenants and Agreements of SRTA. SRTA makes the following representations, covenants and agreements as the basis for the undertakings on its part herein contained:

(a) SRTA is a body corporate and politic and an instrumentality and public corporation of the State; has the power to enter into this Agreement and perform all of its obligations contained herein; and, by proper action, has been duly authorized to execute and deliver this Agreement.

Section 2.4 Place and Timing of Payments.

(a) The payments from GDOT to SRTA provided for in the Joint Resolution, to the extent not already on deposit with SRTA, shall be deposited into an account maintained jointly by GDOT and SRTA (the "Project Account") and the funds therein contained shall for all purposes be deemed to be held in trust for the exclusive use and benefit of the Project.

(b) GDOT agrees to make the payments required under the Joint Resolution ten (10) days prior to the date such payments are required to meet (i) GDOT's funding commitment to SRTA under the Joint Resolution as set forth in Attachment 2 to Exhibit 7 to the DBF Agreement (which shall be amended from time to time pursuant to the terms of the DBF Agreement), which is attached hereto as Exhibit A and (ii) such other funding commitments as required in the Joint Resolution.

(c) SRTA shall, at any given time, only withdraw (i) the amount so authorized by GDOT to be withdrawn from the Project Account, and forward the same amount to the Developer, pursuant to the schedule set forth on Attachment 2 to Exhibit 7 to the DBF Agreement and as otherwise set forth in Section 7.5 below and (ii) other amounts as necessary to fulfill its obligations under the DBF Agreement.

(d) Both parties hereby covenant and agree that interest earned on amounts deposited into the Project Account shall be applied solely to fund Project Cost Payments (as defined in the Joint Resolution) and for no other purpose; provided, however, if no Project Cost Payments remain, such amounts shall be paid to GDOT for any lawful purpose.

(e) GDOT agrees that the records relating to draws made and requisitions approved in respect of the Project shall, at all times, be subject to inspection or audit by SRTA upon its request.

ARTICLE III

APPOINTMENT OF GDOT AS SRTA'S AGENT; COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 Appointment of GDOT as SRTA's Agent. GDOT has agreed to act and SRTA hereby appoints, GDOT as SRTA's Agent (subject to the Reserved SRTA Rights and Obligations) for purposes of causing the design, construction and financing of the Project by the Developer pursuant to the provisions of the DBF Agreement. In this connection, and without intending to limit the foregoing, but expressly subject to the Reserved SRTA Rights and Obligations, GDOT shall provide project oversight and administration on behalf of SRTA, including reviewing and approving requisitions for payments and other amounts owed to the Developer pursuant to the DBF Agreement, reviewing and administering Claims, Relief Event Notices, and Compensation Event Notices asserted by Developer under the DBF Agreement and making determinations on behalf of SRTA with respect to same, conducting inspections, coordinating with and making final decisions, on behalf of SRTA, communicating any such decisions to the Developer, and handling all matters and responsibilities related to hazardous materials. Unless and until the Developer is notified in writing by SRTA to the contrary, all notices, consents, directions, and instructions to be given by, and all notices and plans to be delivered to SRTA with respect to the Project, shall be taken, given and made through GDOT, with a copy of any written notices to SRTA in accordance with the DBF Agreement. The parties acknowledge and agree that 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 SRTA, with respect to, among others, GDOT's obligation to make the final determination and related decisions that the construction, design and other work performed by the Developer is executed in accordance with the DBF Documents (subject to the Reserved SRTA Rights and Obligations). For purposes of clarification and to avoid doubt, the Reserved SRTA Rights and Obligations are set forth in more detail in Section 7.1 hereof.

Section 3.2 Commencement of the Project. GDOT hereby covenants and agrees that it will (a) proceed immediately and with due diligence to perform its obligations as SRTA's Agent under the DBF Agreement, (b) use its best efforts to cause the timely completion of the Project, and (c) as and to the extent required, use its best efforts to cause the design, construction, and financing of said Project, all in accordance with the programs, plans, specifications and Change Orders prepared in connection therewith and subject to the rights, obligations and limitations set forth in the DBF Agreement.

