

STATE OF GEORGIA

COUNTIES OF DEKALB AND FULTON

ESTATE FOR YEARS

THIS ESTATE FOR YEARS (hereinafter referred to as the “**Estate for Years**”) is made and entered as of the 21st day of January, 2016 (the “**Effective Date**”), by and between the **STATE OF GEORGIA DEPARTMENT OF TRANSPORTATION**, with an office located at 600 W. Peachtree Street NW, 22nd Floor, Atlanta, Georgia 30308 (hereinafter referred to as “**Grantor**”), and the **STATE ROAD AND TOLLWAY AUTHORITY**, with an office located at 47 Trinity Avenue, S.W., 4th Floor, Atlanta, Georgia 30334 (hereinafter referred to as “**Grantee**”). Grantor and Grantee, and any entity that succeeds to the rights of Grantee hereunder, may be referred to individually, as a “**Party**”, or collectively, as the “**Parties**”.

WITNESSETH THAT:

WHEREAS, Grantor and Grantee have determined that it is in their mutual best interest and in the best interests of the State of Georgia (the “**State**”) to cause the design, construction, and financing of the Project (as defined below) pursuant to the public-private partnership framework contemplated in O.C.G.A. § 32-2-78, *et seq.*; and

WHEREAS, Grantor is the owner of that certain real property, which forms a part of the State transportation system and is situated in Dekalb County, Georgia and Fulton County, Georgia, as more particularly described in **Exhibit A** attached (the “**Premises**”); and

WHEREAS, pursuant to O.C.G.A. § 32-2-2, Grantor is authorized to undertake a project on the Premises consisting of but not limited to 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, Grantee 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 Grantee, 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, Grantor and Grantee have each determined that the design, construction, partial financing and maintenance (during construction) of the Project on the Premises is an authorized undertaking by the Parties under State law; and

Grantor  Grantee 

WHEREAS, the State Transportation Board (the “**Board**”) approved the final selection by Grantor of North Perimeter Contractors, LLC (the “**Developer**”) to design, construct, and finance the Project; and

WHEREAS, the Board and the Grantee, respectively, approved the conveyance of the Premises by Grantor to Grantee under the terms of this Estate for Years, and the execution, delivery and performance by Grantee of a Design-Build-Finance Agreement with Developer (the “**DBF Agreement**”) in order to cause the design, construction, partial financing and maintenance (during construction) of the Project; and

WHEREAS, Grantor and Grantee have each found and determined that the conveyance of the real estate interest contemplated herein is in their mutual best interests and in the best interests of and for the benefit of the State.

NOW, THEREFORE, in consideration of the mutual public benefit, the mutual promises herein contained, upon the following terms and conditions to be kept by the Parties, and for other good and valuable consideration, the receipt and sufficiency of which each Party hereby acknowledges, the Parties agree as follows:

1.

GRANT OF ESTATE FOR YEARS IN PREMISES, USE OF PROPERTY AND ADDITION OF FURTHER PREMISES

1.1 Grantor hereby conveys, demises and grants to Grantee for the hereinafter defined Term, as an estate for years, all of its right, title and interest in and to that certain real property described in **Exhibit A** attached hereto and by this reference made a part hereof, together with all the improvements now or hereafter located thereon, subject to (i) the Permitted Encumbrances set forth in **Exhibit B** attached hereto and by this reference made a part hereof, and (ii) the reservations set forth in **Section 24** hereof.