Section 3.3 Authority to Pursue Remedies Against Developer, Contractors, Subcontractors, and any of their respective Sureties or Guarantors; Cooperation of GDOT in Legal Actions. In the event of default by the Developer (its successors or assigns), or any contractor or subcontractor under any contract made in connection with the design, construction and financing of the Project, GDOT shall have the authority to administer such matters as it shall determine to be in the best interest of the Project, including making elections with respect to enforcement of any remedies which GDOT and SRTA may have against said Developer, contractor or subcontractor so in default and against any surety or guarantor, as applicable, for the performance of such contract, whether pursuant to applicable law or such respective contracts. GDOT agrees to advise SRTA of the steps it intends to take in connection with any such default prior to initiating any such steps. GDOT, with SRTA's concurrence, agrees to

prosecute or defend any action or proceeding or take any other action involving the Developer, contractor, subcontractor, surety or guarantor which GDOT deems reasonably necessary; and, in such event, GDOT and SRTA agree to cooperate fully with each other. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, whether prior to or after the Substantial Completion Date shall be used in the manner provided in the DBF Agreement. In addition, GDOT hereby agrees to at all times cooperate with and participate in the defense of SRTA, as and to the extent a suit, claim or other action is filed in connection with the matters contemplated in this Agreement. This section is not intended to override the dispute resolution procedures set forth in the DBF Agreement.

Section 3.4 Obligations of the Parties Hereunder Absolute and Unconditional.

(a) The obligations of GDOT to observe the agreements on its part contained herein shall be absolute and unconditional, provided that SRTA is not in breach of this Agreement. Until the later to occur of the end of the Term (as herein defined) and the termination or expiration of the DBF Agreement, GDOT shall perform and observe all of its obligations contained in this Agreement or any other agreement relating to the Project to which GDOT is a party, and except as expressly provided in the DBF Agreement (by way of example and not limitation, after a termination for convenience under the DBF Agreement), shall not terminate the Estate for Years or this Agreement for any cause whatsoever.

(b) Until the later to occur of the end of the Term and the termination or expiration of the DBF Agreement, and provided that GDOT is not in breach of this Agreement, SRTA (i) shall perform and observe all of its obligations under this Agreement, and (ii) except as expressly provided therein, shall not terminate the Estate for Years, the DBF Agreement or this Agreement for any cause whatsoever. SRTA's obligations and agreements herein contained shall also be absolute and unconditional. For purposes of clarification, a default by GDOT or SRTA hereunder is not intended, nor shall such be considered, to serve as a basis for breaching (i) SRTA's covenants and agreements to the Developer under the DBF Agreement or any other related document, instrument or agreement, or (ii) SRTA's covenants and agreements with any party which has participated in the financing of all or a portion of the Project.

ARTICLE IV EFFECTIVE DATE OF THIS AGREEMENT; TERM

Section 4.1 Effective Date of this Agreement; Term. This Agreement is effective as of the date first above written (the “**Effective Date**”) and shall remain in effect until the earlier to occur of (i) the expiration (by its terms) or termination of the DBF Agreement, in each case in strict conformance with the provisions thereof, and after giving effect to any applicable cure rights, cure periods and paying or providing for the payment of each and every obligation in respect of such agreements (as and to the extent required), and (ii) 11:59 P.M. prevailing Atlanta, Georgia time on the day before the twentieth (20th) anniversary of the Effective Date (unless otherwise modified, extended or renewed) (the “**Term**”); further, provided that in no event shall the Term extend beyond the date which is fifty (50) years after the Effective Date of this Agreement.

ARTICLE V
MAINTENANCE, OVERSIGHT, INSPECTION,
MODIFICATIONS, TAXES, UTILITIES AND INSURANCE

Section 5.1 Maintenance, Oversight, Inspection and Modifications of the Project by GDOT.

(a) Prior to Final Acceptance and pursuant to its role as SRTA's Agent, GDOT hereby agrees that it will cause the Developer to keep the Premises in as reasonably safe condition as its reasonable occupancy shall permit, all in accordance with the requirements set forth in the DBF Agreement.

(b) Until the completion of the Developer's performance obligations under the DBF Agreement and as SRTA's Agent, GDOT shall have the sole and exclusive right and obligation (subject only to the hereinafter defined Reserved SRTA Rights and Obligations) to duly and faithfully carry out and perform each and every duty, role or responsibility of SRTA in or contemplated by the DBF Agreement.

Section 5.2 Taxes, Other Governmental Charges and Utility Charges.

(a) GDOT and SRTA each acknowledge that under present law neither GDOT's nor SRTA's interests in the Project are subject to ad valorem taxation by the State or by any political or taxing subdivision thereof and that under present law the revenue, if any, of GDOT and SRTA from the Project are not subject to either federal or State taxation.

(b) As and to the extent applicable, GDOT, in its capacity as SRTA's Agent, will use its best efforts to cause the Developer to pay, as the same respectively become lawfully due and payable, (i) any and all taxes and governmental charges of any kind whatsoever levied upon or with respect to the Developer's payments or obligations and interests under the DBF Agreement (if any), and (ii) all utility and other charges incurred in the maintenance and upkeep (during construction) of the Project. After the completion of the Developer's obligations under the DBF Agreement, GDOT shall be solely responsible for any and all applicable utility and other charges incurred in the maintenance and upkeep of the Project.

Section 5.3 Insurance Required. Notwithstanding anything contained in the Estate for Years to the contrary, during the Term, GDOT and SRTA agree to cooperate, one with the other, to insure (or cause to be insured) the Project in accordance with the requirements of the DBF Agreement or as otherwise permissible under the provisions of applicable State law. For purposes of clarification, this provision is not intended and shall not be construed as preventing GDOT or SRTA from utilizing its or the State's usual and customary insurance policies and practices (including, but not limited to, self-insurance) with respect to similar transportation projects during any period that the Developer is not responsible for the design, construction, partial financing and maintenance (during construction) of the Project. The parties acknowledge and agree that causing the Developer to comply with the insurance requirements in the DBF Agreement prior to the Substantial Completion Date or Final Acceptance, as the case may be, shall be deemed compliance with this provision of the Agreement. Notwithstanding the

foregoing, nothing in this section shall limit or waive the sovereign immunity of the State of Georgia, GDOT or SRTA to the extent applicable.

Section 5.4 Application of Net Proceeds of Insurance. The net proceeds of any fire and casualty insurance carried pursuant to the provisions of the DBF Agreement or the provisions of this Agreement shall be applied as provided in the DBF Agreement or pursuant to Section 6.1 hereof, and the net proceeds of any liability or workmen's compensation insurance carried pursuant to the provisions of DBF Agreement shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid.

ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 Damage and Destruction. In the event that the Project, or any portion thereof, is damaged or destroyed by fire or other casualty, GDOT, with the cooperation of SRTA, which cooperation SRTA shall be required to provide, shall have the right to control all decisions relating to the determination as to whether to repair, rebuild, replace or modify the Project (whether from insurance proceeds, the amounts payable to the Developer or any other legally available funds, as the case may be); provided, however, that GDOT shall act in strict compliance with the requirements placed upon SRTA in the DBF Agreement.