1.2 The Premises shall be used by Grantee or any Grantee Transferee (as that term is defined in **Section 19**), for the purpose of designing, constructing, and financing the Project (hereinafter referred to as the “**Improvements**”). Grantor reserves for itself such rights to occupy or use the Premises as are necessary or convenient to allow Grantor to perform its obligations as initially set forth in that certain Intergovernmental Agreement between the Parties dated as of even date herewith relating to the Project (the “**Intergovernmental Agreement**”), and for other purposes related thereto and consistent with Grantor’s rights under law. The Parties agree to act in good faith and in a manner consistent with the mutual best interests of one another in respect of their actions and undertakings relating to the Project. In the event that the actions of either Party interfere or are inconsistent with, or any proposed actions of either party could reasonably be expected to interfere or be inconsistent with, the operations or activities of the other Party, the Parties shall promptly work together to resolve the issue, and, until such resolution is reached, shall promptly cease and suspend, or not commence, such action, as applicable. The Improvements shall be constructed pursuant to the program, plans and specifications set forth in the DBF Agreement, which are also on file with Grantor (the “**Plans and Specifications**”).

Grantor  Grantee 

1.3 Without intending to limit the foregoing, Grantee and Grantor each agree that they shall not: (a) permit use of the Premises or Improvements for any illegal purpose, nor for any purpose detrimental to the health, safety and welfare of the public; or (b) commit, or suffer to be committed, any waste in or on the Premises and Improvements, nor shall it create or permit any nuisance in or on the Premises.

1.4 Grantor and Grantee may, from time to time, desire to include certain additional property within the Premises conveyed, demised and granted to Grantee under this Estate for Years. The addition of such property shall be affected by means of a written amendment or supplement to this Estate for Years, in form and substance acceptable to Grantor and Grantee.

1.5 The Grantor hereby grants to the Grantee, for the Term, a non-exclusive right of access, ingress and egress to, over, under or through (as the case may be) that portion, if any, of any right of way adjacent to Premises that is not part of the Premises.

1.6 The rights of Grantee or any hereinafter defined Grantee Transferee shall exclude and be expressly subject to Grantor's reserved interests as set forth in **Section 25**.

2. **OCCUPANCY**

Grantee shall occupy the Premises continuously throughout the Term of this Estate for Years and shall not desert, surrender, abandon or cease using the Premises during the Term of this Estate for Years, except as expressly herein provided or, as and to the extent then effective, as provided in the Intergovernmental Agreement.

3. **RENT**

For and as rent for the Premises, Grantee covenants and agrees to keep each and every term and condition of this Estate for Years required to be kept by Grantee, in addition to payment by Grantee of the following amounts:

3.1 Grantee shall pay to Grantor the sum of TEN AND NO/100 DOLLARS (\$10.00) per year, payable in advance upon execution of this Estate for Years, the receipt of which is hereby acknowledged by Grantor.

3.2 Grantee shall also pay to Grantor, as additional rent, all costs and expenses which Grantor incurs as a result of any default of Grantee or failure on the part of Grantee to comply with any provisions of this Estate for Years, in all cases net of amounts owed by Grantor to Grantee (if any).

4. **TERM AND TERMINATION**

4.1 Unless sooner terminated as hereinafter provided, the term shall begin upon the Effective Date first above written and shall end at 11:59 o'clock P.M. prevailing local time in

Grantor  Grantee 

Atlanta, Georgia, on the twentieth (20th) anniversary of the Effective Date, unless sooner terminated as hereinafter provided (the “Term”). As hereinafter used, “Term” shall collectively refer to the Term and any extension thereof. Grantor and Grantee may terminate this Estate for Years during the Term only upon the happening of certain events or the taking of certain actions as set forth in, and subject to compliance with the requirements, responsibilities and limitations contained in, the Intergovernmental Agreement. For purposes of clarification, this Estate for Years may not be terminated unless and until the Intergovernmental Agreement is terminated in strict compliance with the provisions thereof.

4.2 To the extent allowed by State law, the Parties may agree to renew or otherwise extend the Term.

4.3 To the extent legally permissible, upon expiration of the Term of this Estate for Years (including any renewals or extensions thereof), if and only if Grantor determines the continued rental of the Premises is in the best interest of Grantor, Grantor may grant Grantee a usufruct in the Premises for fair market rental value and under terms to be mutually agreed upon by Grantor and Grantee.