Section 6.2 Right of Way Acquisition. Pursuant to Article 2 of the DBF Agreement, SRTA is obligated to provide the Developer with access rights to the Existing Right of Way and State Proposed/State Acquired Right of Way. GDOT, in furtherance of Section 5.1(b) herein, shall be responsible to undertake the obligations of SRTA as required pursuant to the DBF Agreement with respect to such property interests, including the acquisition of any of such property interests as may be required to complete the Project. In the event condemnation or other means of acquisition of real estate or any interest therein is required with respect to any State Proposed/State Acquired Right of Way, State Proposed/Developer Acquired Right of Way or Developer Proposed/Developer Acquired Right of Way in order to complete the construction of the Project as contemplated in the DBF Agreement or this Agreement (for purposes hereof, an "Additional Property Interest"), GDOT shall proceed pursuant to its statutorily prescribed authority; provided, however, that the funding of any such condemnation or acquisition shall for all purposes be deemed an eligible capital cost of the Project. Any Additional Property Interest held or so acquired by GDOT shall be transferred by GDOT to SRTA, and such transfer shall be memorialized by an amendment, addendum or other supplement to the Estate for Years, but solely as and to the extent such Additional Property Interest is necessary or appropriate for SRTA to carry out (or cause to be carried out) its obligations under the DBF Agreement or this Agreement.

ARTICLE VII SPECIAL COVENANTS

Section 7.1 Reserved SRTA Rights and Obligations. GDOT shall not be responsible for, and SRTA hereby reserves to itself, the following rights and obligations under the DBF Agreement: (a) the right to receive reimbursement for SRTA's costs and expenses reasonably allocable to the Project; (b) any and all rights of ingress or egress, easements, rights of entry or

other reserved property interests with respect to the Premises necessary or appropriate for SRTA to carry out its obligations under the DBF Agreement or this Agreement; (c) the right and obligation to make payments from funds on deposit with it in respect of the Project upon receipt of and in compliance with the Notice of Acceptability of Work and Direction to Pay (as provided in Section 7.5 below); (d) the right to hire, engage or otherwise procure third-party architects, engineers, contractors, consultants and other professionals needed to carry out its obligations under this Agreement or with respect to the construction of the Project; and (e) the right and obligation to file lawsuits and/or to commence other legal proceedings against the Developer and any third party, after consultation with GDOT and the Attorney General (collectively, the **“Reserved SRTA Rights and Obligations”**).

Section 7.2 Inspection of the Project. Notwithstanding GDOT's right and obligation to inspect, review, approve, make determinations and otherwise manage and oversee the Project (including, without limitation, GDOT's right to serve as the sole approving party for all invoices and other disbursement requests payable from funds held for the benefit of the Project) as SRTA's Agent or otherwise, GDOT agrees that SRTA and its other duly authorized agents shall have the right at all reasonable times to review the inspection reports, engineering reports and other documentation prepared in connection with the design, construction, financing, operation and maintenance of the Project, and to otherwise examine and inspect the Project; provided, further, that this provision is not intended and shall not be construed as limiting Reserved SRTA Rights and Obligations (including, without limitation, the SRTA reserved payment rights contemplated in Section 7.5 hereof).

Section 7.3 GDOT's and SRTA's Right to Carry Out their Respective Federally Required Rights, Obligations and Duties. Notwithstanding anything herein or in the DBF Agreement to the contrary, the parties hereby acknowledge and agree that each of GDOT and SRTA shall retain all of their respective rights, obligations and responsibilities over matters which the applicable party is required to control, direct or perform, as the case may be, to remain in compliance with federal and State law. In addition, nothing in this Agreement is intended to, nor shall it be construed so as to, restrict, impair, delegate, transfer or abdicate GDOT's rights and obligations to the United States Department of Transportation (including its modal agencies such as the Federal Highway Administration) to oversee, manage and administer the federal-aid highway program for the State. GDOT further reserves the right to hire, engage or otherwise procure third-party architects, engineers, contractors, consultants and other professionals needed to carry out its obligations under this Agreement.

Section 7.4 GDOT's Responsibility and Obligations as to Hazardous Materials Management. Notwithstanding anything herein or in the DBF Agreement to the contrary, the parties hereby acknowledge and agree that as between GDOT and SRTA, GDOT, in its capacity as (a) the fee simple owner of the Premises, (b) the grantor of the Estate for Years, and (c) SRTA's Agent under this Agreement, shall retain liability, to the full extent permissible under applicable federal and State environmental Laws, with respect to generator and arranger liability due to hazardous materials. Further, to the extent permitted by Law, GDOT will retain and be responsible for, as between GDOT and SRTA (and to the fullest extent possible as between SRTA and the Developer), all liability and responsibility (including all claims related thereto) relating to hazardous materials, whether such liability and/or responsibility is based on the theory of strict liability, negligence or any other theory of liability. Notwithstanding the above, in the

event that it is judicially determined that the Developer has contributed to any liability or responsibility in respect of such hazardous materials, SRTA shall not be responsible for the portion of any liability or responsibility determined judicially to be caused by the Developer. In addition, nothing herein shall be construed as limiting GDOT's rights as: (a) the fee simple owner of the Premises, (b) the grantor of the Estate for Years, (c) a third party beneficiary to the DBF Agreement, or (d) SRTA's Agent under this Agreement, to seek contribution or payment from (or otherwise take action against) the Developer or any other person or entity which may be responsible (in whole or in part) with respect to any such liability or responsibility.

Section 7.5 GDOT Project Certifications; SRTA and GDOT's Rights to Directly Pay Certain Project Related Costs and Expenses. Notwithstanding anything herein contained to the contrary and excluding the SRTA reserved payment rights, GDOT shall be solely responsible for the timely review, approval, rejection, modification, coordination and communication (with the Developer and SRTA) with respect to all Project Certificates made by the Developer pursuant to the DBF Agreement, all of which shall be performed by GDOT in strict accordance with the obligations imposed on SRTA or GDOT under the DBF Agreement, not to exceed twenty (20) days from the date of receipt of the Project Certificate from the Developer. GDOT shall certify to SRTA that it has reviewed such Project Certificates and shall complete a Notice of Acceptability of Work and Direction to Pay (in the form set forth in Exhibit B attached hereto) for each Approved Project Certificate and forward such Notice of Acceptability of Work and Direction to Pay along with a copy of the applicable Approved Project Certificate to SRTA within ten (10) days of GDOT furnishing each Approved Project Certificate to Developer. Should approval to pay all or any portion of a Project Certificate be denied by GDOT, GDOT shall communicate to SRTA, within the timeframe set forth above, the reasons for withholding approval.

ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.1 Defaults Defined. The following shall constitute "Defaults" under this Agreement and the term "**Default**" shall mean, whenever it is used in this Agreement any one or more of the following events:

(a) the failure by a party to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Agreement or any related agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied shall have been given to the defaulting party by the non-defaulting party. If a default specified in this subsection (a) is such that it can be corrected but not within the period specified herein, unless an extension of such period would materially adversely affect the Project or the revenues therefrom would be subjected to loss or forfeiture, such default shall not constitute the basis of a Default hereunder (i) if corrective action capable of remedying such default is instituted by the defaulting party within the applicable period and diligently pursued until the default is corrected, and (ii) if such defaulting party shall within the applicable period furnish to the non-defaulting party a certificate executed by the Commissioner of GDOT or Executive Director of SRTA, as the case may be, certifying that the default is such that it can be corrected but not within the applicable period and that corrective action capable of remedying

such default has been instituted, and specifying the corrective action is being diligently pursued and will be diligently pursued until the default is corrected; and

(b) the making of any representation by a party in this Agreement if such representation is untrue, incorrect, or invalid in any material respect when made.

The foregoing provisions of this Section are subject to the following limitations: if by reason of force majeure GDOT or SRTA is unable in whole or in part to carry out the agreements on its part herein contained, such party shall not be deemed in Default during the continuance of such inability. The term "force majeure" as used herein shall include, without limitation, the following: acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; acts of terrorism; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes, or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of GDOT or SRTA, as the case may be. Both parties agree, however, to remedy with all reasonable dispatch the cause or causes preventing such party from carrying out its agreements; provided, that the settlement of strikes, lockouts, and other similar disturbances shall be entirely within the discretion of each such party, and neither party shall be required to make settlement of strikes, lockouts, and other similar disturbance by acceding to the demands of the opposing party or parties when such course is, in the judgment of GDOT or SRTA (as the case may be), unfavorable to it.