4.4 Subject to **Section 4.3**, upon expiration or termination of this Estate for Years, all rights and interests of Grantee and any Grantee Transferee (and all other persons whomsoever claiming by, under or through Grantee or any Grantee Transferee), including but not limited to all permanent improvements, erections and additions constructed on the Premises by Grantee, shall vest in Grantor without further act or conveyance, and without liability to make compensation therefor to Grantee, Grantee Transferee or to anyone whatsoever, and shall be free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by Grantee or any Grantee Transferee or any other person at any time other than pursuant to the specific terms of this Estate for Years and the Intergovernmental Agreement. Grantee, upon the request of Grantor, covenants and agrees to execute a quitclaim deed releasing all such rights in the Premises and the Improvements in a form and substance acceptable to Grantor.

5.

RULE AGAINST PERPETUITIES

If the Rule Against Perpetuities or any rule of law with respect to restriction on the alienation of property or remoteness of vesting of property interests, including, without limitation, O.C.G.A. § 44-6-200, *et seq.*, as amended, shall limit the time within which the vesting of title to the Improvements for which provision is made in **Section 9** must occur, then such vesting of title shall occur not later than twenty (20) years after the death of the last survivor of the Board in office on the Effective Date. In the event such vesting should occur due to the provisions of this section and prior to the expiration or termination of this Estate for Years, this Estate for Years shall continue in full force and effect, except the term “Premises” shall be automatically modified to include the Improvements.

6.

HOLDING OVER

Grantee shall not use or remain in possession of the Premises after the termination of this Estate for Years. Any holding over or continued use and/or occupancy of the Premises by Grantee after the expiration or any termination of the Term of this Estate for Years, without consent from Grantor, shall not constitute a tenancy-at-will in Grantee, but Grantee shall be a tenant-at-sufferance, subject to the provisions of **Section 4**.

7.

INSPECTION AND TITLE

Grantor represents and covenants to Grantee that Grantor presently has good and marketable fee simple title to the Premises, free and clear of all claims, liens, encumbrances and restrictions, except for the Permitted Encumbrances set forth in **Exhibit B**. Grantor makes no representation as to the suitability of the Premises for the undertakings contemplated by this Estate for Years.

8.

NO JOINT VENTURE

Nothing contained in this Estate for Years shall make, or shall be construed to make, Grantor or Grantee partners in, of, or joint venturers with each other, nor shall anything contained in this Estate for Years render, or shall be construed to render, either Grantor or Grantee liable to a third party for the debts or obligations of the other. Notwithstanding the foregoing, the completion of the Improvements shall, for all purposes of applicable State law, be deemed a joint undertaking as provided in the Intergovernmental Agreement.

9.

IMPROVEMENTS

Title to the Improvements shall vest in Grantee until the end of the Term, unless sooner terminated pursuant to the terms of this Estate for Years and the terms, conditions and limitations set forth in the Intergovernmental Agreement (as and to the extent in effect). Grantee covenants and agrees to convey (or cause the conveyance of) all of Grantee's and any Grantee Transferee's right, title and interests, free and clear of all liens and security interests other than those created by Grantor, whether before or after the effective date of this Estate for Years, and surrender possession of the Premises and Improvements, at the expiration of the Term, or at such date of earlier termination pursuant to the provisions of this Estate for Years and the Intergovernmental Agreement. Any and all temporary improvements, erections or additions constructed on the Premises by Grantee or any Grantee Transferee, which are not a part of the Improvements as specified in this **Section 9**, shall continue to be and remain the property of Grantee or Grantee Transferee (as the case may be), and may be removed by Grantee, in whole or in part, at any time before the termination of this Estate for Years, as the case may be. If Grantee removes any or all temporary improvements, erections or additions such Party has constructed on the Premises, Grantee agrees to repair (but solely in respect of the temporary improvements, erections or

Grantor  Grantee 

additions it removed) any and all damage resulting to the Premises and the Improvements from such removal.