Section 8.2 Alternative Dispute Resolution; Other Remedies on Default. In the event of any dispute whatsoever arising out of or relating to this Agreement, or any other issue arising between the parties relating in any way to the Project, the disputing party must furnish a written notice to the other party, setting forth in detail the dispute. Such notice must be addressed to the SRTA Director of Project Management or GDOT's Project Manager, as applicable. Within three (3) business days after the receipt of the notice by the receiving party, SRTA's Director of Project Management and GDOT's Project Manager shall meet to attempt to resolve the dispute. If SRTA's Project Manager and GDOT's Project Manager cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute then, within five (5) business days after the date of written notice by either individual to SRTA's Deputy Executive Director and GDOT's Chief Engineer, SRTA's Deputy Executive Director and GDOT's Chief Engineer shall meet to attempt to resolve the dispute. If SRTA's Deputy Executive Director and GDOT's Chief Engineer cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute then, within five (5) business days after the date of written notice by either individual to the Executive Director of SRTA and the Commissioner of GDOT, the Executive Director of SRTA and the Commissioner of GDOT shall meet to attempt to resolve the dispute. If the Executive Director of SRTA and the Commissioner of GDOT cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute, then either party may pursue those remedies only as allowed under this Agreement and as otherwise permitted by the Attorney General of the State of Georgia. In addition to any other dispute between the parties, whenever any Default referred to in Section 8.1 hereof shall have occurred and be subsisting, subject at all times to the provisions of Section 3.4

hereof, the non-defaulting party shall first pursue resolution of said default pursuant to the alternative dispute resolution provisions set forth in this Section 8.2.

The obligation to pay amounts due or perform actions required to be taken, as the case may be, under this Agreement, as and to the extent such obligations arise prior to the termination of this Agreement, shall survive the termination of this Agreement, unless otherwise expressly set forth in a subsequent agreement by and between the parties.

Section 8.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the non-defaulting party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.4 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX TERMINATION OF THE DBF AGREEMENT

Section 9.1 Mutual Cooperation by and between SRTA and GDOT Regarding Termination of the DBF Agreement and Canceling the Project. SRTA and GDOT hereby covenant and agree to cooperate, one with the other, in connection with SRTA's exercise of any right to terminate the DBF Agreement pursuant to the provisions set forth therein or to otherwise cancel the Project. For purposes of clarification, upon a default by Developer under the DBF Agreement, after giving effect to any applicable cure periods, cure rights and other provisions in said DBF Agreement, SRTA agrees to consult with GDOT, and to secure GDOT's consent, prior to making the decision to terminate the DBF Agreement, designate a replacement developer or otherwise exercise any rights which SRTA may have under the DBF Agreement (subject at all times to the applicable Reserved SRTA Rights and Obligations).

ARTICLE X MISCELLANEOUS

Section 10.1 Notices. All notices, statements, reports, demands, requests, consents, approvals, waivers and authorizations required by the provisions of this Agreement to be given by either of the parties hereto to the other shall be via electronic mail, the receipt of which shall be confirmed by the other party by electronic mail.

Section 10.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon GDOT and SRTA and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

Section 10.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.4 Amendments, Changes and Modifications. Except as otherwise expressly provided in this Agreement, this Agreement may not be effectively amended, changed, modified, altered, or terminated without the express written consent of both parties.

Section 10.5 Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


Section 10.6 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.


Section 10.7 Law Governing Construction of Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, GDOT, acting pursuant to and in conformity with a properly considered and adopted resolution and acting by and through its duly authorized and hereinafter named representatives, and SRTA, acting pursuant to and in conformity with a properly considered and adopted resolution and acting by and through its duly authorized and hereinafter named officers, have caused this Agreement to be signed, sealed and delivered as of the date hereof.