10.
INSURANCE

During the Term, Grantor and Grantee agree to cooperate, one with the other, to insure or cause the insurance of the Project in accordance with, during construction, the requirements of the DBF Agreement between the Grantee and the Developer dated as of even date herewith, or, as otherwise required under the provisions of applicable State law. For purposes of clarification, this provision is not intended and shall not be construed as preventing Grantor or Grantee from utilizing its or the State's usual and customary insurance policies and practices in respect of similar transportation projects during any period that the Developer or a Grantee Transferee is not responsible for insuring the Project.

11.
DESTRUCTION OF OR DAMAGE TO PROPERTY

If the Improvements and/or any other facilities on the Premises are totally or partially destroyed or rendered unusable by storm, fire, earthquake, hurricane or other natural catastrophe, this Estate for Years shall be interpreted in a manner consistent with the rights, obligations and responsibilities of Grantee and any Grantee Transferee to rebuild under the DBF Agreement or under any other document or agreement relating to the Project; provided, however, that in the event termination is an option or right held by the Grantee, Grantor shall be required to approve any decision by Grantee to so terminate this Estate for Years and/or the DBF Agreement.

12.
HAZARDOUS SUBSTANCES

Notwithstanding anything herein or in the DBF Agreement to the contrary, the Parties hereby acknowledge and agree that Grantor, in its capacity as (a) the fee simple owner of the Premises, (b) the grantor of this Estate for Years, and (c) as Grantee's agent under the Intergovernmental Agreement, shall remain liable to the full extent permissible under applicable provisions of federal and state environmental laws with respect to generator and arranger liability due to hazardous materials. Further, to the extent permitted by law, Grantor will retain and be responsible for, as between Grantor and Grantee, 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 or administratively determined that the Developer has contributed to any liability or responsibility with respect to such hazardous materials, Grantee shall not be responsible for the portion of any liability or responsibility determined judicially or administratively to be caused by the Developer. In addition, nothing herein shall be construed as limiting Grantor's rights as: (i) the fee simple owner of the Premises, (ii) the grantor of this Estate for Years, (iii) a third party beneficiary to the DBF Agreement, or (iv) as Grantee's agent under the Intergovernmental Agreement, to seek contribution or payment from (or otherwise take action against) any person that may be responsible (in whole or in part) in respect of any such liability or responsibility.

Grantor  Grantee 

13.

TRANSFER, ASSIGNMENT AND SUBLETTING

Grantee shall not voluntarily sell, transfer or assign this Estate for Years or any right or privilege of Grantee hereunder without the prior written consent of Grantor (in Grantor's sole discretion). Grantee shall not sublet the Premises or any improvement built thereon or part thereof, or any right or privilege appurtenant thereto, nor permit nor suffer any party other than Grantee to use or occupy the Premises or any portion thereof without the prior written consent of Grantor (in Grantor's sole discretion). The foregoing shall not apply to restrict the granting of a right to use pursuant to license agreements entered into by Grantee in the course of performing its statutory and contractual obligations with respect to the Project. Any sale, transfer, assignment, conveyance or subletting without the prior written consent of Grantor shall be void *ab initio*.

14.

UTILITIES

The Parties hereby agree that as between Grantor and Grantee, any cost and expense of all water, gas, light, power, sanitation (sewerage or otherwise) and other utilities or services required for or related to the Project shall be solely borne by the Grantor.

15.

NOTICES

All notices, statements, reports, demands, requests, consents, approvals, waivers and authorizations (collectively referred to herein as "Notices") required by the provisions of this Estate for Years 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.

16.

TIME IS OF THE ESSENCE

All time limits stated herein are of the essence for this Estate for Years.

17.

NON-WAIVER

No failure of either Party to exercise any right or power given to that Party under this Estate for Years, or to insist upon strict compliance by the other Party with the provisions of this Estate for Years, and no custom or practice of Grantor or Grantee, as applicable, at variance with the terms and conditions of this Estate for Years, shall constitute a waiver of a Party's right to demand exact and strict compliance by the other Party with the terms and conditions of this Estate for Years.

18.
RIGHTS CUMULATIVE

All rights, powers and privileges conferred by this Estate for Years upon Grantor and Grantee shall be cumulative of, but not restricted to, those given by law.

19.
BINDING EFFECT

19.1 Each of the terms and conditions of this Estate for Years shall apply, extend to, be binding upon, and inure to the benefit or detriment of the Parties hereto, to the successors and assigns of Grantor, and as and to the extent that Grantor has consented to a transfer, assignment, construction easement, or other temporary (construction) conveyance of or under this Estate for Years, to any transferee (and its successors and assigns) of Grantee (each such party sometimes referred to herein as, a “**Grantee Transferee**”). Subject to the foregoing, whenever a reference to the Parties hereto is made, such reference shall be deemed to include the successors and assigns of said Party, the same as if in each case expressed. No Grantee Transferee shall succeed to the rights of Grantee hereunder unless such Grantee Transferee (i) shall indemnify Grantor, its officers, agents, consultants and employees in accordance with, or in form and substance substantially similar to the indemnification provisions contained in, the DBF Agreement, (ii) shall have agreed in writing to pay to the public officer charged with collection thereof and before any of the same shall become delinquent, as and to the extent they are applicable, (a) any and all taxes, assessments, license fees, excises, imposts, fees and charges of every sort, nature and kind (hereinafter collectively referred to as “**Impositions**”), which during said Grantee Transferee's use and/or occupancy of the Premises, may be assessed, levied, charged or imposed against or with respect to the Premises or the Improvements; and (b) any Impositions assessed, levied, charged or imposed on or with respect to the conduct of Grantee Transferee's business in or on the Premises, and (iii) said Grantee Transferee shall have indemnified Grantor from the payment of any and all said Impositions.

19.2 Grantee may permit any Grantee Transferee to contest the validity, legality or amount of any Imposition (a) in the manner provided by law after posting of security with (and acceptable to) Grantor in an amount equal to the amount of the Imposition claimed to be due, or (b) as otherwise provided in the DBF Agreement.

20.
INTERPRETATION

Should any provision of this Estate for Years require judicial interpretation, it is agreed and stipulated by and between the Parties that the court interpreting or construing the same shall not apply the presumption that the provisions hereof shall be more strictly construed against one Party by reason of the rule of construction that an instrument is to be construed more strictly against the Party who prepared the same.

21.

GEORGIA AGREEMENT

This Estate for Years shall be governed by, construed under, performed and enforced in accordance with the laws of the State of Georgia.

22.

SECTION HEADINGS

The brief headings or title preceding each section herein are merely for purposes of section identification, convenience and ease of reference, and shall be completely disregarded in the construction of this Estate for Years.

23.

COUNTERPARTS

This Estate for Years may be executed in counterparts, provided that each counterpart shall be deemed an original and, when taken together, the counterparts shall constitute one and the same instrument.

24.

NO THIRD PARTY BENEFICIARY

Nothing in this Estate for Years, whether express or implied, is intended to confer upon any other party, other than the Parties hereto and their respective successors and assigns (including the Developer and other Developer-Related Entities (as defined in the DBF Agreement) (for the limited purposes as set forth in the DBF Agreement) and any other Grantee Transferee), any right or interest whatsoever. No party other than the Parties hereto is entitled to rely in any way upon the warranties, representations, obligations or limitations of liability whatsoever in this Estate for Years.

25.

RESERVED INTERESTS

Grantor reserves to itself all real and personal rights, interests and opportunities that are not expressly granted or transferred to Grantee hereunder.

26.

SEVERABILITY

If any provision of this Estate for Years, or any portion hereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, then any remaining portion of such provision and all other provisions of this Estate for Years shall survive and continue in full force and effect, and any invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

For purposes of clarification and to avoid any doubt, nothing in this Estate for Years is intended to create, nor shall this Estate for Years be construed as, an “intergovernmental contract” under Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, and any provision of this Estate for Years which is ruled by any court of competent jurisdiction in a manner so as to cause this Estate for Years to constitute an intergovernmental contract shall be severed from this Estate for Years; it being the express intention of the Parties that this Estate for Years conveys a real property interest from Grantor to Grantee.

27.

INCORPORATION OF RECITALS

The recitals set forth above are true and correct and said recitals are incorporated herein by reference.

[CONTINUED ON NEXT PAGE]

Grantor  Grantee 

IN WITNESS WHEREOF, Grantor, 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 Grantee, 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 Estate for Years to be signed, sealed and delivered as of the date hereof.

GRANTOR:

**STATE OF GEORGIA DEPARTMENT OF
TRANSPORTATION**

By: *Donald R. McManis*
Commissioner of Transportation

Attest: *Angela D. Whitehead*
Treasurer

(Seal Affixed Here)

Signed, sealed and delivered as to
Grantor in the presence of:

Matthew E. Clark
Unofficial Witness

Anita Henson
Official Witness, Notary Public

My Commission Expires: MY COMMISSION EXPIRES 10/16/2019



[SIGNATURES CONTINUED ON NEXT PAGE]

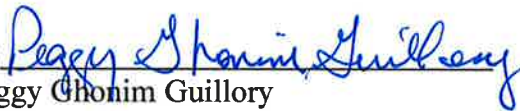
Grantor *[Signature]* Grantee *[Signature]*

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GRANTEE:

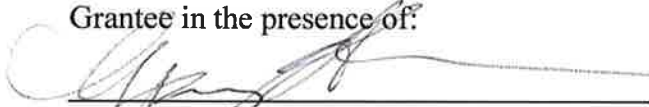
STATE ROAD AND TOLLWAY AUTHORITY


By: 
Christopher Tomlinson
Executive Director

Attest: 
Peggy Ghonim Guillory
Chief Financial Officer and Treasurer

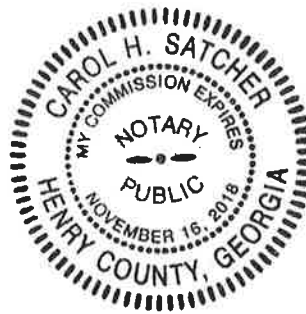
(Seal Affixed Here)

Signed, sealed and delivered as to
Grantee in the presence of:


Unofficial Witness


Official Witness, Notary Public

My Commission Expires: 11/10/18



Grantor  Grantee 

EXHIBIT A

Legal Description

All that property owned by GDOT, being more particularly shown and delineated as Existing Right of Way and State Proposed Right of Way as set forth in the NEPA Approval as defined in the Exhibit 1 of the Design-Build-Finance Agreement between GDOT and Developer. This shall include all subsequent changes to property other than temporary interests in property for project specific locations, resulting from the approved design and construction of the Project and shall be identified throughout the Project as required Right of Way on the following project:

I-285 @ SR 400 Project Number: P.I. No. 0013546, Dekalb and Fulton Counties

Prior to the start of construction, the Developer shall provide a set of drawings that highlight the exact area of the proposed construction activity or construction maintenance limits within the Right of Way and the limits of any additional properties to be acquired for the Project. This drawing will serve as the boundary for the construction work and will also be used as the exact limits for Developer to maintain any element within the Existing Right of Way required to construct the Project in order for GDOT and SRTA to maintain and operate the Project.

The Parties contemplate that at the completion of the Project the legal description will be substituted with a description of the Project as it exists after completion of the project.

Grantor  Grantee 

EXHIBIT B

Permitted Encumbrances

“Permitted Encumbrances” means:

- (a) any recorded or unrecorded easement, right, claim, license, privilege, covenant, condition, right-of-way or servitude, or other similar reservation, right, limitation or restriction, relating to (i) utilities and/or utility facilities (including, without limitation, water, electricity and gas) or (ii) elevated signage or advertisements encroaching on any part of the Premises;
- (b) any right reserved to or vested in any governmental authority (other than the Grantor) by any State law; and
- (c) any amendment, extension, renewal or replacement of any of the foregoing.

Grantor  Grantee 