**STATE OF GEORGIA DEPARTMENT OF
TRANSPORTATION**

By: 
Commissioner of Transportation

Attest: 
Treasurer

(Seal Affixed Here)



[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

STATE ROAD AND TOLLWAY AUTHORITY

By: 
Executive Director

Attest: 
Chief Financial Officer and Treasurer

(Seal Affixed Here)

EXHIBIT A
ATTACHMENT 2 to EXHIBIT 7

EXHIBIT B

NOTICE OF ACCEPTABILITY OF WORK AND DIRECTION TO PAY

PROJECT: I-285 and SR 400 Reconstruction Project

DBF Agreement: Design, Build and Finance Agreement for the I-285 and SR 400 Reconstruction Project dated February [], 2016 (the "DBF Agreement"), among North Perimeter Contractors, LLC (the "Developer") and the State Road and Tollway Authority ("SRTA").

Application for Project Certificate No. _____

Dated: _____

Original DBF Contract Sum:	\$
Net change by change order:	\$
Net change from Claim(s):	\$
Total DBF Contract Sum to date:	\$
Previous Approved Project Certificate(s):	\$
Amount of current Approved Project Certificate:	\$
Total completed and stored to date:	\$
Balance to finish:	\$

This Notice of Acceptability of Work and Direction to Pay (this "Direction") is made as of this ____ day of ____, 20__, by the State of Georgia Department of Transportation ("GDOT"), to SRTA, pursuant to that certain Intergovernmental Agreement made as of January 21, 2015 between GDOT and SRTA (the "IGA").

GDOT certifies the following with regard to the Developer's Project Certificate, together with all schedules, backup materials, certifications, progress waivers, and other supporting documentation and materials provided by Developer, including from Developer's Contractor and Developer's Contractor's subcontractors and equipment and/or material suppliers, in connection therewith, from which this Direction is based (collectively, the "Developer's Project Certificate"):

- (i) that based on personal observation of Developer's Work and the review of the Developer's Project Certificate, affirming (a) payment for materials, equipment, payments as required pursuant to the DBF Agreement, and (b) all of the materials indicated on Developer's Application have been purchased and are being stored on the Project site or are otherwise in process and/or otherwise stored in accordance with DBF Documents;
- (ii) that GDOT reviewed Developer's Project Certificate including interim and final lien waivers, as applicable, affirming payment for materials, labor and equipment made to subcontractors and equipment and/or material suppliers, and having no knowledge of any claims of lien having been filed or other claim for nonpayment having been asserted as of the date hereof, except as provided in the Rider 1 attached hereto, and that all subcontractors and equipment and/or material suppliers have been paid in full through the

payment requisition immediately preceding the period covered by the Developer's Project Certificate;

- (iii) that other than as listed on Rider 1 attached hereto (which may include withholding of payment from prior Developer's Project Certificate pursuant to the DBF Documents), there are no claims for which GDOT has knowledge that Developer may assert; and
- (iv) that based on personal observation of Developer's Work and the review of Developer's Project Certificate all items, units, quantities, and prices of work, equipment and material shown on the Developer's Project Certificate are correct, all work has been performed and materials supplied in accordance with the terms and conditions of the DBF Documents and authorized changes thereto, and the amount indicated below is, to the best knowledge of GDOT, a true and correct statement of the amount due the Developer up to and including the last day of the period covered by the Developer's Project Certificate and that no part of the amount due hereunder has previously been approved and payment directed to be given by GDOT.

This Direction is for the sole use of and reliance by SRTA in making payment to the Developer as directed herein by GDOT when due under the DBF Documents. There shall be no third party beneficiaries to this Direction, including but not limited to the Developer, Developer's Contractor and their subcontractors, equipment and/or material suppliers and their respective successors and assigns.

GDOT directs SRTA to remit payment to the Developer for the applicable Approved Project Certificate when due under the DBF Documents.

Capitalized terms not expressly defined herein shall have the meanings ascribed in the DBF Documents.

State of Georgia Department of Transportation

By: _____
Title: _____
Dated*: _____, _____

*This date shall constitute the Approved Project Certificate date.

Rider 1
Exceptions to Notice of Acceptability of Work and Direction to Pay

Claims of lien or other claim for nonpayment:

Claims against Developer: