

**AMENDED AND RESTATED PUBLIC-PRIVATE TRANSPORTATION
PARTNERSHIP AGREEMENT
(AMENDED AND RESTATED PRE-DEVELOPMENT AGREEMENT)**

FOR THE

PENNDOT MAJOR BRIDGES PROJECT

BY AND BETWEEN

**THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION,
an executive agency of the Commonwealth of Pennsylvania**

AND

**BRIDGING PENNSYLVANIA PARTNERS LLC,
as PDA Entity**

DATED AS OF MAY 6, 2022

AMENDED AND RESTATED AS OF November 29, 2022

TABLE OF CONTENTS

	Page
1. DEFINITIONS, INTERPRETATION, AND PRECEDENCE	2
2. REFERENCE INFORMATION DOCUMENTS	3
3. EFFECTIVE DATE AND TERM	4
4. EXCLUSIVE RIGHTS AND OBLIGATIONS	5
5. PERFORMANCE SECURITY	5
6. REPRESENTATIONS AND WARRANTIES	8
7. REPRESENTATIVES	13
8. STEERING COMMITTEE	13
9. SITE ACCESS AND INVESTIGATIONS	14
10. PDA WORK	19
11. [RESERVED]	24
12. PACKAGE PROPOSALS AND PROJECT AGREEMENTS	24
13. SCHEDULE OF PERFORMANCE	28
14. RELIEF EVENTS	28
15. PERSONNEL CONTRACTING AND COMMUNITY OUTREACH	31
16. LAWS AND FEDERAL REQUIREMENTS	40
17. CHANGE ORDERS	41
18. INDEMNITY	41
19. INSURANCE	46
20. PDA ENTITY DEFAULT AND REMEDIES	50
21. TERMINATION	53
22. REDUCTION IN SCOPE OF THE AGREEMENT	58
23. RECORDS AND AUDIT	59
24. INTELLECTUAL PROPERTY	61
25. RIGHT TO KNOW LAW	65
26. ASSIGNMENT AND TRANSFER; FUNDAMENTAL CHANGES	66
27. CHANGE IN OWNERSHIP OF PDA ENTITY	67
28. DISPUTE RESOLUTION	68
29. LIABILITIES	70
30. GOVERNING LAW AND JURISDICTION	71
31. OTHER	72

EXHIBITS

- 1. DEFINITIONS**
- 2. PDA ENTITY OWNERSHIP**
- 3. INITIAL DESIGNATION OF REPRESENTATIVES**
- 4. RESERVED**
- 5. PDA MILESTONES AND DEADLINES**
- 6. PDA WORK REQUIREMENTS**
- 7. PACKAGE PROPOSAL REQUIREMENTS**
- 8. PROJECT AGREEMENT TERM SHEET**
- 9. PDA PROPOSAL COMMITMENTS**
- 10. REQUIRED INSURANCE FOR PDA WORK**
- 11. KEY PERSONNEL FOR PDA WORK**
- 12. ALLOWED COSTS**
- 13. FEDERAL AND STATE REQUIREMENTS**

ATTACHMENTS

- 1. RELEVANT PROPOSAL VALUES**

AMENDED AND RESTATED PRE-DEVELOPMENT AGREEMENT

That certain Public-Private Transportation Partnership Agreement (Pre-Development Agreement) (the “**Unamended PDA**”) was entered into and became effective as of May 6, 2022 (the “**Effective Date**”), by and between the Pennsylvania Department of Transportation (“**PennDOT**”), an executive agency of the Commonwealth of Pennsylvania (the “**Commonwealth**”) and Bridging Pennsylvania Partners LLC (the “**PDA Entity**”), and is hereby amended and restated by this agreement (as may be amended or modified in accordance with the terms hereof, the “**A&R PDA**” and collectively with the Unamended PDA, the “**Agreement**”), effective November 29, 2022 (the “**A&R Effective Date**”).

RECITALS

- (A) PennDOT desires to deliver the rehabilitation and reconstruction improvements to certain major bridges throughout the Commonwealth. PennDOT selected the nine Bridges for ultimate delivery under a single procurement (the “**Project**”).
- (B) Under Act 88 of 2012, as amended, 74 Pa.C.S. §§ 9101-9124, (the “**P3 Law**”), PennDOT utilized a multi-step, competitive procurement for the Project.
- (C) On June 28, 2021, PennDOT issued a Request for Qualification for the Project (as amended, the “**RFQ**”) and received statements of qualifications (“**SOQs**”) and on September 20, 2021 PennDOT shortlisted three proposers, including Bridging Pennsylvania Partners (the “**Selected Proposer**”).
- (D) On December 15, 2021, PennDOT issued a Request for Proposals for a development entity to perform PDA Work for the Project through this Agreement (the “**RFP**”), as amended by Addendum #1 issued on January 6, 2022 and Addendum #2 issued on January 10, 2022, and on January 19, 2022, the Selected Proposer submitted a proposal in response to the RFP, as amended, (the “**Proposal**”).
- (E) Following receipt and evaluation of the RFP proposals, PennDOT selected the Selected Proposer for contract award in accordance with the terms of the RFP. Macquarie Infrastructure Developments LLC and Shikun & Binui Concessions USA, Inc., the equity members of the Selected Proposer, subsequently formed the PDA Entity as a special purpose entity to perform the PDA Work under this Agreement.
- (F) The Parties intend that the Project will be delivered in two or more groupings of Bridges, and related infrastructure (each a “**Package**”) pursuant to this Agreement.
- (G) The Parties also intend that each Package will consist of one or more Bridges to be developed and delivered by a Development Entity that will be responsible for the design, construction, financing and maintenance of the applicable Package under a separate design-build-finance-maintain (“**DBFM**”) public-private transportation partnership (“**P3**”) agreement (the “**Project Agreement**”) to be executed between PennDOT and a to-be-formed Development Entity, the terms for which are to conform to those set forth in Exhibit 8 (Project Agreement Term Sheet).
- (H) The Parties are entering into this A&R PDA in order to set forth the terms for the PDA Entity’s performance of the PDA Work under and in accordance with Pennsylvania Act 84 of 2022.
- (I) The Parties desire to amend and restate the Unamended PDA in its entirety (but not terminate or novate the Unamended PDA) into this A&R PDA (which shall continue to set forth the terms for the PDA Entity’s performance of the PDA Work).

(J) The PDA Entity is the “**Development Entity**” under this Agreement for purposes of the P3 Law.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS, INTERPRETATION, AND PRECEDENCE

1.1 Definitions

Unless the context otherwise requires, capitalized terms and acronyms used in this Agreement have the meanings given in [Exhibit 1 \(Definitions\)](#).

1.2 Order of Precedence

(a) Without limiting the other provisions within this [Section 1.2](#), if there is any conflict, ambiguity, or inconsistency between the provisions of this Agreement (including all Exhibits), the order of precedence will be as follows, from highest to lowest:

- (A) the main body of this Agreement;
- (B) the Exhibits to this Agreement, other than [Exhibit 6 \(PDA Work Requirements\)](#) and [Exhibit 9 \(PDA Proposal Commitments\)](#);
- (C) [Exhibit 6 \(PDA Work Requirements\)](#); and
- (D) [Exhibit 9 \(PDA Proposal Commitments\)](#),

in each case, as amended or supplemented in accordance with this Agreement.

- (b) If there is any conflict, ambiguity, or inconsistency between two or more provisions in this Agreement (including all Exhibits) regarding safety, reliability, durability, performance, or service, the provision establishing a higher standard will prevail.
- (c) Additional or supplemental details or requirements in a provision of this Agreement with lower priority will be given effect, except to the extent that they irreconcilably conflict with any provision of this Agreement with higher priority.
- (d) An amendment to this Agreement or a PennDOT Change Request under [Article 17 \(Change Orders\)](#) shall take precedence over the terms it amends.

1.3 Resolving any Conflict or Ambiguity

- (a) If any Party becomes aware of any conflict, ambiguity, or inconsistency between the provisions of this Agreement, it must promptly notify the other Party in writing of the conflict, ambiguity, or inconsistency and its assessment of which provision should prevail in light of the application of the rules in [Section 1.2](#).
- (b) If:
 - (i) any conflict, ambiguity, or inconsistency between the provisions of this Agreement cannot be reconciled; or

- (ii) the Parties disagree with respect to any conflict, ambiguity, or inconsistency between the provisions of this Agreement,

PennDOT will promptly issue a written determination to the PDA Entity, resolving the conflict, ambiguity, or inconsistency.

- (c) Any determination by PennDOT under Section 1.3(b) shall not constitute a Relief Event, or a PennDOT Change Request under Article 17 (Change Orders), or otherwise entitle the PDA Entity to any extension of time, relief from obligations, or compensation. Any determination by PennDOT under Section 1.3(b) shall not be subject to the Dispute Resolution Procedures under Article 28 (Dispute Resolution).

2. REFERENCE INFORMATION DOCUMENTS

2.1 Reference Information Documents

- (a) Following the issuance of the RFP, PennDOT provided and disclosed to the Shortlisted Proposers, including the PDA Entity, certain reference information documents (“**RIDs**”).
- (b) The RIDs were provided for reference purposes only.
- (c) Except to the extent expressly provided under this Agreement or in a Project Agreement, neither the PDA Entity nor any PDA-Related Entity is entitled to rely on the RIDs as accurately describing existing conditions or presenting design, engineering, operating or maintenance solutions, or other directions, means or methods for complying with the requirements of this Agreement, the Project Agreements, Governmental Approvals, or Laws.
- (d) The PDA Entity 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 RIDs or otherwise as may be required to perform the PDA Work. Any use of information in the RIDs in performance of the Work, without verification or supplement, is entirely at the PDA Entity’s own risk. If any PDA-Related Entity uses any of the information in RIDs in any way, then such use is made on the basis that the PDA Entity, not PennDOT, has approved and is responsible for the information.
- (e) The Parties acknowledge and agree that general industry or general government manuals and publications that are part of the RIDs may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. PennDOT shall have no obligation to notify the PDA Entity regarding any such revisions, changes, additions or replacements. The PDA Entity shall independently maintain awareness of such revisions, changes, additions or replacements as they are published or made public.

2.2 No Representations, Warranties, or Liability

The PDA Entity acknowledges that, except to the extent expressly provided in this Agreement or a Project Agreement:

- (a) PennDOT makes no representation, warranty, or guaranty with respect to the relevance, completeness, accuracy, or fitness for any purpose of any of the information contained in

the RIDs or that such information conforms with the requirements of this Agreement, any Project Agreement, Governmental Approval or Law; and

- (b) neither PennDOT, nor any of its Constituents will have any liability to the PDA Entity nor any PDA-Related Entity, and neither the PDA Entity nor any PDA-Related Entity will be entitled to any extension of time, relief from obligations, or compensation with respect to:
 - (i) any inaccuracy, omission, lack of fitness for any purpose, or inadequacy of any kind whatsoever in the RIDs;
 - (ii) any failure to make available to the PDA Entity or any PDA-Related Entity any materials, documents, drawings, plans, or other information relating to the Project as part of the RIDs; or
 - (iii) any Claims or Losses whatsoever suffered by the PDA Entity or any PDA-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the RIDs.
- (c) With the PDA Entity acknowledging that PennDOT's disclosures of information are ongoing in support of the Parties' efforts to timely advance the first Package Proposal, PennDOT represents that, as of the Effective Date and the A&R Effective Date, PennDOT has not intentionally withheld material information in its possession relevant to the Bridges and the PDA Entity's development of the Packages.

2.3 No Reliance

The PDA Entity acknowledges and confirms that it has not entered into this Agreement on the basis of, and has not relied upon, any statement or representation, warranty, or other provision (whether oral, written, express, or implied) made or agreed to by PennDOT, or any of its respective agents or employees, except those expressly repeated or referred to in this Agreement, and the only remedy or remedies available with respect to any misrepresentation or untrue statement made to it will be the remedy or remedies available under this Agreement.

3. EFFECTIVE DATE AND TERM

Without limiting Section 31.7, the Unamended Agreement commenced on the Effective Date and this A&R PDA will commence on the A&R Effective Date, and this Agreement will end on the earlier of:

- (a) the date Financial Close is achieved for the last Project Agreement that is subject to this Agreement;
- (b) the date this Agreement is terminated under Article 21 (Termination); and
- (c) the “**PDA Long Stop Date**”, as set forth in Exhibit 5 (PDA Milestones and Deadlines),

(“the **PDA Term**”), in each case, the Parties acknowledge and agree that the Unamended Agreement is not terminated or novated and that this A&R PDA supplements and modifies the Unamended Agreement which shall continue in full force and effect from the Effective Date.

4. EXCLUSIVE RIGHTS AND OBLIGATIONS

4.1 PennDOT Reserved Right

- (a) Subject to Section 4.1(b), PennDOT grants the PDA Entity an exclusive right during the PDA Term to perform the PDA Work in accordance with the terms of this Agreement.
- (b) PennDOT reserves the right to entertain proposals from and negotiate with any third-party with respect to the development of any Bridge(s) (i) not subject to an executed Project Agreement at the end of the PDA Term or (ii) that is removed from the scope of this Agreement under Article 22 (Reduction in Scope of the Agreement).

4.2 Nature of Rights and Interests of PDA Entity and PDA-Related Entities

- (a) The Parties acknowledge and agree that this Agreement will in no way be deemed to constitute:
 - (i) a lease to the PDA Entity (whether an operating lease or a financing lease); or
 - (ii) 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 the Site, or of any assets incorporated into, or appurtenant to, the Project, other than the rights of access granted under Section 9.1.

- (b) The Parties acknowledge and agree that the PDA Entity will not be treated as or deemed to be the legal or equitable owner of the Site for any purpose under this Agreement.
- (c) The PDA Entity's rights under this Agreement are derived solely from its status as a "development entity" under the P3 Law and independent contractor as described in Section 31.3 of this Agreement, and not as a tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property.

5. PERFORMANCE SECURITY

5.1 PDA Performance Security

As a condition precedent to the Effective Date of this Agreement, and subject to Section 5.1(c), the PDA Entity has delivered to PennDOT a letter of credit to guarantee the PDA Entity's performance of its obligations under this Agreement in an amount equal to the following: (1) prior to Financial Close for the First Package, \$10,000,000, (2) between Financial Close for the First Package and Financial Close for the second Package, \$10,000,000 less \$500,000 for each Bridge that achieves Commercial Close under a Project Agreement for the First Package, (3) between Financial Close for the second Package and Financial Close for the third Package (if any), the value determined under clause (2) less \$500,000 for each Bridge that achieves Commercial Close under a Project Agreement for the second Package, and (4) between Financial Close for the third Package (if any) and Financial Close for the fourth Package (if any), the value determined under clause (3) less \$500,000 for each Bridge that achieves Commercial Close under a Project Agreement for the third Package, and so on pending the final "packaging" performed by the PDA Entity under this Agreement (collectively, the "**PDA Performance Security**"). For example, if the First Package

contains two Bridges, the amount of the PDA Performance Security provided to PennDOT shall be reduced upon Financial Close for the First Package from \$10,000,000 to \$9,000,000, and if the second Package contains three Bridges, the amount of the PDA Performance Security provided to PennDOT shall be reduced upon Financial Close for the Second Package from \$9,000,000 to \$7,500,000.

(a) **Form of PDA Performance Security**

The PDA Entity has confirmed that the PDA Performance Security meets the following requirements and during the PDA Term the PDA Entity shall continue to ensure that the PDA Performance Security continues to meet the following requirements:

- (i) be a standby letter of credit;
- (ii) at all times during the term of such letter of credit be maintained by a Eligible Security Issuer with an office in the continental United States at which the letter of credit can be presented for payment;
- (iii) be in a form approved by PennDOT in its Good Faith discretion, which approval shall be granted if the requirements set forth in subclauses (i), (ii), (iv), (v), (vi) and (vii) of this Section 5.1(a) are satisfied;
- (iv) be payable immediately, conditioned only on written presentment from PennDOT to the issuer of a sight draft drawn on the letter of credit and a certificate stating that PennDOT has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to PennDOT, without requirement to present the original letter of credit;
- (v) provide an expiration date not earlier than one year from date of issue (or such longer term as may be required by PennDOT under this Agreement);
- (vi) allow for multiple draws; and
- (vii) name PennDOT as the sole beneficiary.

(b) **PennDOT Draws on PDA Performance Security**

PennDOT shall have the right to draw on the PDA Performance Security:

- (i) upon a termination of this Agreement for a PDA Entity Default in accordance with Section 21.2;
- (ii) if the PDA Entity for any reason fails to deliver to PennDOT new or replacement PDA Performance Security on the same terms as required under Section 5.1(a) not later than 30 Days before the expiration date of the existing PDA Performance Security, unless this Agreement expressly requires no further PDA Performance Security with respect to the duty, obligation or liability in question; and
- (iii) under the circumstances described in Section 5.1(c).

PennDOT shall have the right to draw on the full stated amount of the PDA Performance Security after not less than five Business Days' prior notice to the PDA Entity for draws under paragraph (i) above. PennDOT will have the right to draw on the full stated amount of the PDA Performance Security without prior notice to the PDA Entity for draws under paragraph (ii) and paragraph (iii) above. No such notice shall be required for draws under paragraph (i) above if such notice would preclude drawing before the expiration date of the PDA Performance Security. PennDOT draws on the PDA Performance Security shall not be conditioned on prior resort to any other security of the PDA Entity, if any. If PennDOT draws on the PDA Performance Security under paragraph (i) above, PennDOT will use and apply the proceeds as provided in this Agreement for such PDA Performance Security. If PennDOT draws on the PDA Performance Security under paragraph (ii) above, PennDOT shall draw on the full face amount of the PDA Performance Security and shall retain such amount as cash collateral to secure the obligations under the PDA Performance Security without payment of interest to the PDA Entity. If PennDOT draws on the PDA Performance Security under paragraph (iii) above, PennDOT will use and apply the proceeds as set forth in Section 5.1(c).

(c) **Draws upon the Financial Close Security for Failure to Achieve Financial Close under a Project Agreement; Reestablishment of Stated Amount**

The PDA Entity acknowledges and agrees that a PDA Entity Default under Section 20.1(k) includes specifically the Development Entity Default of Development Entity's unexcused failure to achieve timely Financial Close under a Project Agreement.

In such event, PennDOT may either draw upon the PDA Performance Security pursuant to a termination under Section 5.1(b)(i) or, if PennDOT elects, in its sole discretion, not to terminate this Agreement despite such specific Development Entity Default, PennDOT may draw upon the full stated amount of the PDA Performance Security as of the date of such Development Entity Default (such drawing of the PDA Performance Security being PennDOT's sole and exclusive remedy for such specific Development Entity Default), whereupon the PDA Entity shall restore the full stated amount of the PDA Performance Security following such draw at the value determined under Section 5.1 (introductory paragraph) and continue performance under this Agreement, it being understood and agreed by the parties that:

- (i) the liquidated damages in the amount of the then-contracted stated amount of the PDA Performance Security are reasonable in order to compensate PennDOT for damages it will incur as a result of the lost opportunity to PennDOT represented by the Development Entity's failure to achieve timely Financial Close;
- (ii) such damages include the harm from the difficulty, and substantial additional expense, to PennDOT, thereafter to procure and deliver, and to maintain the Project that was the subject of the Project Agreement through other means, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of PennDOT's transportation improvement program, with policy makers, other Governmental Entities and the general public who depend on and expect availability of service;
- (iii) these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it; and

- (iv) given the affiliation of the Development Entity to the PDA Entity, PennDOT's election to continue this Agreement, despite such Development Entity Default pertaining to failed Financial Close, supports replenishment of the value of the PDA Performance Security such that PennDOT may be assured of further performance by the PDA Entity hereunder.

6. REPRESENTATIONS AND WARRANTIES

6.1 PDA Entity Representations and Warranties

The PDA Entity represented and warranted as of the Effective Date and hereby represents and warrants to PennDOT that as of the A&R Effective Date:

(a) **Existence and Good Standing in Home Jurisdiction**

The PDA Entity is a limited liability company duly organized, validly existing, and in good standing under the laws of Delaware.

(b) **Good Standing and Qualification in Pennsylvania**

The PDA Entity is in good standing and qualified to do business in the Commonwealth.

(c) **Power and Authority**

The PDA Entity has the power and authority to execute and deliver this Agreement, and to perform its obligations under this Agreement.

(d) **Authorization**

(i) The execution of this Agreement by the PDA Entity, and the performance of the PDA Entity's obligations under this Agreement, have been duly authorized by all necessary limited liability company action of the PDA Entity.

(ii) Each individual person executing this Agreement on behalf of the PDA Entity has been duly authorized to execute this Agreement on behalf of the PDA Entity.

(e) **Execution**

This Agreement has been duly executed by the PDA Entity.

(f) **Enforceability**

This Agreement constitutes a legal, valid, and binding obligation on the PDA Entity, enforceable against the PDA Entity in accordance with its terms, subject to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(g) **No Contravention**

The execution of this Agreement by the PDA Entity, and the performance by the PDA Entity of its obligations under this Agreement, does not conflict with, or result in a default or a violation of:

- (i) the PDA Entity's organizational documents;
- (ii) any other agreement or instrument to which the PDA Entity is a party or which is binding on the PDA Entity or any of the PDA Entity's assets;
- (iii) any Law; or
- (iv) any judicial decree.

(h) **No Prohibited Person**

The PDA Entity, each Affiliate of the PDA Entity, and each of their respective Constituents, is not a Prohibited Person, including all Major Team Members engaged in any work on the Project.

(i) **No Litigation**

There is no action, suit, proceeding, investigation, or litigation pending or, to the knowledge of the PDA Entity or any Equity Member, threatened, that, except with respect to the Existing Litigation:

- (i) could reasonably be expected to have a material adverse effect on the ability of the PDA Entity to perform its obligations under this Agreement;
- (ii) challenges or could adversely impact the PDA Entity's power and authority to execute this Agreement or to perform its obligations under this Agreement;
- (iii) challenges the validity or enforceability of this Agreement; or
- (iv) challenges the authority of the PDA Entity's representative(s) executing this Agreement,

in each case, subject to the PDA Entity relying on PennDOT's representations in Section 6.3 with respect to the Existing Litigation.

(j) **Licenses, Skills, and Expertise**

The PDA Entity and the Key Contractors have (or will have by the time required) the required authority, qualifications, rights, franchises, licenses, certificates, privileges, professional ability, skills, and capacity to perform the PDA Work.

(k) **Governmental Approvals and Contractor Prequalification**

The PDA Entity and the Major Team Members have all Governmental Approvals that are required, as of the A&R Effective Date, to begin the PDA Work, other than any PennDOT-Provided Approvals. The PDA Entity has no reason to believe that any Governmental Approval required to be obtained by the PDA Entity will not be granted in due course and thereafter remain in effect so as to enable the PDA Work to proceed in accordance with this Agreement.

The Lead Construction Contractor and Lead Engineering Firm hold all necessary, valid licenses, and if necessary prequalifications, to practice in the Commonwealth.

(l) **Sites and RIDs**

The PDA Entity has, in accordance with Good Industry Practice:

- (i) investigated and reviewed the RIDs; and
- (ii) familiarized itself with the Sites and the surrounding locations, based on the RIDs and an inspection of the Sites to the extent it was permitted access to the Sites under the ITP.

(m) **Laws and Governmental Approvals**

The PDA Entity has familiarized itself with the requirements of all Laws and the conditions of any required Governmental Approvals.

(n) **Ownership**

Exhibit 2 (PDA Entity Ownership) accurately describes the legal, beneficial, and equitable ownership of the PDA Entity, and no arrangements are in place that will result in, or are reasonably likely to result in, a Change in Ownership that would require the PDA Entity to provide notice to PennDOT under Article 27 (Change in Ownership of PDA Entity).

(o) **No Improper Acts**

The PDA Entity has not employed or retained, and shall not employ or retain, any Person other than employees, agents, attorneys, consultants, and advisors of the PDA Entity to solicit or secure this Agreement, and the PDA Entity has not paid or agreed to pay any Person any fee or any other consideration contingent on the making of this Agreement which would be in violation of Section 15.9(c).

(p) **Conflicts of Interest**

As of the PDA Proposal Due Date, the PDA Entity disclosed to PennDOT in writing all known Organizational Conflicts of Interest of the PDA Entity and all Key Contractors that were listed in the PDA Proposal. Between the SOQ Due Date and the A&R Effective Date:

- (i) the PDA Entity has no knowledge of any Organizational Conflict of Interest of the PDA Entity that were not disclosed in either the SOQ or PDA Proposal; and
- (ii) there have been no organizational changes to the PDA Entity or any Key Contractor listed in the PDA Proposal which have not been approved in writing by PennDOT.

(q) **Prosecution of the PDA Work**

The PDA Entity has the capacity – administrative, technical, financial and otherwise – to timely and orderly perform the PDA Work under this Agreement to achieve Financial Close of the First Package by the date set forth in Exhibit 5 (Pre-Development Milestones and Deadlines).

(r) **Taxes**

The PDA Entity and its Affiliates owe no outstanding tax debts.

(s) **Pennsylvania Department of Revenue Filing**

The PDA Entity has provided confirmation to PennDOT of its filing for registration with the Pennsylvania Department of Revenue.

6.2 PennDOT Representations and Warranties as of the Effective Date and A&R Effective Date

PennDOT represented and warranted as of the Effective Date and hereby represents and warrants to the PDA Entity that as of the A&R Effective Date:

(a) **Existence**

PennDOT is an executive agency of the Commonwealth and has the requisite power and all required licenses to perform each and all of its obligations under this Agreement.

(b) **Power and Authority**

PennDOT has the power and authority to execute this Agreement, and to perform its obligations under this Agreement.

(c) **Authorization**

(i) The execution of this Agreement by PennDOT, and the performance of its obligations under this Agreement, have been duly authorized by all necessary action of PennDOT.

(ii) Each individual person executing this Agreement on behalf of PennDOT has been duly authorized to execute this Agreement on behalf of PennDOT.

(iii) This Agreement has been approved as to form and legality by the Governor's Office of General Counsel and the Office of the Attorney General pursuant to the act of October 15, 1980 (P.L. 950, No. 164), as amended, known as the Commonwealth Attorneys Act.

(d) **Execution**

This Agreement has been duly executed by PennDOT.

(e) **Enforceability**

This Agreement constitutes a legal, valid, and binding obligation of PennDOT, enforceable against PennDOT in accordance with the terms herein, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) **No Contravention**

The execution of this Agreement by PennDOT, and the performance by PennDOT of its obligations under this Agreement, does not conflict with, or result in, a default or a violation of any other agreement, law or instrument to which PennDOT is a party or which is binding on PennDOT or any of PennDOT's assets.

(g) **No Consent**

The execution of this Agreement by PennDOT, and the performance by PennDOT of its obligations under this Agreement, does not require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not obtained or accomplished as of the Effective Date or the A&R Effective Date.

(h) **No Property or Transfer Taxes**

The Project is not subject to any property taxes or transfer tax.

(i) **Governmental Approvals**

PennDOT has all Governmental Approvals that are required, as of the Effective Date and A&R Effective Date, to perform its obligations hereunder, and has no reason to believe that any Governmental Approval necessary to enable PennDOT to perform such obligations in accordance with this Agreement will not be granted in due course and thereafter remain in effect.

6.3 PennDOT Representations and Warranties as of the A&R Effective Date

PennDOT represents and warrants to the PDA Entity that as of the A&R Effective Date:

(a) **Pennsylvania Act 84 of 2022**

The execution of this Agreement by PennDOT, and the performance by PennDOT of its obligations under this Agreement, is consistent with and does not conflict with Pennsylvania Act 84 of 2022 and as a result, PennDOT has the power to perform its obligations under this Agreement and, execute waivers, change orders and other modifications to this Agreement and to perform its obligations under this Agreement following any such modification, change or waiver without any additional consent, authorization, provision of notice or approval.

(b) **No Litigation**

PennDOT acknowledges the Existing Litigation (as defined in Section 6.3(c) below), and notwithstanding the Existing Litigation, PennDOT represents that there is no action, suit, proceeding, investigation, or litigation pending, nor, as of the date of PennDOT's signature to this amended Agreement, has PennDOT received express notice from any person of such person's intent to initiate litigation that:

- (i) could reasonably be expected to have a material adverse effect on the ability of PennDOT to perform its obligations under this Agreement;

- (ii) could reasonably be expected to adversely impact PennDOT's power and authority to execute this Agreement or to perform its obligations under this Agreement;
- (iii) could reasonably be expected to have an adverse impact on the validity or enforceability of this Agreement; or
- (iv) could reasonably be expected to have an adverse impact on the authority of the PennDOT representative(s) executing this Agreement.

(c) **Existing Litigation**

Judge Ellen Ceisler issued an opinion, filed June 30, 2022 at Docket Entry No. 404 M.D. 2021, in the litigation styled as South Fayette Township, Bridgeville Borough, and Collier Township v. Pennsylvania Department of Transportation, Public-Private Transportation Partnership (P3 Board) and Yassmin Gramian, P.E, in their official capacity as Chairperson of the P3 Board (the "Existing Litigation") (and related judicial decisions), which declared the Project void ab initio. Subsequently, the General Assembly enacted Act 84 of 2022, approved by the Governor of the Commonwealth on July 11, 2022, which by its terms, authorized the Project. As such, this Agreement (and the obligations of PennDOT hereunder) are fully enforceable against PennDOT, and PennDOT is fully authorized and empowered to perform its obligations under this Agreement and direct the PDA Entity's recommencement of the PDA Work under this Agreement.


Nov 23, 2022


11/23/2022

PennDOT acknowledges that in the case of clauses (b) and (c) in this Section 6.3, the PDA Entity is relying upon PennDOT's representations in respect of such matters for the purposes of PDA Entity's continued performance under this Agreement.

7. **REPRESENTATIVES**

7.1 **Representatives**

- (a) PennDOT and the PDA Entity shall each designate an individual or individuals who will be authorized to make decisions and bind PennDOT and the PDA Entity on matters relating to this Agreement (the "**Contract Manager**" and "**PDA Representative**", respectively).
- (b) Exhibit 3 (Initial Designation of Representatives) provides initial designations of the Contract Manager and the PDA Representative, which may be changed by a Party by subsequent delivery of a written notice to the other Party in accordance with Section 31.9.
- (c) For purposes of this Agreement, except where expressly stated to the contrary, all communications and deliveries shall be through the Contract Manager acting on behalf of PennDOT and the PDA Representative acting on behalf of the PDA Entity.

8. **STEERING COMMITTEE**

- (a) PennDOT and the PDA Entity shall establish a Steering Committee to:
 - (i) ensure that the PDA Work is progressed in accordance with this Agreement;
 - (ii) develop and issue recommendations to PennDOT and the PDA Entity regarding issues critical to the success of the Project; and

- (iii) assist in resolving Disputes if requested under Section 28.1.
- (b) The Steering Committee will be comprised of three representatives of the PDA Entity and three representatives of PennDOT. PennDOT may invite representatives of other agencies to attend and participate in any Steering Committee meeting, however any such additional participants shall not be entitled to make any determinations on issues before the Steering Committee.
- (c) The Steering Committee will meet at least monthly throughout the PDA Term, or such other frequency as agreed between PennDOT and the PDA Entity.
- (d) The PDA Entity shall document all Steering Committee meetings and distribute meeting minutes, including a list of all attendees, to PennDOT within seven days following each Steering Committee meeting.

9. SITE ACCESS AND INVESTIGATIONS

9.1 Access to the Sites

- (a) The PDA Entity may access the Sites only in accordance with this Article 9 (Site Access and Investigations).
- (b) The PDA Entity may access the Sites to:
 - (i) conduct Site Investigations as part of the PDA Work in accordance with Section 9.2; and
 - (ii) perform Remedial Action in accordance with Section 9.4.

9.2 Site Investigations

- (a) Pursuant to Section 9.2(c), the PDA Entity may request access to the Sites to conduct site investigations as part of the PDA Work (“**Site Investigations**”). The scope of the PDA Entity’s Site Investigations will be limited to:
 - (i) field exploration and observation;
 - (ii) soil boring and sampling;
 - (iii) surveys;
 - (iv) those activities that would constitute a “**Reasonable Investigation**” (as defined in Exhibit 8 (Project Agreement Term Sheet)); and
 - (v) any additional activities (e.g., data collection) agreed to by PennDOT in its reasonable discretion;in each case, subject to Section 9.2(b).

- (b) The PDA Entity shall not commence or conduct Site Investigations unless:
- (i) it has requested and received approval from PennDOT to access the relevant part of the Sites for the purpose of conducting those Site Investigations;
 - (ii) the Insurance Policies are in full force and effect;
 - (iii) it has obtained from PennDOT any Governmental Approvals PennDOT has obtained in its own name that are required to perform those Site Investigations;
 - (iv) it has obtained, or caused to be obtained, any Governmental Approvals that are required to perform those Site Investigations; and
 - (v) it has obtained, or PennDOT has obtained on its behalf, a right of access with respect to any Third-Party Parcels as required under paragraph (d).
- (c) The PDA Entity shall provide written notice to PennDOT requesting access to conduct Site Investigations no later than 14 Business Days prior to the date on which the PDA Entity wishes to perform the Site Investigations. The PDA Entity's request shall specify:
- (i) the Sites (including the specific PennDOT Parcels and/or Third-Party Parcels) that the PDA Entity requests access to;
 - (ii) the scope of the Site Investigations the PDA Entity proposes to undertake at such Site(s); and
 - (iii) the date(s) on which the PDA Entity proposes to perform the Site Investigations.
- (d) If the PDA Entity's request is compliant with the requirements under Section 9.2(c):
- (i) with respect to any PennDOT Parcels, PennDOT shall, within five Business Days after receiving the PDA Entity's notice under Section 9.2(c), notify the PDA Entity in writing that PennDOT either (x) grants the PDA Entity access to conduct the Site Investigations or (y) informs the PDA Entity that access cannot be granted for the reasons stated in PennDOT's written response and provides an estimate of when access may be available to the PDA Entity; and
 - (ii) with respect to any Third-Party Parcels, PennDOT shall use Reasonable Efforts to obtain access for the PDA Entity to conduct the Site Investigations and shall notify the PDA Entity in writing whether or not PennDOT has obtained such access and rights to conduct Site Investigations and the relevant dates of access, on such terms, and subject to such conditions, as may be imposed by the owner or occupant (or both) of any such Third-Party Parcel. The PDA Entity acknowledges that PennDOT will not provide access to any Third-Party Parcels unless PennDOT has obtained a right of access from the third-party or parties that control access to the applicable Third-Party Parcels. The PDA Entity shall comply with any restrictions, constraints, limitations, or other conditions imposed by the owner or occupant (or both) of any Third-Party Parcel as a condition to entry that are conveyed in advance in writing to the PDA Entity to conduct such Site investigations. If the PDA Entity is unable or unwilling to comply with any such restrictions, constraints, limitations, or other conditions, then the PDA Entity may

not conduct Site Investigations on such Third-Party Parcel. The PDA Entity's failure to comply, or refusal to comply, shall not be the basis for any Claim against PennDOT or such owner or occupant.

- (e) The PDA Entity may, by written notice to PennDOT, request PennDOT's assistance in obtaining any Governmental Approvals required for performing Site Investigations. If requested by the PDA Entity in accordance with this Section 9.2(e), PennDOT will exercise Reasonable Efforts to assist the PDA Entity in obtaining such Governmental Approvals.

9.3 Protection of Property

- (a) The PDA Entity shall use Good Faith efforts to preserve and to protect all structures, improvements, equipment, and vegetation, on or adjacent to the Sites and areas where the PDA Entity conducts Site Investigations or conducts any other PDA Work, and shall repair all damage thereto caused by any PDA Work.
- (b) Without duplication of the PDA Entity's indemnity obligations under Article 18 (Indemnity), the PDA Entity shall be responsible for the costs of any repairs of damage to structures, improvements, equipment, or vegetation, including those that are the property of a third-party, resulting from the failure of the PDA Entity to comply with the requirements of this Agreement in performing the PDA Work, in each case, to a condition equivalent to that which existed immediately prior to occurrence of such damage. If the PDA Entity fails or refuses to repair the damage promptly, PennDOT may have the necessary services performed at the PDA Entity's sole cost.
- (c) The PDA Entity shall promptly (and in any event within two Business Days after any encounter) notify PennDOT of all things of historical, archaeological, paleontological, or scientific interest discovered or encountered by the PDA Entity during the performance of the PDA Work. The PDA Entity shall promptly stop any Site Investigation or other PDA Work within the vicinity of the discovery in order to preserve and protect the discovery until its significance can be determined by PennDOT. PennDOT shall issue instructions to the PDA Entity with respect to the disposition or handling of the discovery and shall reimburse the PDA Entity for its reasonable and documented costs (i.e., that would not otherwise have been incurred in performing PDA Work) in complying with such instructions, which costs shall not be subject to the Pre-Development Cost Cap at the earlier of Financial Close for the next Package or termination of this Agreement.

9.4 Hazardous Materials

- (a) Subject to Section 9.4(d), if the PDA Entity encounters any Pre-Existing Hazardous Materials, or if there is a Hazardous Materials Release during any Site Investigation by the PDA Entity, the PDA Entity shall promptly (and in any event within one Business Day) notify PennDOT of the Pre-Existing Hazardous Materials or Hazardous Materials Release and its location and, subject to Section 9.4(d), provide PennDOT with a reasonable opportunity to inspect the affected areas and locations before taking any Remedial Action in accordance with Section 9.4(b).
- (b) If the PDA Entity notifies PennDOT of any Pre-Existing Hazardous Materials or any Hazardous Materials Release encountered while performing the PDA Work, PennDOT shall:

- (i) within five Business Days after the receipt of the PDA Entity's notification, notify the PDA Entity of any Remedial Action that PennDOT requires the PDA Entity to perform with respect to the Hazardous Materials; and
- (ii) if PennDOT requires the PDA Entity to perform Remedial Action, or the PDA Entity is required by Law to perform Remedial Action, or if Remedial Action is reasonably necessary for the PDA Entity to continue performing the PDA Work at the affected portions of a Site, PennDOT shall reimburse the PDA Entity for its reasonable and documented costs (i.e., that would not otherwise have been incurred in performing PDA Work) in performing the Remedial Action, which costs shall not be subject to the Pre-Development Cost Cap at the earlier of Financial Close for the next Package or termination of this Agreement, except in the case of a PDA Entity Hazardous Materials Release, in which case the PDA Entity will bear all costs and expenses associated with the Remedial Action and Section 18.1(d) will apply.

For the avoidance of doubt, PennDOT may in its sole discretion elect to self-perform any Remedial Action with respect to the Hazardous Materials.

- (c) Subject to Section 9.4(d), the PDA Entity shall:
 - (i) with respect to any Third-Party Parcels, abide by any requirements of the owner of such Third-Party parcel that would not reasonably be expected to result in a violation of Law or Governmental Approval;
 - (ii) comply with any notice issued by PennDOT under Section 9.4(b) to perform any Remedial Action;
 - (iii) obtain all Governmental Approvals required for any Remedial Action that it is required to perform;
 - (iv) perform all Remedial Action in accordance with all Laws and Governmental Approvals; and
 - (v) in performing the Remedial Action, take such steps and actions as PennDOT may require to protect and preserve PennDOT's potential Claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties.
- (d) If there is a sudden, unanticipated Hazardous Materials Release, the PDA Entity may take commercially reasonable initial Remedial Action as may be necessary to stabilize and contain the relevant Hazardous Materials Release without providing PennDOT with prior notice under Section 9.4(a) or the opportunity to inspect the relevant areas and locations before commencing such Remedial Action; provided that under such circumstances the PDA Entity shall promptly notify PennDOT of such Hazardous Materials Release and any Remedial Action taken, and upon such notice PennDOT may exercise its rights to direct Remedial Action as provided for under this Section 9.4.
- (e) Nothing in this Section 9.4, prevents or excuses the PDA Entity from complying with any Law, Governmental Approval, or the requirement of any Governmental Entity, including complying with any requirement to notify a Governmental Entity or other Person upon discovery of Hazardous Materials.

- (f) PennDOT shall reimburse the PDA Entity for costs incurred with any Remedial Action as an Allowed Cost to be reimbursed at Financial Close for the next Package.

9.5 Generator Status

- (a) Between PennDOT and the PDA Entity, the PDA Entity will perform the responsibilities of the generator under 40 CFR, Part 262 with respect to any PDA Entity Hazardous Materials Release. For any PDA Entity Hazardous Materials Release, the PDA Entity will be identified as the generator of the relevant Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities, or any Governmental Entity.
- (b) With respect to Pre-Existing Hazardous Materials or any Hazardous Materials Release other than a PDA Entity Hazardous Materials Release:
 - (i) between PennDOT and the PDA Entity, the PDA Entity will not be deemed the generator under 40 CFR, Part 262;
 - (ii) the PDA Entity will not be identified as the generator on the waste manifest or any other documentation submitted to transporters, disposal facilities, or any Governmental Entity; and
 - (iii) if PennDOT requires the PDA Entity to take Remedial Action under Section 9.4, the PDA Entity shall:
 - (A) prepare waste manifests for review, approval and execution (if applicable) by PennDOT (prior to the time that the Hazardous Materials are loaded on the transport truck on the Sites) required for transportation and disposal of the Hazardous Materials;
 - (B) provide copies of the waste manifests and related forms to PennDOT on the date of transport; and
 - (C) provide the final signed manifests and receipt(s) from the receiving/disposal facility to PennDOT upon receipt of such documents.
- (c) If PennDOT requires the PDA Entity to take Remedial Action under Section 9.4 with respect to Pre-Existing Hazardous Materials or any Hazardous Materials Release other than a PDA Entity Hazardous Materials Release:
 - (i) the PDA Entity shall not transport the relevant Hazardous Materials unless PennDOT has received, reviewed, approved, and signed (as required) any waste documentation, and reviewed and signed the manifests; and
 - (ii) the PDA Entity shall give PennDOT at least 48 hours' prior notice before transporting the relevant Hazardous Materials.

10. PDA WORK

10.1 General Requirements

- (a) The PDA Entity shall perform the PDA Work in accordance with:
 - (i) Exhibit 6 (PDA Work Requirements);
 - (ii) Exhibit 9 (PDA Proposal Commitments);
 - (iii) Good Industry Practice;
 - (iv) all Law;
 - (v) the requirements of all Governmental Approvals; and
 - (vi) all other requirements of this Agreement.
- (b) The PDA Entity shall obtain all Governmental Approvals (other than PennDOT-Provided Approvals) and maintain all Governmental Approvals (including the PennDOT-Provided Approvals) that are required to perform the PDA Work.
- (c) For the avoidance of doubt, the PDA Entity is not entitled to any compensation under this Agreement, except as provided under Article 21 (Termination), Article 22 (Reduction in Scope of the Agreement), and otherwise as expressly provided in this Agreement.
- (d) PennDOT shall have the right to witness any testing, attend any site visits and meetings, obtain any samples, and perform any other independent quality functions regarding the PDA Entity's performance of the PDA Work during the PDA Term.

10.2 Environmental Process and NEPA-Related PDA Work

- (a) For the purposes of NEPA, the identification of a preferred alternative for each Bridge is exclusively within the control and decision-making authority of PennDOT, in conjunction with FHWA as the lead federal agency for NEPA.
- (b) Nothing in this Agreement shall limit the discretion that PennDOT may exercise in conducting its environmental review and preparing environmental documents, by itself or through separate contractors, for each Bridge, including the discretion of PennDOT and FHWA (as the lead federal agency for NEPA) to choose a no-build alternative.
- (c) Subject to Section 10.2(d), as part of the PDA Work, the PDA Entity shall, in accordance with 23 CFR §636.109(b), support and cooperate with PennDOT during the environmental process for each Bridge, by:
 - (i) preparing preliminary designs (as defined in 23 CFR §636.103);
 - (ii) to the extent required by PennDOT, performing design and engineering activities for the purposes of:
 - (A) supporting PennDOT's definition of Bridge alternatives and completion of the NEPA alternative analysis and review process;

- (B) complying with other related Environmental Laws;
 - (C) supporting PennDOT coordination, public involvement, permit applications, and/or the development of mitigation plans; or
 - (D) developing the design of the preferred alternative to a higher level of detail if the lead agencies agree that it is warranted under 23 U.S.C. §139(f)(4)(D); and
- (iii) providing feedback on cost assumptions used by PennDOT for the NEPA alternative analysis and review process.
- (d) As among the PDA Entity, PennDOT and FHWA, PennDOT and FHWA shall retain control and responsibility for the NEPA process for each Bridge. The PDA Entity shall not perform services (and, if requested by PennDOT, may refuse to provide services) that would violate conflict of interest rules under NEPA regarding the preparation, review, revision, and decisions on the scope and content of draft and final NEPA environmental review documents.

10.3 Reporting of PDA Allowed Costs

- (a) No later than 10 Business Days after the end of each month, the PDA Entity shall provide PennDOT with a report (the “**Allowed Costs Report**”) detailing:
 - (i) the Allowed Costs that were incurred by the PDA Entity during that month, together with line-item documentation for each cost;
 - (ii) the aggregate amount of cumulative Allowed Costs that have been incurred by the PDA Entity from the Effective Date until the end of that month; and
 - (iii) the Allowed Costs that the PDA Entity anticipates incurring in the following month.
- (b) PennDOT shall review the Allowed Costs Reports and notify the PDA Entity of any comments or objections to the report. PennDOT may provide comments or objections to the report, and in such case the PDA Entity shall, within five Business Days after receipt of such comments or objections, provide PennDOT with an updated report addressing PennDOT’s comments and objections.
- (c) PennDOT may also request further information or documents from the PDA Entity to substantiate the Allowed Costs contained in the Allowed Costs Report. Upon such request, the PDA Entity shall, within five Business Days after receipt of such request or such longer time period as is reasonably required by the PDA Entity, provide PennDOT with the requested information or documents.
- (d) Any failure by PennDOT to review or comment on an Allowed Costs Report shall not limit PennDOT’s right to object to any Claim for Allowed Costs by the PDA Entity in accordance with this Agreement.
- (e) The PDA Entity shall not be entitled to the reimbursement of any Allowed Costs that (i) were incurred prior to the Effective Date; or (ii) have not been correctly reported or

revised, supplemented or updated to reflect any comments and/or objections by PennDOT as required under this Section 10.3.

- (f) Any disagreements between the Parties relating to the Allowed Costs Report will initially be brought to the Steering Committee for resolution. If the Steering Committee is unable to resolve the disagreement, the Parties shall follow the Dispute Resolution Procedures set forth in Article 28 (Dispute Resolution).

10.4 **Limitation on Right to Rely**

- (a) Except to the extent expressly provided under this Agreement, no action or omission by PennDOT or its respective agents, employees, successors and assigns, with respect to any submittal from the PDA Entity in connection with the PDA Work will:
 - (i) relieve the PDA Entity from the performance of its obligations under this Agreement or a Development Entity from the performance of its obligations under a Project Agreement;
 - (ii) constitute acceptance by PennDOT that any PDA Work satisfies the requirements of this Agreement or a Project Agreement; or
 - (iii) prevent PennDOT from subsequently raising an objection or comment on a submittal under this Agreement if the same objection or comment was not made by PennDOT on a previous submittal.
- (b) Without limiting the generality of Section 10.4(a), the PDA Entity acknowledges and agrees that:
 - (i) PennDOT will not be responsible for the relevance, completeness, accuracy, adequacy or fitness for any purpose of any Design Documents developed by the PDA Entity under this Agreement; and
 - (ii) the PDA Entity will be solely responsible for its design work, including the adoption or use of any Design Documents developed by the PDA Entity, a PDA-Related Entity, or any other Person. The adoption and use of such Design Documents will be at the sole risk of the PDA Entity. PennDOT shall not have any liability to the PDA Entity with respect to the use of such Design Documents by the PDA Entity, or any PDA-Related Entity or any other Person, notwithstanding, any review, comment, exception, objection, rejection, approval, disapproval, acceptance, concurrence, certification of the Design Documents, or failure to conduct any such activity by PennDOT under this Agreement.
- (c) Any review, comment, exception, objection, rejection, approval, disapproval, acceptance, concurrence, or certification, of any Design Documents or failure to conduct any such activity by PennDOT under this Agreement:
 - (i) will not be deemed or construed as any kind of warranty, express or implied, by PennDOT;
 - (ii) will not create or impose upon PennDOT any duty or obligation toward the PDA Entity or any PDA-Related Entity;

- (iii) will not relieve the PDA Entity or any PDA-Related Entity, including any Development Entity, from liability for, and responsibility to replace nonconforming work and to cure defaults under any Project Agreement;
 - (iv) will not be deemed or construed as any assumption of risk by PennDOT as to design, construction, equipping, supply, maintenance, performance, or quality of performance of the PDA Work or other Project Agreement Work under a Project Agreement; and
 - (v) may not be asserted by the PDA Entity or any PDA-Related Entity, including any Development Entity, against PennDOT as a defense (legal or equitable) to, or as a waiver of, or relief from, any obligations of the PDA Entity or any PDA-Related Entity, including any Development Entity, to fulfill the requirements of this Agreement or any Project Agreement.
- (d) Notwithstanding paragraph (c) above, the PDA Entity shall be entitled to rely on PennDOT's written approval of and acceptances (i) for the limited purpose of establishing that the approval or acceptance occurred; or (ii) that are within PennDOT's sole or absolute discretion, but only to the extent that the PDA Entity is prejudiced by a subsequent decision of PennDOT to rescind such approval or acceptance.
- (e) This Section 10.4(e) will neither relieve PennDOT from any liability arising out of a knowing and intentional material misrepresentation under any written statement that PennDOT delivers to the PDA Entity, nor relieve PennDOT from performance of its express responsibilities and obligations under this Agreement in accordance with all standards applicable hereto.

10.5 Pre-Development Cost Cap

Other than as otherwise set forth in this Agreement, the PDA Entity shall not be entitled to reimbursement for any costs incurred in its performance of the PDA Work, including any Allowed Costs, which would cause the aggregate amount of compensation paid by PennDOT to the PDA Entity under this Agreement to exceed the Pre-Development Cost Cap.

10.6 Innovative Concept Submittals

(a) Procedures

- (i) The PDA Entity may submit innovative technical and financial concepts ("**Innovative Concept Submittal**") to PennDOT during the PDA Term as set forth in Exhibit 6 (PDA Work Requirements) and this Section 10.6.
- (ii) Except for incorporating PennDOT-accepted Innovative Concept Submittals, the PDA Work submittals and Package Proposals may not contain deviations from the technical and financial requirements of this Agreement or the form of PA Technical Provisions furnished to PDA Entity by PennDOT as required pursuant to Section 12.1.

(b) Contents

Each Innovative Concept Submittal submitted by the PDA Entity shall have the form and include the contents required under Exhibit 6 (PDA Work Requirements).

(c) PennDOT's Response to an Innovative Concept Submittal

- (i) Subject to clause (ii) below, PennDOT will respond to an Innovative Concept Submittal within 10 Business Days of the submittal to PennDOT; provided, however, that PennDOT's timeline for response may be extended in PennDOT's sole discretion based on the number and complexity of submissions received from the PDA Entity at any particular time.

PennDOT's written response will be one of the following:

(A) Acceptable

The Innovative Concept Submittal may be included in the PDA Entity's PDA Work and any future Package Proposal submitted to PennDOT. PennDOT shall also incorporate the underlying concept in the accepted Innovative Concept Submittal into the form of PA Technical Provisions provided to the PDA Entity as part of PennDOT's Request for Package Proposal.

(B) Unacceptable

The Innovative Concept Submittal may not be included in the PDA Entity's PDA Work and any future Package Proposal submitted to PennDOT. PennDOT will not incorporate the underlying concept in the Innovative Concept Submittal into the form of PA Technical Provisions provided to the PDA Entity as part of PennDOT's Request for Package Proposal.

- (ii) PennDOT may request additional information regarding any Innovative Concept Submittal at any time and the PDA Entity shall provide all additional information requested that is available to the PDA Entity. Upon receipt of sufficient additional information, in PennDOT's sole discretion, PennDOT shall make a determination of whether the Innovative Concept Submittal is acceptable or unacceptable for use in performance of the Work.

(d) Incorporation into PDA Work, Package Proposal and Draft PA Technical Provisions

- (i) The PDA Entity shall have sole responsibility for the implementation of any Innovative Concept Submittal accepted by PennDOT, including the satisfaction of any conditions (if any) attached to PennDOT's acceptance of an Innovative Concept Submittal and obtaining the approval or consent of any relevant Governmental Entity or third party (including any necessary modifications to the PennDOT-Provided Approvals).
- (ii) The PDA Entity shall not be entitled to any additional time, relief, or compensation, under this Agreement, including any relief from its obligations to deliver any Package Proposal, or any adjustment to the Allowed Costs or Pre-

Development Cost Cap payable under this Agreement as a result of any Innovative Concept Submittal.

11. **[RESERVED]**

12. **PACKAGE PROPOSALS AND PROJECT AGREEMENTS**

12.1 **Development and Delivery of Draft Project Agreement and Technical Provisions; PDA Entity's Package DBE Submittal and Bridge List**

- (a) The PDA Entity acknowledges and agrees that prior to submission of its PDA Proposal, it reviewed and accepted the terms and conditions contained in the Project Agreement Term Sheet provided in the RFP.
- (b) Not more than seven Business Days after execution of this Agreement by the Parties, PennDOT shall provide the PDA Entity with a draft form of Project Agreement (including, without limitation, the PA Technical Provisions) the terms of which are to conform to those set forth in Exhibit 8 (Project Agreement Term Sheet).
- (c) Upon execution of this Agreement, the PDA Entity shall work in Good Faith to identify the First Package and subsequent Packages. As provided under Exhibit 6 (PDA Work Requirements), the PDA Entity shall perform (1) Bridge-specific PDA Work and complete associated submittals to support Package identification; (2) generic Package-specific work and complete associated submittals to further develop the Package submittal templates; and (3) overarching PDA-specific work for the management of the PDA Work.
- (d) Prior to submission of the First Package Proposal, PennDOT and the PDA Entity shall negotiate in Good Faith the form of Project Agreement (including, without limitation, the PA Technical Provisions) to govern the Project Agreement for the First Package. In negotiating the form of Project Agreement, the Parties shall not amend any terms that were included in the Project Agreement Term Sheet, unless agreed between PennDOT and the PDA Entity in Good Faith that such amendments are consistent with matters agreed to between PennDOT and the PDA Entity during the PDA Entity's performance of the PDA Work. If, despite both PennDOT and the PDA Entity discharging their obligations under this Agreement in Good Faith, PennDOT and the PDA Entity are unable to agree on the final form of the Project Agreement within 90 Days after the later of the Effective Date and PennDOT's delivery of the Project Agreement, then PennDOT may, in its sole discretion, terminate this Agreement in accordance with Section 21.4.
- (e) When the PDA Entity submits its Final Package Proposal Design submittal as required under Exhibit 6 (PDA Work Requirements) for any Package, the PDA Entity shall submit a Package DBE Submittal to allow PennDOT BEO to set DBE contract goals and establish OJT requirements for the Package Work under the applicable Project Agreement. Each Package DBE Submittal shall contain the information required by PennDOT BEO. When the PDA Entity submits a Package DBE Submittal, the PDA Entity shall include the applicable NAICS code(s) for each type of work that the DBE firms quote and intend to perform on the Package Work. All federally funded projects require a scope of work that will be performed by a DBE which corresponds to the DBE firm's NAICS Code (a federally recognized standard of business by economic activity), which can be found at <https://paucp.dbesystem.com/>.

- (f) When the PDA Entity submits its Final Package Proposal Design as required under Exhibit 6 (PDA Work Requirements), the PDA Entity shall also notify PennDOT in writing of the Bridge(s) identified for inclusion in the respective Package. For the First Package, the PDA Entity must include all First Package Bridges in the First Package Proposal. If the PDA Entity does not include all First Package Bridges in the First Package Proposal, such failure shall be considered a PDA Entity Default unless such failure is due to delay of NEPA Approval as set forth under Section 12.2(e).
- (g) Within 20 Days after PennDOT's receipt of the PDA Entity's Final Package Proposal Design, Package DBE Submittal under Section 12.1(e), and the PDA Entity's Bridge list under Section 12.1(f), PennDOT will deliver to the PDA Entity a "**Request for Package Proposal**" that:
 - (i) identifies the final Bridges approved for inclusion in a Package Proposal;
 - (ii) includes the final agreed upon form of Project Agreement for such Package, including the final form of PA Technical Provisions;
 - (iii) identifies any information and components of the final Project Agreement (including the PA Technical Provisions) that the PDA Entity shall be responsible for providing as part of its Package Proposal to be submitted to PennDOT under Section 12.2;
 - (iv) identifies the DBE contract goal for the Package Work as well as any OJT requirements; and
 - (v) identifies the deadline for the PDA Entity's submission of its Package Proposal to PennDOT.

12.2 Package Proposal Submittal

- (a) Following receipt of a Request for Package Proposal from PennDOT, the PDA Entity shall submit a Package Proposal to PennDOT that includes the information required under paragraph (b) below and Exhibit 7 (Package Proposal Requirements). Unless otherwise agreed to in writing by PennDOT, the Package Proposal shall be consistent with the PDA Proposal. Each Package Proposal shall be subject to PennDOT's approval, in its sole discretion.
- (b) In addition to the requirements of Exhibit 7 (Package Proposal Requirements), each Package Proposal must:
 - (i) include certain information and components for inclusion in the Project Agreement that the PDA Entity is responsible for providing as set forth in the Request for Package Proposal;
 - (ii) include an executed signature page of the Project Agreement by the applicable Development Entity to be held in escrow by PennDOT until the Package Proposal is approved by PennDOT in accordance with Section 12.3 and the Parties agree on the final form of Project Agreement for such Package in accordance with Section 12.5(a);

- (iii) as required in the form of Package Proposal Letter at Attachment A to Exhibit 7 (Package Proposal Requirements), include an affirmative statement of assurance by the PDA Entity that in submitting the Package Proposal, the remaining Bridges which are not subject to such Package Proposal or Project Agreement are viable for inclusion in a future Package Proposal and Project Agreement and will be included in a future Package Proposal and Project Agreement by the PDA Long Stop Date;
 - (iv) as required in the form of Package Proposal Letter at Attachment A to Exhibit 7 (Package Proposal Requirements), include an affirmative statement that the PDA Entity acknowledges and agrees that it shall implement any approved Package Proposal under the negotiated final form of Project Agreement, and that the PDA Entity's failure to execute a Project Agreement for any approved Package Proposal shall be considered a PDA Entity Default, except in the case of a termination under Section 21.4 of this Agreement; and
 - (v) comply with the structural, legal, commercial, and technical constraints, requirements, terms, and conditions in the Project Agreement.
- (c) Upon receipt of a Request for Package Proposal from PennDOT, the PDA Entity shall also commence certain Package-specific work defined under Exhibit 6 (PDA Work Requirements) to further develop and tailor the PDA submittals for the specific Package being proposed by the PDA Entity, as identified under Section 12.4(b)(ii).
 - (d) The PDA Entity shall not include any Bridge in a Package Proposal that has not obtained NEPA Approval. The PDA Entity's inclusion of a Bridge that has not obtained full NEPA Approval as contemplated under this Agreement in a submitted Package Proposal shall constitute submission of a Non-Compliant Package Proposal under Section 20.1(a).
 - (e) If NEPA Approval for a Bridge is not obtained by PennDOT within 30 Days prior to the submission deadline for a Package Proposal, PennDOT shall notify the PDA Entity of the same and the PDA Entity shall exclude such Bridge from such Package Proposal. Such Bridge may be considered for inclusion in a subsequent Package Proposal.

12.3 PennDOT Determination Regarding Package Proposal

- (a) Within ten Business Days of receipt of a Package Proposal from the PDA Entity, including a revised Package Proposal, PennDOT shall notify the PDA Entity in writing:
 - (i) whether the Package Proposal is compliant and satisfies the minimum requirements set forth under this Agreement and the Request for Package Proposal; and
 - (ii) whether PennDOT approves the Package Proposal for conformance and finalization under Section 12.4.
- (b) If PennDOT determines that a Non-Compliant Package Proposal was submitted, PennDOT will notify the PDA Entity and provide the reasons why the Package Proposal was deemed to be a Non-Compliant Package Proposal. The PDA Entity may resubmit such Non-Compliant Package Proposal one additional time within the timeframe provided by PennDOT in its reasonable discretion. If PennDOT determines that the second submittal

is a Non-Compliant Package Proposal, a PDA Entity Default shall be deemed to have occurred, and PennDOT may terminate this Agreement in accordance with Section 21.2, in its sole discretion.

- (c) Other than with respect to the First Package, PennDOT may request that the PDA Entity resubmit a Package Proposal that is deemed compliant but for which PennDOT has objections or concerns regarding the contents. If PennDOT requests that the PDA Entity resubmit a Package Proposal, the PDA Entity shall submit a revised Package Proposal that is compliant and responsive to all PennDOT objections or concerns in the timeframe set forth by PennDOT in its reasonable discretion. PennDOT may request submittal of a revised Package Proposal from the PDA Entity pursuant to this Section 12.3(c) as many times as it deems necessary in its reasonable discretion. PennDOT shall not be permitted to request resubmission of a compliant First Package Proposal.
- (d) If PennDOT does not approve a Package Proposal that is compliant, the scope of this Agreement will be reduced in accordance with Section 22.3.

12.4 **Conformance and Finalization of Project Agreement and Technical Provisions**

- (a) Upon PennDOT's approval of a compliant Package Proposal, the PDA Entity and PennDOT shall work in Good Faith to conform and finalize the Project Agreement (including, without limitation, the PA Technical Provisions) for such Package.
- (b) Between PennDOT's approval of a compliant Package Proposal and execution of the Project Agreement for the Package, the PDA Entity shall:
 - (i) continue performance of the work described in Section 12.1(c); and
 - (ii) perform the Package-specific PDA Work to be submitted to PennDOT after the Package Proposal submission.

12.5 **Entry into a Project Agreement**

- (a) If PennDOT and the PDA Entity are able to agree on the final form of Project Agreement (including the PA Technical Provisions) for a Package, then the Parties shall finalize the same for execution by the Development Entity and PennDOT and the Development Entity shall release its previously escrowed signature page to the Project Agreement.
- (b) The PDA Entity acknowledges and agrees that a Project Agreement shall not have any legal force and effect until PennDOT provides the approval of such Project Agreement by the following Persons:
 - (i) Office of Chief Counsel;
 - (ii) Office of General Counsel;
 - (iii) Office of Attorney General; and
 - (iv) Comptroller Operations,

which approvals shall be requested by PennDOT within 45 Days of the applicable Development Entity's release of its signature page to such Project Agreement.

12.6 Good Faith

For the purposes of this Article 12 (Package Proposals and Party Agreements), a Party will not be acting in Good Faith if:

- (a) it proposes to include provisions in the Project Agreement or the PA Technical Provisions that, unless otherwise agreed by PennDOT and the PDA Entity:
 - (i) deviate from the terms or commercial intent of the Project Agreement Term Sheet or draft PA Technical Provisions; or
 - (ii) are otherwise materially inconsistent with the terms generally accepted on bridge P3 projects of similar size and scope in the United States (for avoidance of doubt, such standard shall not be applicable to Project Agreement or PA Technical Provisions terms addressed in or set forth in accordance with the commercial intent of the Project Agreement Term Sheet or draft PA Technical Provisions); or
- (b) in the case of the PDA Entity only, it refuses to accept, or seeks to negotiate changes to, proposed terms of the Project Agreement or the PA Technical Provisions on the basis that those terms are inconsistent with assumptions that it made when developing and submitting its Package Proposal.

12.7 Equity Interests in Development Entity

- (a) The PDA Entity acknowledges and agrees that at Commercial Close of each Project Agreement, the PDA Entity and/or the Equity Members shall hold at least 51% of the equity interest in the Development Entity that enters into the Project Agreement for the Package until two years after the "**Final Acceptance Date**" thereunder.

13. SCHEDULE OF PERFORMANCE

- (a) The PDA Entity shall perform the PDA Work in accordance with the PDA Work Schedule and achieve each milestone set forth in Exhibit 5 (Pre-Development Milestones and Deadlines) by the deadline set forth in Exhibit 5 (Pre-Development Milestones and Deadlines).
- (b) Time is of the essence in each Party's performance of its obligations hereunder.

14. RELIEF EVENTS

14.1 Entitlement to Claim

- (a) If a Relief Event directly causes the PDA Entity to fail to (x) achieve a Pre-Development Milestone by the applicable Pre-Development Milestone Deadline or (y) comply with any of its other obligations under this Agreement, the PDA Entity may claim one or more of the following in accordance with this Article 14 (Relief Events), in each case for so long as such Relief Event is ongoing:

- (i) an extension to the Pre-Development Milestone Deadline, it being acknowledged if any such extension is granted pursuant to this Article 14 (Relief Events) that it may affect otherwise agreed, but not yet finalized, milestone deadlines in Package Proposals, and the parties shall exercise Good Faith efforts to incorporate any such extension finally determined under this Section 14.1 in finalizing revised milestone deadlines in consideration of relevant Package Proposals;
 - (ii) relief from compliance with its obligations under this Agreement; or
 - (iii) an increase to a Pre-Development Cost Cap,
- and nothing else.
- (b) In the case of a Pandemic Event, the PDA Entity will not be entitled to claim any relief other than schedule relief under this Article 14 (Relief Events).

14.2 Notices and Information to be Provided

- (a) The PDA Entity shall comply with the procedures in this Section 14.2 to claim an extension to a Pre-Development Milestone Deadline, relief from its obligations, or an increase to the Pre-Development Cost Cap with respect to a Relief Event.
- (b) The PDA Entity shall submit a notice that complies with Section 14.2(c) (“**Relief Event Notice**”) no later than 15 Business Days after the date that the PDA Entity first became aware that the relevant Relief Event had occurred and would have the effect that is the subject of the PDA Entity’s Claim set forth in the Relief Event Notice.
- (c) A Relief Event Notice must include, to the extent information is then available to the PDA Entity after due inquiry, diligence, and at the time of the relevant Relief Event:
 - (i) a statement that it is a Relief Event Notice issued under this Section 14.2(c);
 - (ii) full details of the relevant Relief Event (as available to the PDA Entity having made due inquiry), including its date and time of occurrence or inception;
 - (iii) full details of any extension of time, relief from any of its obligations, or increase to any Pre-Development Cost Cap claimed under this Article 14 (Relief Events) (including details of any immediate relief required while the Relief Event is continuing);
 - (iv) with respect to a Claim for an extension to a Pre-Development Milestone Deadline under Section 14.1(a)(i), the PDA Entity’s Good Faith analysis of how the relevant Relief Event was the direct cause or is reasonably likely to be the direct cause of a delay in achieving a Pre-Development Milestone by the applicable Pre-Development Milestone Deadline;
 - (v) with respect to a Claim for relief from its obligations under Section 14.1(a)(ii), the PDA Entity’s Good Faith analysis of the adverse impact of the Relief Event on the PDA Entity’s ability to perform its obligations under this Agreement;

- (vi) with respect to a Claim for an increase to a Pre-Development Cost Cap, the PDA Entity's Good Faith analysis of the additional Allowed Costs that it will incur as a result of the Relief Event and that would not be incurred had the Relief Event not occurred; and
 - (vii) the actions that the PDA Entity has taken and will take to mitigate the effect of the Relief Event in accordance with Section 14.3, including evidence of any insurance claims.
- (d) If the Relief Event (or its effects) are continuing, the PDA Entity shall:
- (i) submit an updated Relief Event Notice every 30 Business Days until the Relief Event has ended; and
 - (ii) within 10 Business Days after the end of the Relief Event, submit a final Relief Event Notice.
- (e) Within 10 Business Days after receiving a request from PennDOT, the PDA Entity shall provide PennDOT with any clarifying or additional information requested by PennDOT with respect to its Relief Event Notice.

14.3 Mitigation

- (a) The PDA Entity and each PDA-Related Entity shall use Reasonable Efforts to mitigate the delay and any other consequences of any Relief Event that is the subject of a Relief Event Notice.
- (b) If the PDA Entity or any PDA-Related Entity fails to comply with its obligations under Section 14.3(a), the PDA Entity will not be entitled to any extension of time or relief or an increase in the Pre-Development Cost Cap from its obligations to the extent such failure contributes to the continuation or exacerbation of the consequences of such Relief Event.

14.4 Failure to Provide Required Notice or Information

If any notice or information is not provided to PennDOT in accordance with Section 14.2(b), the PDA Entity will not be entitled to any extension of time or relief from its obligations or an increase Pre-Development Cost Cap and will have irrevocably waived and released any Claim with respect to the alleged Relief Event. If the PDA Entity provides justification to PennDOT as to why such notice or information was not provided to PennDOT in accordance with Section 14.2(b), PennDOT shall grant an extension of time or relief from the PDA Entity's obligations if the PDA Entity satisfies all other obligations under this Agreement for such extension of time or relief.

14.5 Burden of Proof

The PDA Entity bears the burden of proving both the occurrence of a Relief Event and the resulting direct and adverse impacts of the Relief Event on the PDA Entity.

14.6 Grant of Relief for Relief Events

- (a) Within 30 Business Days (or such longer period as PennDOT reasonably requires and notifies to the PDA Entity, having regard to the complexity of the Claim) after receipt of a

Relief Event Notice together with any other information provided under Section 14.2(c), PennDOT will notify the PDA Entity of PennDOT's determination as to the PDA Entity's entitlement to any extension of time, increase to a Pre-Development Cost Cap, or other relief under this Article 14 (Relief Events). If PennDOT does not issue a determination within such time period, the Claim will be deemed rejected.

- (b) Within 10 Business Days after:
 - (i) the PDA Entity receives a notice of PennDOT's determination under Section 14.6(a); or
 - (ii) a deemed rejection under Section 14.6(a),

the PDA Entity shall notify PennDOT in writing of whether it accepts or disputes PennDOT's determination or deemed rejection. If the PDA Entity does not dispute PennDOT's determination within 10 Business Days, the PDA Entity will be deemed to have accepted PennDOT's determination.

- (c) If the PDA Entity disputes PennDOT's determination under Section 14.6(b), then the matter will be resolved in accordance with the Dispute Resolution Procedures under Article 28 (Dispute Resolution).
- (d) If the PDA Entity accepts or is deemed to have accepted PennDOT's determination under Section 14.6(b), the PDA Entity will have irrevocably waived and released any Claim with respect to the alleged Relief Event.

14.7 Sole Remedy

Without prejudice to the PDA Entity's right to bring a Claim for damages for a breach of contract by PennDOT constituting a Relief Event under paragraph (h) of the definition of Relief Event in Exhibit 1 (Definitions), the PDA Entity's sole remedy in relation to any Relief Event will be the operation of this Article 14 (Relief Events).

15. PERSONNEL CONTRACTING AND COMMUNITY OUTREACH

15.1 Key Personnel and Required Personnel

- (a) The PDA Entity shall ensure that all Key Personnel and Required Personnel identified under Section 2.1.1.1 of Exhibit 6 (PDA Work Requirements) perform their respective scopes of PDA Work for the entire PDA Term, unless replaced pursuant to Section 15.2 or removed pursuant to Section 15.3.
- (b) The PDA Entity shall retain, employ, and utilize the individual persons listed in Exhibit 11 (Key Personnel for PDA Work). It being agreed that those Key Personnel for PDA Work identified in the PDA Entity's SOQ, as may have thereafter been changed with PennDOT's approval, or thereafter in the PDA Proposal, are hereby approved to hold each individual's respective Key Personnel positions.

15.2 Replacement of Personnel

- (a) The PDA Entity shall not change or substitute any Key Personnel or Required Personnel except:
 - (i) due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment of the Key Personnel or Required Personnel;
 - (ii) if PennDOT directs the PDA Entity to remove the Key Personnel or Required Personnel in accordance with Section 15.2(e) or Section 15.3; or
 - (iii) with PennDOT's prior approval in writing under Section 15.2(b).
- (b) The PDA Entity shall ensure that no individual carries out PDA Work as a Key Personnel or Required Personnel unless the individual has been approved in writing by PennDOT in accordance with this Section 15.2.
- (c) If the PDA Entity proposes to change, or is required to change, an individual in a Key Personnel or Required Personnel position in accordance with Section 15.2(b), the PDA Entity shall provide PennDOT with any information that PennDOT may require to demonstrate that the PDA Entity's proposed individual to be substituted has qualifications, capability, and experience that are equal to or better than those of the individual being replaced as of the date the individual being replaced commenced Key Personnel or Required Personnel duties under this Agreement.
- (d) PennDOT will have the right to:
 - (i) review the qualifications, capability, and experience of each individual proposed by the PDA Entity to hold a Key Personnel or Required Personnel position;
 - (ii) interview and have both formal and informal discussions with each individual proposed by the PDA Entity to hold a Key Personnel or Required Personnel position; and
 - (iii) approve or reject the appointment of each individual to each Key Personnel or Required Personnel position prior to the individual commencing any PDA Work in the Key Personnel or Required Personnel capacity in PennDOT's reasonable discretion.
- (e) If PennDOT approves the appointment of an individual under Section 15.2(d)(iii), PennDOT may require that the individual is appointed for a trial period of up to 60 days. At any time during that trial period, PennDOT may require the PDA Entity to remove the individual from that position, in which case the PDA Entity shall repeat the process set forth in Section 15.2(c).
- (f) If PennDOT rejects a proposed substitute Key Personnel or Required Personnel, the PDA Entity shall repeat the process in Section 15.2(c) until PennDOT has approved the proposed substitute Key Personnel or Required Personnel.

- (g) The PDA Entity shall cause each Key Personnel and Required Personnel to dedicate the full amount of time necessary for the proper prosecution and performance of the PDA Work.
- (h) The PDA Entity shall provide PennDOT with office addresses, cell phone numbers, and email addresses for each Key Personnel and Required Personnel. PennDOT may contact any Key Personnel or Required Personnel 24 hours a day, seven days a week.
- (i) The PDA Entity shall ensure that the PDA Entity's Project Manager supervises, directs, and has overall responsibility for, the PDA Work in accordance with this Agreement.
- (j) The PennDOT approval process set forth in Sections 15.2(c) through (f) shall also be applicable to any changes or replacements of a Major Team Member as may be necessary to avoid a PDA Entity Default under Section 20.1(g) (*Major Team Member Insolvency*).

15.3 Removal or Replacement of PDA Entity and PDA-Related Entity Personnel

- (a) PennDOT may, by notice in writing, require the removal or replacement of any personnel (at any level) assigned to the performance of the PDA Work, if PennDOT reasonably considers that the removal or replacement is necessary and in the best interests of the Project.
- (b) If PennDOT requires the removal or replacement of any personnel under paragraph (a), the PDA Entity shall ensure that the personnel to be removed or replaced immediately ceases the performance of PDA Work at no cost or expense to PennDOT.
- (c) The PDA Entity shall ensure that any individual person who is removed or replaced under this Section 15.3 is not re-employed again for the Project without PennDOT's prior written approval.

15.4 Key Contractors

- (a) The PDA Entity shall at all times during the PDA Term, retain, employ, and utilize the Key Contractors.
- (b) The PDA Entity shall not:
 - (i) substitute a Key Contractor; or
 - (ii) add an additional Key Contractor,
 without PennDOT's prior written consent (which shall not be unreasonably withheld or delayed).
- (c) Without limiting the matters that PennDOT may consider when deciding whether to provide consent under paragraph (b), it will be reasonable for PennDOT to withhold its consent to a substitute Key Contractor if:
 - (i) the PDA Entity fails to demonstrate that the proposed substitute has qualifications, capabilities, and experience that are equal to or better than those of the Key Contractor that is being replaced;

- (ii) PennDOT determines that the substitute would materially adversely affect the capacity of the PDA Entity to perform fully the requirements of this Agreement; or
- (iii) if the substitute Key Contractor proposed by the PDA Entity is subject to state or federal debarment or suspension.

15.5 Subcontracting

- (a) Nothing contained in this Agreement will create any contractual relationship between PennDOT and any Contractor.
- (b) All changes to any persons, firms or Contractors identified in the PDA Proposal shall be subject to PennDOT's prior written approval (which shall not be unreasonably withheld or delayed). Any such changes in personnel shall be subject to the same qualifications for the position contained in the RFQ and RFP.
- (c) No contract entered into by any PDA-Related Entity will impose any obligation or liability upon PennDOT to any PDA-Related Entity, its employees or any third parties.
- (d) The PDA Entity's retention of Contractors will not relieve the PDA Entity of its obligations under this Agreement, and the PDA Entity will at all times be fully responsible under this Agreement for the acts and omissions of all Contractors performing the PDA Work in relation to the Project as if they were the acts and omissions of the PDA Entity.
- (e) The PDA Entity shall retain, or shall cause to be retained, only Contractors that are qualified, experienced, and capable of performing the portion of the PDA Work assigned to them. The PDA Entity shall require that each Contractor obtains and maintains at all times during the performance of the assigned PDA Work, all licenses, certifications, registrations, permits, approvals and insurances required by Law and all Governmental Approvals in respect of the work being performed by such Contractor.
- (f) The Lead Construction Contractor shall (i) be prequalified pursuant to 67 Pa. Code Ch. 457.5 to perform structure "S" and "T" work types or be prequalified as a "General Highway Contractor" and (ii) have "unlimited financial capacity".

15.6 Prompt Payment

- (a) Subject to, and without limiting, Section 15.8(d), the PDA Entity shall:
 - (i) make prompt payment of undisputed amounts to Contractors with whom it has privity of contract; and
 - (ii) require all Contractors to make prompt payment of undisputed amounts to lower-tier Contractors with whom they have privity of contract.
- (b) The PDA Entity shall submit to PennDOT a Monthly Feedback Report no later than the first day of each month during the PDA Term. PennDOT shall have 5 Days to review and approve the Monthly Feedback Report. Unless PennDOT indicates otherwise to the PDA Entity, the Monthly Feedback Report shall be deemed approved by PennDOT 5 days after submission. The PDA Entity shall pay all undisputed amounts to Contractors (with whom

they have privity of contract) for goods and services provided by the Contractors within 10 Days after PennDOT's approval of the Monthly Feedback Report. The PDA Entity shall insert in all contracts to which the PDA Entity is a party a requirement for the Contractor to:

- (i) pay all undisputed amounts to Contractors (with whom they have privity of contract) within 10 Days after PennDOT's approval of the Monthly Feedback Report; and
 - (ii) require Contractors to insert the same provision in each subcontract at all tiers.
- (c) The PDA Entity acknowledges that any Contractor that does not receive prompt payment may have the right to request a remedy in accordance with Commonwealth law.
- (d) Each prime contractor shall make full payment to its subcontractor(s) as required in Part I (Disadvantaged Business Enterprise Requirements) of Exhibit 13 (Federal and State Requirements).

15.7 Labor Standards

- (a) In performing the PDA Work, the PDA Entity shall comply, and shall require all Contractors to comply, with all Laws regarding labor, occupational safety, and health.
 - (b) All individuals performing the PDA Work must be qualified, experienced, competent, and skilled in performing the PDA Work assigned to them under this Agreement.
 - (c) If an individual employed by the PDA Entity, any Contractor, or any PDA-Related Entity:
 - (i) lacks the qualifications, skill, competence, experience, licensing, certification, registration, permit, approval, bond, or insurance for performing the relevant aspect of the PDA Work; or
 - (ii) is not performing the relevant aspect of the PDA Work in a proper, safe, and skillful manner,
- the PDA Entity shall, or shall cause the relevant Contractor to, remove that individual or PDA-Related Entity from performing the PDA Work.
- (d) An individual removed from performing the PDA Work under Section 15.7(c) may not be re-employed to perform any portion of the PDA Work. The PDA Entity will not be entitled to make any Claim as a result of such removal.
 - (e) If, after notice and reasonable opportunity to cure, the PDA Entity:
 - (i) fails to take action as required by Section 15.7(c); or
 - (ii) fails to ensure that qualified, skilled, competent, experienced, licensed, certified, registered, permitted, bonded, insured and approved personnel are furnished for the proper performance of the PDA Work,

then, PennDOT may suspend the affected portion of the PDA Work by delivering to the PDA Entity notice of such suspension.

- (f) Any suspension under Section (e) will in no way relieve the PDA Entity of any obligation contained in this Agreement, or entitle the PDA Entity to make any Claim under this Agreement.

15.8 Disadvantaged Business Enterprises

The federal Disadvantaged Business Enterprise requirements set forth in Title 49 of the Code of Federal Regulations Part 26 shall apply to the Project, including the PDA Work. The DBE contract goal for the PDA Work will be 13.05% utilization of Disadvantaged Business Enterprises (such 13.05% to be applied against the total cost of the PDA Work). The DBE goal remains in effect for the life of the contract. The PDA Entity and PDA-Related Entities shall also comply with the DBE requirements in Exhibit 13 (Federal and State Requirements).

The PDA Entity and each Contractor shall abide by and include the following provisions in every subcontract it enters into under this Agreement:

- (a) **Policy for Federally-Funded Projects.** It is the policy of the DOT and PennDOT that DBEs, as defined in 49 C.F.R. Part 26, be given the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 C.F.R. Part 26, as amended, apply to this Agreement.
- (b) **DBE Obligation.** The PDA Entity and each Contractor shall take all necessary and reasonable steps to ensure that all DBEs have the opportunity to compete for and perform contracts. The PDA Entity and each Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this or any DOT-assisted contract. The PDA Entity and each Contractor shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. PennDOT's DBE program, as required by 49 C.F.R. Part 26 and as approved by the DOT, is incorporated by reference in this Agreement. Implementation of 49 C.F.R. Part 26 is a legal obligation and failure by the PDA Entity or any Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or imposition of other available sanctions. Upon notification to the PDA Entity or any Contractor of its failure to carry out its approved program, the DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).
- (c) **Failure to Comply with DBE Requirements.** The PDA Entity or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The PDA Entity and each Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the PDA Entity or any Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as PennDOT deems appropriate, which may include, but is not limited to:
 - (i) withholding monthly progress payments;
 - (ii) assessing sanctions;
 - (iii) liquidated damages; and/or

- (iv) disqualifying the Contractor from future bidding as non-responsible.
- (d) **Prompt Payment.** The PDA Entity shall submit to PennDOT a Monthly Feedback Report no later than the first day of each month during the PDA Term. PennDOT shall have 5 Days to review and approve the Monthly Feedback Report. Unless PennDOT indicates otherwise to the PDA Entity, the Monthly Feedback Report shall be deemed approved by PennDOT 5 Days after submission. The PDA Entity shall pay all undisputed amounts to Contractors (with whom they have privity of contract) for goods and services provided by the Contractors within 10 Days after PennDOT's approval of the Monthly Feedback Report. Any entity, including the PDA Entity and Contractors, making payments to DBE or SBE subcontractors must also complete and submit Form EO-402.
- (e) **Retainage.** Withholding of retainage is not permitted under this Agreement. Each prime contractor shall pay make full and prompt payment to its subcontractor(s).
- (f) **Small Business Enterprise (SBE) Participation.** There is no SBE goal. However, the PDA Entity and each Contractor shall recruit and utilize certified SBEs in addition to all other equal opportunity requirements of the contract. The SBE participation shall be counted and reported the same as DBE participation.
- (g) **DBE Reporting.** The PDA Entity shall submit to PennDOT the DBE Reporting Forms within 5 Days of a DBE beginning work. The DBE Reporting Forms shall be completed by the Project Manager detailing the PDA Work to be completed by the DBE. The PDA Entity shall also submit to PennDOT a DBE Uniform Report every 6 months for the reporting periods of October 1 – March 30 and April 1 – September 30.

15.9 Prevailing Wages and Enhanced Minimum Wages, and Worker Protection for PDA Work

- (a) To the extent applicable, the PDA Entity shall pay or cause to be paid to all applicable workers employed by it or its Contractors performing the PDA Work no less than the prevailing rates of wages or the enhanced minimum wage rate, whichever is greater, as provided in the statutes and regulations applicable to public work contracts, including Pennsylvania Prevailing Wage Act of August 15, 1961, P.L. 987, as amended by 43 P.S., Section 165-1, *et seq.* and 40 U.S. Code § 3141 (the "**Davis Bacon Act**") and Executive Order 2016-02 as amended. See Exhibit 13 (Federal and State Requirements).
- (b) It is the PDA Entity's sole responsibility to confirm the wage rates required to be paid. If rates of wages and benefits change while this Agreement is in effect, then the PDA Entity shall bear the cost of such changes and shall have no right to a Claim against PennDOT on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon the PDA Entity's lack of knowledge or a misunderstanding of any such requirements.
- (c) If it is found that any individual employed by the PDA Entity or a Contractor has been or is being paid a rate of wages less than the rate of wages required to be paid under this Agreement, PennDOT, in addition to other remedies, may declare a PDA Entity Default under Section 20.1(o) (Prevailing Wage and Improper Acts).
- (d) Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and

Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1 (as escalated, the obligations under Section 15.9(c) and Section 15.9(d), subject to Section 15.9(e) to Section 15.9(i), inclusive, the "**Enhanced Minimum Wage Provisions**").

- (e) The Enhanced Minimum Wage Provisions shall not apply to employees:
 - (i) exempt from the minimum wage under the Minimum Wage Act of 1968;
 - (ii) covered by a collective bargaining agreement;
 - (iii) required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - (iv) required to be paid a higher wage under any state or local policy or ordinance.
- (f) The PDA Entity, and each PDA-Related Entity, in turn, shall post the Enhanced Minimum Wage Provisions for the entire PDA Term conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- (g) The PDA Entity, and each PDA-Related Entity, in turn, must maintain and, upon request, and within the time periods requested by the Commonwealth (by way of PennDOT or its designee), furnish all employment and wage records necessary to document compliance with the Enhanced Minimum Wage Provisions.
- (h) Failure to comply with the Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of this Project Agreement, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- (i) Contractors and Subcontractors shall include the Enhanced Minimum Wage Provisions in every Subcontract so that these provisions will be binding upon each Subcontractor.

15.10 Sanctions Upon Improper Acts

- (a) PennDOT may declare a PDA Entity Default under Section 20.1(o) (*Prevailing Wage and Improper Acts*), if:
 - (i) without limiting Section 15.10(b), the PDA Entity, any PDA-Related Entity, or any of their respective employees, members, managers, officers, directors, share/stockholders (closed corporation only), or partners, is convicted of a crime arising out of, relating to, or resulting from, the procurement of work to be done or payment to be made under this Agreement;
 - (ii) the PDA Entity:
 - (A) is debarred under 62 P.A.C.S 531, 67 Pa.Code §457.13, 67 Pa.Code § 457.13, 48 CFR Subparts 9.4, Executive Order 12549, or DOT Order 4200.5G; or

- (B) may be debarred because any of the circumstances under 62 P.A.C.S 531, 67 Pa.Code § 457.13, 67 Pa.Code § 457.13, 48 CFR Subparts 9.4, Executive Order 12549, or DOT Order 4200.5G;
 - (iii) the PDA Entity is included on a list of Persons suspended or debarred under state and federal laws and regulations; or
 - (iv) the PDA Entity, any PDA-Related Entity, or any of their officers, partners, principals, or employees, violates the Contractor Responsibility Provisions or Contractor Integrity Provisions set forth in Exhibit 13 (Federal and State Requirements).
- (b) The PDA Entity shall dismiss from the Project and remove from the Site any individual person or entity that is a Constituent of the PDA Entity or any PDA-Related Entity immediately following any conviction of any such person or entity of a crime arising out of, relating to, or resulting from, the procurement of work to be done or payment to be made under this Agreement or any Project Agreement. Following dismissal and removal, such person or entity shall not be re-employed on the Work or the “Work” under any Project Agreement. Failure to immediately dismiss and remove, or reemployment, as is restricted pursuant to the preceding sentence, constitutes a PDA Entity Default under Section 20.1(s) (Breach of Material Covenant).

15.11 Community Outreach and Engagement

(a) Transportation Education

For the purposes of getting students interested in the transportation field, the PDA Entity and each Development Entity shall assure educational outreach is conducted in at least one school district in surrounding counties with significant minority and low-income populations as determined by environmental justice equity analyses per Bridge location pursuant to the PennDOT Project Level Environmental Justice Guidance Manual and the PennDOT Project Level Public Involvement Handbook.

(b) Community, Economic and Workforce Development

For the purposes of supporting local communities to enhance economic growth per bridge location, the PDA Entity and each Development Entity shall engage with local community organizations, schools, unions, and CareerLinks to provide community and educational outreach on careers in the transportation field pursuant to the PennDOT Project Level Environmental Justice Guidance Manual and the PennDOT Project Level Public Involvement Handbook.

15.12 Worker Protection

Pursuant to Executive Order 2021-06, Worker Protection and Investment (October 2, 2021), the PDA Entity shall provide PennDOT with an executed Department Form BOP-2201 for itself and each Contractor at every tier on or before the A&R Effective Date (or if such date is subsequent to the A&R Effective Date, the date on which any Contractor submits a bid, proposal or quote with respect to the PDA Work).

16. LAWS AND FEDERAL REQUIREMENTS

16.1 General

The PDA Entity shall at all times in carrying out the PDA Work comply, and require its Contractors to comply, with all Laws and Governmental Approvals.

16.2 Federal Requirements

Without limiting Section 16.1, the PDA Entity shall comply with, and require its Contractors to comply with, all federal requirements applicable to transportation projects that receive federal credit or funds, including the requirements stated in Exhibit 13 (Federal and State Requirements).

In addition to the requirements stated in Exhibit 13 (Federal and State Requirements), the PDA Entity and each Contractor shall ensure that all Information and Communication Technology deliverables meet the requirements of Section 508 of the Rehabilitation Act and the ICT Final Standards and Guidelines (508 Refresh) at 36 CFR Part 1194. As defined in the 508 Refresh, at 36 CFR Part 1194, Appendix A, E103.4, the PDA Entity and each Contractor shall adhere to the terms and requirements in FHWA Form 4260 Section 508 Information and Communication Technology (ICT) Conformance Criteria for Section 508 conformance.

16.3 Assistance with Reporting Requirements

The PDA Entity shall provide all assistance reasonably requested by PennDOT in connection with any reporting requirements that PennDOT must comply with under any Law.

16.4 Conflicting Provisions

If there is any conflict between:

- (a) any applicable federal requirements or any Law; and
- (b) the other requirements of this Agreement,

the federal requirements and any Law will prevail and take precedence over any such conflicting provisions.

16.5 Certification Regarding Use of Contract Funds for Lobbying

The PDA Entity shall ensure that all Contracts (including lower-tier subcontracts) that exceed \$100,000 include the language of the certification in Part B of Exhibit 13 (Federal and State Requirements).

16.6 Separations Act Compliance

Among other Laws, the Project Agreements shall be subject to 71 P.S. §1618 (the “**Separations Act**”) for any buildings that are constructed as part of the Project.

17. CHANGE ORDERS

- (a) PennDOT may, at any time, propose a change to the PDA Work by delivering a written notice (a “**PennDOT Change Request**”) to the PDA Entity setting out PennDOT’s proposed change to the PDA Work.
- (b) PennDOT shall not deliver a PennDOT Change Request that:
 - (i) requires the PDA Work to be performed in a way that violates any Law;
 - (ii) causes any Governmental Approval then in full force and effect to be revoked;
 - (iii) adversely affects the health and safety of any individual person; or
 - (iv) materially and adversely changes the nature of the Project and/or any Package as a whole.
- (c) Promptly, and in any event within 30 Days following receipt of a PennDOT Change Request, PennDOT and the PDA Entity shall meet to discuss and seek to agree to:
 - (i) any change to a Pre-Development Cost Cap required by the PennDOT Change Request; or
 - (ii) any time or other relief necessary as a consequence of the change set forth in the PennDOT Change Request.
- (d) The Parties shall execute a change order to reflect the change to the PDA Work and such other terms agreed to in accordance with Section 17(c).
- (e) The PDA Entity shall not suspend performance of the PDA Work during the negotiation of any PennDOT Change Request under this Article 17 (Change Orders), unless expressly provided otherwise in accordance with the terms of this Agreement.

18. INDEMNITY

18.1 Indemnity

Subject to Section 18.2, the PDA Entity shall indemnify, hold harmless, and subject to Section 18.6, defend the Indemnified Parties from and against all liability for Losses, and attorney and expert witness fees and costs, arising out of, relating to, or resulting from Third-Party Claims (or Third-Party Losses), or both, for death, personal injury, loss of or damage to property, breach of statutory duty, or any other Third-Party Claims or Third-Party Losses arising out of, relating to, or resulting from:

- (a) any breach of the PDA Entity’s obligations under this Agreement;
- (b) the failure or alleged failure by the PDA Entity or any PDA-Related Entity to comply with any Governmental Approval or Law relating to the performance of the PDA Work;
- (c) any alleged infringement or other allegedly improper appropriation or use of:

- (i) Intellectual Property (including PennDOT Intellectual Property) by the PDA Entity or any PDA-Related Entity; or
- (ii) Intellectual Property (excluding PennDOT Intellectual Property) by an Indemnified Party,

in performing the PDA Work, or arising out of, relating to, or resulting from any use in connection with the Project of methods, processes, design, information, or other items furnished or communicated to an Indemnified Party under this Agreement. This indemnity shall not apply to any infringement resulting from an Indemnified Party's failure to comply with specific written instructions regarding the use of Intellectual Property provided to PennDOT by the PDA Entity that are consistent with the PDA Entity's obligation to convey and license any Intellectual Property under this Agreement;

- (d) any PDA Entity Hazardous Materials Release;
- (e) any fines or penalties imposed on PennDOT by a Governmental Entity arising out of, relating to, or resulting from the PDA Entity's breach or failure to comply with applicable requirements of this Agreement;
- (f) any claims by any Governmental Entity claiming taxes based on gross receipts, purchases or sales, use of any property, or income of the PDA Entity or any PDA-Related Entity with respect to any payment for the PDA Work made to or earned by the PDA Entity or any PDA-Related Entity under this Agreement;
- (g) any inverse condemnation, trespass, nuisance, or similar taking of, or harm to, real property by reason of:
 - (i) the failure of the PDA Entity or any PDA-Related Entity to comply with Good Industry Practice, requirements of this Agreement, or an approved plan under this Agreement in connection with the performance of the PDA Work;
 - (ii) the intentional, reckless, or willful misconduct or negligence of the PDA Entity or any PDA-Related Entity in connection with the performance of the PDA Work; or
 - (iii) the unauthorized physical entry onto or encroachment upon another's property by the PDA Entity or any PDA-Related Entity in connection with the performance of the PDA Work; and
- (h) any other actual or alleged grossly negligent; reckless, willful, or intentional misconduct (excluding intentional PDA Entity Default); illegal activities (or inaction); fraud; criminal conduct; bad faith; violation of Law; violation or breach of contract (excluding breach of this Agreement) on the part of the PDA Entity or any PDA-Related Entity in, arising out of, relating to, caused by, or otherwise associated with performance of the PDA Work.

18.2 Limitations on Indemnification Obligations

(a) Exclusions

The PDA Entity shall not be responsible or be obligated to indemnify, hold harmless, or defend the Indemnified Parties with respect to any Loss or Third-Party Claims under

Section 18.1 to the extent it arises as a direct result of a violation of Law or a Governmental Approval by an Indemnified Party or PennDOT's breach of this Agreement, which was left uncured after any applicable cure period and such violation or breach is not caused by the PDA Entity's breach of this Agreement.

(b) **Insured Losses**

With respect to any Loss or Third-Party Claim covered by the insurance required to be provided under this Agreement or otherwise obtained by the PDA Entity and/or the PDA-Related Entity for the Project, the PDA Entity's indemnity obligations shall not extend to any Loss or Third-Party Claims arising out of, relating to, or resulting from the sole negligence, or willful misconduct of, an Indemnified Party, or its agents, servants, or independent contractors who are directly responsible to such Indemnified Party.

(c) **Uninsured Losses**

(i) With respect to any Loss or Third-Party Claims not covered by the insurance required to be provided under this Agreement, or is not otherwise obtained by the PDA Entity or the PDA-Related Entity for the Project, the PDA Entity's indemnity obligation will not extend to any loss, damage, or cost to the extent that such Loss, damage, Third-Party Claims or cost was caused by:

(A) the breach by PennDOT of any of their obligations to the PDA Entity under this Agreement; or

(B) the sole negligence, or willful misconduct of the relevant Indemnified Party or its agents, servants, or independent contractors who are directly responsible to such Indemnified Party.

(ii) The PDA Entity's indemnity obligations shall not include the payment of punitive damages except to the extent that punitive damages are assessed as the result of culpable conduct by the PDA Entity.

(d) **Claims by Employees**

With respect to Claims by an employee of the PDA Entity, any PDA-Related Entity or a Contractor, anyone directly or indirectly employed by the PDA Entity, any PDA-Related Entity or a Contractor, or anyone for whose acts the PDA Entity, any PDA-Related Entity or a Contractor may be liable, the indemnification obligation under this Article 18 (Indemnity) shall not be limited on the amount, or type of damages, compensation, or benefits payable, by or for the PDA Entity, any PDA-Related Entity or a Contractor under workmen's compensation, disability benefit, or other employee benefit laws; provided that this Section 18.2(d) will not be construed as a waiver in favor of any employee by the PDA Entity, or any Contractor of any limitation of liability afforded by such laws.

(e) **Reliance on the PDA Entity's Performance**

The PDA Entity acknowledges and agrees that it is the PDA Entity's obligation to cause its indemnity obligations to be performed in accordance with this Article 18 (Indemnity), and that the Indemnified Parties are fully entitled to rely on the PDA Entity's performance of this obligation.

18.3 Indemnities by Contractors

The PDA Entity shall ensure that each contract includes indemnity provisions appropriate to the scope of the PDA Work to be performed by the Contractor, naming the Indemnified Parties as indemnitees.

18.4 Limitation on Indemnity

The indemnities under this Article 18 (Indemnity) shall not limit any other indemnity by the PDA Entity under this Agreement.

18.5 Notice of Claims by Third Parties

The PDA Entity shall:

- (a) promptly, but in no event greater than ten Business Days, notify PennDOT in writing of any injury to Persons, damage to property, or other occurrence covered by the indemnities in this Article 18 (Indemnity); and
- (b) subject to legally recognized privilege, promptly, but in no event greater than ten Business Days, provide PennDOT copies of all factual reports and factual portions of any other reports given to the PDA Entity's insurance carrier or carriers.

18.6 Conduct of Third-Party Claims

- (a) Where an Indemnified Party is entitled to make a Claim under this Agreement against the PDA Entity in relation to a Third-Party Claim, PennDOT shall give notice of such Indemnified Party's relevant Claim to the PDA Entity, setting out the full particulars of the Claim and whether or not the defense is tendered to the PDA Entity.
- (b) The PDA Entity acknowledges that:
 - (i) the Pennsylvania Office of the Attorney General is required by law to represent and defend PennDOT and the Commonwealth and may appoint counsel approved by the Pennsylvania Office of the Attorney General to act in its stead; and
 - (ii) certain other Indemnified Parties may have similar statutory representation obligations and rights.

As a result, PennDOT and the Indemnified Parties may elect to conduct their own defense at any time but may also agree to allow defense to be conducted in whole, in part, in conjunction with, or from time to time, by counsel appointed by the PDA Entity or its insurer.

- (c) Subject to Section 18.6(b), if the insurer under any applicable Insurance Policy accepts the tender of defense, PennDOT and the PDA Entity agree to cooperate in the defense proffered by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 18.6(d) will apply.
- (d) Subject to Section 18.6(b), if the defense is tendered to the PDA Entity, then within 30 Days after receipt of the tender, the PDA Entity shall notify each relevant 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 the PDA Entity:

- (i) accepts the tender of defense and confirms that the Claim is subject to full indemnification without any “reservation of rights” to deny or disclaim full indemnification;
 - (ii) accepts the tender of defense but with a “reservation of rights” in whole or in part; or
 - (iii) rejects the tender of defense based on a determination that it is not required to indemnify against the Claim under the terms of this Agreement.
- (e) Subject to Section 18.6(b), if the PDA Entity accepts the tender of defense under Sections 18.6(d)(i) or 18.6(d)(ii), the PDA Entity shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and the PDA Entity shall otherwise direct the defense of such Claim, and bear the fees and costs of defending and settling such Claim. PennDOT shall be kept informed of the status of any Claim covered by such insurance and the PDA Entity shall seek PennDOT’s consent to any settlement terms and conditions.
- (f) Subject to Section 18.6(b), if the PDA Entity responds to the tender of defense as specified in Section 18.6(d)(iii), the Indemnified Party may select its own legal counsel and otherwise control the defense of such Claim, including settlement.
- (g) Despite Sections 18.6(d)(i) or 18.6(d)(ii), any Indemnified Party (regardless of whether it is entitled to conduct its own defense under Section 18.6(b)), may assume its own defense at any time by delivering to the PDA Entity notice of such election and the reasons therefor.
- (h) If an Indemnified Party elects to conduct its own defense of a Claim for which it is entitled to indemnification under this Section 18.6, the PDA Entity shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending such Claim. If the Indemnified Party is entitled to and elects to conduct its own defense, then:
- (i) in the case of a defense that otherwise would be conducted under Section 18.6(d)(i), the Indemnified Party may settle or compromise the Claim with the PDA Entity and each of the PDA Entity’s relevant insurer(s)’ prior written consent, which, in each case, shall not be unreasonably withheld or delayed;
 - (ii) in the case of a defense that otherwise would be conducted under Section 18.6(d)(ii), the Indemnified Party and the PDA Entity shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the Claim under a policy required under this Agreement, the Indemnified Party may settle or compromise the Claim with the PDA Entity’s prior written consent without prejudice to the Indemnified Party’s rights to be indemnified by the PDA Entity; and
 - (iii) in the case of a defense conducted under Section 18.6(d)(iii), the Indemnified Party may, subject to the rights of any insurer providing coverage for the Claim under a policy required under this Agreement, settle or compromise the Claim without the

PDA Entity's prior written consent and without prejudice to its rights to be indemnified by the PDA Entity.

- (i) A refusal of, or failure to accept, a tender of defense, as well as any Dispute relating to assumption of control of defense by an Indemnified Party under Section 18.6(g), will be resolved according to the Dispute Resolution Procedures. The PDA Entity may 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.

19. INSURANCE

19.1 Insurance Policies and Coverage

The PDA Entity shall obtain and maintain, or cause to be obtained and maintained, the Insurance Policies in accordance with this Article 19 (Insurance) and Exhibit 10 (Required Insurance for PDA Work).

19.2 General Insurance Requirements

(a) Insurers

The PDA Entity shall cause all Insurance Policies to be obtained from insurers:

- (i) that at the time coverage commences have a current financial strength and financial size category rating of not less than "A -" (excellent or above) according to A.M. Best's Financial Strength Rating and "VIII" or better according to A.M. Best's Financial Size Rating, except as approved in writing by PennDOT in its sole discretion; and
- (ii) that are authorized to do business in the Commonwealth.

(b) No Recourse for Premiums, Deductibles, and Self-Insured Retentions

Except as otherwise expressly provided in this Agreement:

- (i) the PDA Entity or its Contractors shall be responsible for paying all premiums, deductibles, and self-insured retentions with respect to the Insurance Policies; and
- (ii) neither PennDOT nor any other Indemnified Party will have any liability for premiums, deductibles, self-insured retentions, or claim amounts in excess of the required coverage, or other amounts, with respect to the Insurance Policies.

(c) Primary Coverage

The PDA Entity shall ensure that:

- (i) each Insurance Policy provides that the coverage is primary and non-contributory with respect to all named and additional insureds and loss payees as their interests may appear, except for coverage that by its nature cannot be written as primary; and

- (ii) any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured must be in excess of such insurance and must not contribute with it.

(d) **Verification of Coverage**

- (i) Each time the PDA Entity is required to initially obtain or cause to be obtained an Insurance Policy, and not less than 10 Business Days before the expiration date of each Insurance Policy required to be maintained under this Agreement, the PDA Entity shall deliver to PennDOT a written certificate(s) of insurance (which, in the case of an expiring Insurance Policy, provides evidence of renewal coverage after such expiration). Each certificate of insurance must:

- (A) be on the most recent ACORD form consistent with the required coverage;
- (B) state the identity of all insurers, named insureds, and additional insureds, and state the type and limits of coverage;
- (C) where applicable, include as attachments all additional insured endorsements; and
- (D) be signed by the agent or broker.

- (ii) Within 10 Business Days after receiving a request from PennDOT, the PDA Entity must deliver to PennDOT:

- (A) for the Insurance Policies required in Section 1 of Exhibit 10 (Required Insurance for PDA Work), a true and complete copy of each Insurance Policy or modification, or renewal or replacement of such Insurance Policy and all endorsements accompanied by a letter from the agent or broker placing the PDA Entity's insurance certifying that the same is a true and complete copy thereof; and
- (B) evidence, acceptable to PennDOT (acting reasonably), that all premiums then due have been paid in full.

- (iii) If the PDA Entity:

- (A) fails or refuses to obtain or maintain in force the Insurance Policies; or
- (B) does not provide PennDOT with proof of coverage within five Business Days after PennDOT requests such proof;

PennDOT may, upon five Business Days' written notice to the PDA Entity, without prejudice to any other available remedy and without further inquiry as to whether such insurance is actually in force, obtain such an Insurance Policy.

- (iv) The PDA Entity shall reimburse PennDOT for the cost PennDOT incurs in obtaining any Insurance Policy under Section 19.2(d)(iii) within 30 Days after receiving an invoice from PennDOT with respect to such costs.

- (v) PennDOT may, without obligation or liability, suspend all or any portion of the PDA Work during any time that any proofs of coverage required by this Article 19 (Insurance) have not been provided to PennDOT.

(e) **Contractor Insurance Requirements**

- (i) The PDA Entity shall cause all Contractors to obtain (before commencing any PDA Work) and maintain all insurance that is required by Section 2 of Exhibit 10 (Required Insurance of PDA Work), to the extent that such Contractor is not covered by the PDA Entity provided insurance.
- (ii) The PDA Entity shall cause the Contractors to include PennDOT and the Indemnified Parties as additional insureds on a primary and non-contributory basis as required under Exhibit 10 (Required Insurance of PDA Work) and also cause the Contractors to ensure that all Insurance Policies required by Section 2 of Exhibit 10 (Required Insurance for PDA Work) include a waiver of subrogation in favor of PennDOT and the Indemnified Parties.

(f) **Endorsements and Waivers**

- (i) The PDA Entity shall ensure that all Insurance Policies contain, or are endorsed to comply with, the following:
 - (A) each policy must be endorsed to state that coverage cannot be canceled, voided, or materially reduced in coverage or in limits (except with respect to payments under the policy which by their nature erode or deplete the limits of such policy) by the insurer except after 30 days' prior written notice (or 10 days' notice for non-payment of premium) by certified mail with a return receipt requested, or by email with a hard copy to follow. Such endorsement must not include any limitation of liability of the insurer for failure to provide such notice; and
 - (B) unless specified otherwise in Exhibit 10 (Required Insurance for PDA Work), each policy must provide coverage on an "occurrence" basis and not a "claims made" basis.
- (ii) The PDA Entity shall cause all Insurance Policies (other than workers' compensation and professional liability policies) to contain, or are endorsed to comply with, the following:
 - (A) any failure on the part of a named insured to comply with reporting provisions or other conditions of the 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 PDA Entity's Interest will not affect coverage provided to the other named insureds or additional insureds (and their respective Constituents);
 - (B) the commercial general liability, excess liability and pollution liability insurance must 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;

- (C) endorsements adding additional insured coverage for Indemnified Parties shall, for commercial general liability insurance, be evidenced by the CG 20 10 04 13 and CG 20 37 04 13 forms, or equivalent (to ensure coverage for both operations and completed operations), and, with regard to all required insurance coverages, must contain no additional limitations, conditions, restrictions or exceptions to coverage beyond those that apply under such policy generally;
- (D) the commercial general, automobile liability and excess umbrella insurance policies obtained by the PDA Entity must contain the following endorsement:

“The insurer(s) shall not, without obtaining the express advance written permission from the Pennsylvania Department of Transportation (PennDOT), raise any defense involving in any way the jurisdiction of a tribunal over the person of PennDOT, the immunity of PennDOT, or any of their officers, agents or employees, the governmental nature of PennDOT, or the provisions of any statutes respecting suits against PennDOT.”;
- (E) the commercial general liability policy must cover liability arising out of the acts or omissions of the PDA Entity’s employees and employees of Contractors engaged in the PDA Work on the terms and to the extent the PDA Entity or relevant Contractor is provided coverage under such liability policy; and
- (F) any automobile liability insurance policy must be endorsed as required to include Motor Carrier Act Endorsement-Hazardous Materials Clean-up (MCS-90) for those Contractors who will at any time transport Hazardous Materials.

(g) **Policies with Insureds in Addition to the PDA Entity**

Except with respect to professional errors and omissions Insurance Policies, all Insurance Policies that are required to insure other entities in addition to the PDA Entity shall comply with the following provision:

- (i) all endorsements adding additional named insureds to required Insurance Policies must contain no limitations, conditions, restrictions, or exceptions to coverage other than those that apply to all other named insureds, including the first named insured, under the Insurance Policy.

(h) **Waivers of Subrogation**

- (i) Each Insurance Policy shall include a clause or endorsement denying the insurer any rights of subrogation or recovery against PennDOT to the extent such rights have been waived by the insured before the occurrence of injury or loss.
- (ii) The PDA Entity waives any rights of subrogation or recovery against PennDOT for injury or loss due to hazards covered or which should be covered by the Insurance Policies, to the extent of the injury or loss covered or to have been

covered, and further, any deductible or retention will be deemed to be insurance coverage.

(iii) The PDA Entity shall require all Contractors and their respective insurance carriers to provide similar waivers in writing in accordance with this Section 19.2(h).

(i) **Support of Indemnification**

The insurance coverage that the PDA Entity is required to provide under this Agreement will support but is not intended to limit the PDA Entity's indemnification obligations under this Agreement.

19.3 **Notices**

(a) The PDA Entity shall provide PennDOT with written notice of any Claim in excess of \$100,000 made by the PDA Entity or any other party under any insurance obtained in connection with the Project within 30 Days after submitting the notice of the Claim to the insurer.

(b) Notices given under this Section 19.3, shall be by certified mail with return receipt requested, or by email with hard copy to follow.

20. **PDA ENTITY DEFAULT AND REMEDIES**

20.1 **PDA Entity Default**

The occurrence of any of the following will constitute a “**PDA Entity Default**”:

- (a) the PDA Entity submits more than one Non-Compliant Package Proposal for a given Package;
- (b) the PDA Entity fails to achieve a Pre-Development Milestone by the applicable Pre-Development Milestone Deadline (as may be extended pursuant to the terms and subject to the conditions hereunder);
- (c) the PDA Entity fails to pay an amount owing to a Contractor on the date due for such payment, except to the extent that the PDA Entity is disputing such payment in Good Faith;
- (d) a Prohibited Change in Ownership occurs;
- (e) the PDA Entity fails to comply with the restrictions regarding assignment and transfer under Article 26 (Assignment and Transfer; Fundamental Changes);
- (f) an Insolvency Event arises with respect to the PDA Entity;
- (g) an Insolvency Event arises with respect to a Major Team Member, unless that Major Team Member (excluding any Equity Member) is replaced in accordance with the process set forth in Section 15.2 within 60 Days after the Insolvency Event arising;
- (h) any representation or warranty made by the PDA Entity in this Agreement or any certificate, schedule, report, instrument, or other document delivered to PennDOT under this Agreement is false or materially misleading or inaccurate when made, or omits

material information when made (except with respect to any projections made by the PDA Entity in any such certificate, schedule, report, instrument or other document);

- (i) the PDA Entity fails to (i) obtain, maintain, or otherwise comply with any Governmental Approval, or (ii) comply with any Law;
- (j) the PDA Entity fails to obtain, provide, and maintain or fails to cause to be obtained, provided and maintained, the Insurance Policies;
- (k) a Development Entity Default has occurred under a Project Agreement and has not been cured within the applicable cure period (if any) under the Project Agreement;
- (l) after exhaustion of all rights of appeal:
 - (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the PDA Entity, a Key Contractor, or any affiliate of the PDA Entity (as “affiliate” is defined in 2 CFR §180.905 or successor regulation of similar import) from bidding, proposing, or contracting with any Federal or Commonwealth department or agency, unless the Person that is subject to the suspension, debarment, or agreement for voluntary exclusion is a Key Contractor and such Person is replaced in accordance with the process set forth in Section 15.2 of this Agreement within 90 Days after the suspension, debarment, or agreement for voluntary exclusion; or
 - (ii) the PDA Entity, a Key Contractor, or any of their other respective employees, members, managers, officers, directors, share/stockholders (closed corporation only), partners, or Administering Employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the United States, and such failure continues without cure for a period of 90 days following the date the PDA Entity delivers to PennDOT written notice thereof.

With respect to Section 20.1(l)(ii), if the offending Person is a Key Contractor or another Constituent, or Administering Employee of a Major Team Member, cure may be effected by the PDA Entity replacing the Key Contractor in accordance with Section 15.2 of this Agreement within the 90 day cure period referred to in Section 20.1(l)(ii);

- (m) the PDA Entity or its Key Contractors no longer hold any license or certificate that the PDA Entity or Key Contractor is required to hold to perform the PDA Work for which they were proposed to perform;
- (n) the PDA Entity fails to obtain PennDOT’s approval prior to a change to a Key Contractor under Article 15 (Personnel Contracting and Outreach);
- (o) the PDA Entity fails to comply with the requirements of Section 15.9, or Section 15.10 as applicable;
- (p) the PDA Entity fails to comply with the DBE program requirements of this Agreement, including Exhibit 13 (Federal and State Requirements);

- (q) the PDA Entity fails to negotiate in Good Faith in accordance with Section 12.1 (Development of Project Agreement and Technical Provisions) to agree to the form of the Project Agreement (including the PA Technical Provisions);
- (r) if an Organizational Conflict of Interest exists that the PDA Entity knew or should have known about but failed to disclose to PennDOT during the procurement or subsequent to execution of this Agreement;
- (s) the PDA Entity breaches any material covenant, obligation, term or condition of this Agreement, including any requirement or obligation (material or not) under Exhibit 13 (Federal and State Requirements);
- (t) termination of a Project Agreement due to Development Entity Default, or termination for failure to achieve Financial Close under the Project Agreement, which failure is caused by the Development Entity thereunder; or
- (u) PDA Entity failure to include all First Package Bridges in the First Package Proposal.

20.2 PDA Entity Default Notice and Cure Periods

- (a) PennDOT may provide written notice (“**PDA Entity Default Notice**”) to the PDA Entity upon the occurrence of a PDA Entity Default.
- (b) Upon receipt of a PDA Entity Default Notice, the PDA Entity shall have the following cure periods:
 - (i) for a PDA Entity Default under Section 20.1(p) (DBE), Section 20.1(h) (False or Misleading Information), Section 20.1(s) (Breach of Material Covenant), 20.1(c) (Late Payments to a Contractor), Section 20.1(m) (Licensing), and Section 20.1(o) (Prevailing Wage and Improper Acts), a period of 30 days after the PDA Entity receives the PDA Entity Default Notice;
 - (ii) for a PDA Entity Default under Section 20.1(i) (Governmental Approval and Law), Section 20.1(j) (Insurance), and Section 20.1(n) (Unauthorized Change of Key Contractor), a period of ten Business Days after the PDA Entity receives the PDA Entity Default Notice; and
 - (iii) for a PDA Entity Default under Section 20.1(e) (Assignment), Section 20.1(k) (Default of Project Agreement), Section 20.1(q) (Good Faith), Section 20.1(f) (Insolvency), Section 20.1(g) (Major Team Member Insolvency), Section 20.1(a) (Package Proposal), Section 20.1(b) (Pre-Development Milestones), Section 20.1(d) (Prohibited Change in Ownership), Section 20.1(l) (Suspension and Debarment), Section 20.1(t) (Termination of Project Agreement), Section 20.1(u) (Failure to Include all First Package Bridges) and Section 20.1(r) (Undisclosed Conflict of Interest), there is no cure period.
- (c) A PDA Entity Default under Section 20.1(h) will be regarded as cured when the adverse effects of such PDA Entity Default are cured.

20.3 Remedies for PDA Entity Default

Upon the occurrence of a PDA Entity Default, and expiration without cure of any applicable cure period under Section 20.2, PennDOT may exercise the following rights without further notice and without waiving or releasing the PDA Entity from any obligations:

- (a) PennDOT may terminate this Agreement under Section 21.2;
- (b) PennDOT may exercise its rights under Section 20.4; and
- (c) PennDOT may exercise all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under this Agreement.

20.4 PennDOT Step-in Rights

- (a) If a PDA Entity Default other than under Section 20.1(k) occurs, and the PDA Entity has not fully cured the PDA Entity Default by the expiration of the applicable cure period (if any), PennDOT may perform all or any portion of the PDA Entity's obligations that are:
 - (i) the subject of the PDA Entity Default; or
 - (ii) the subject of any other existing breach for which the PDA Entity has received prior notice from PennDOT, and that the PDA Entity is not using diligent efforts to cure.
- (b) The PDA Entity shall reimburse PennDOT on demand for any costs that are incurred by PennDOT in performing the PDA Entity's obligations under Section 20.4(a).

21. TERMINATION

21.1 Termination for Convenience of PennDOT

- (a) PennDOT may, in its sole discretion, terminate this Agreement without cause at any time before the last day of the PDA Term in accordance with Section 21.1(b).
- (b) If PennDOT wishes to terminate this Agreement under this Section 21.1, it shall deliver a notice to the PDA Entity (a "**Termination For Convenience Notice**") stating:
 - (i) that PennDOT is terminating this Agreement under this Section 21.1; and
 - (ii) that this Agreement will terminate on the date specified in the Termination For Convenience Notice.
- (c) If this Agreement is terminated under this Section 21.1, PennDOT shall:
 - (i) pay the PDA Entity an amount equal to the sum of: (A) all of the PDA Entity's Allowed Costs incurred but not previously reimbursed, that are directly attributable to each Bridge that has not achieved Commercial Close (which amount shall not be subject to the Pre-Development Cost Cap); plus (B) the product of Allowed Costs under clause (A) above multiplied by the PDA Proposal Equity IRR plus (C) applicable demobilization and breakage costs in connection with the termination of this Agreement; and

- (ii) return the PDA Performance Security to the PDA Entity.

21.2 Termination for PDA Entity Default

- (a) If a PDA Entity Default occurs and the PDA Entity Default has no cure period or has not been cured within the relevant cure period under Section 20.2, PennDOT may terminate this Agreement by delivering a termination notice to the PDA Entity (“**PennDOT Termination Notice**”).
- (b) A PennDOT Termination Notice:
 - (i) shall specify the PDA Entity Default that has occurred entitling PennDOT to terminate the Agreement; and
 - (ii) shall terminate the Agreement on the date the PDA Entity receives the PennDOT Termination Notice.
- (c) If this Agreement is terminated in accordance with Section 21.2(a), PennDOT may draw on the remaining amount of the PDA Performance Security. The PDA Entity acknowledges and agrees that such amount is in the nature of liquidated damages (and not a penalty), represents a genuine and reasonable estimate of the loss that will be suffered by PennDOT, and is fair and reasonable to compensate PennDOT for losses it will suffer as a result of such termination, including:
 - (i) additional costs of administering or re-administering the solicitation of the Project;
 - (ii) the cost of foregoing alternative opportunities and loss of potential best value to the general public;
 - (iii) costs of delay to the delivery of the Project, including loss of use, enjoyment, and benefit of the Project for PennDOT and the general public; and
 - (iv) cost of injury to the credibility and reputation of PennDOT among policy makers and the general public.
- (d) If it is finally determined under the Dispute Resolution Procedures that PennDOT was not entitled to terminate this Agreement under this Section 21.2, this Agreement will be deemed to have been terminated by PennDOT for convenience under Section 21.1 and Section 21.1(c) will apply.

21.3 Termination by Court Ruling

- (a) This Agreement will, upon notice from either party, terminate upon the occurrence of either of the following:
 - (i) the issuance of a final, non-appealable order by a court of competent jurisdiction to the effect that this Agreement is void, unenforceable, or impossible to perform in its entirety; or
 - (ii) the issuance of a final, non-appealable order by a court of competent jurisdiction upholding the binding effect on the PDA Entity or PennDOT of a Change in Law

that causes impossibility of either performance of a fundamental obligation or exercise of a fundamental right by the PDA Entity or PennDOT under this Agreement.

- (b) If this Agreement is terminated under Section 21.3(a)(i), but the Agreement is void, unenforceable, or impossible to perform by reason of the PDA Entity's acts, omissions, negligence, willful misconduct, fraud, or breach of warranty or representation, then the Agreement will be deemed to be terminated due to a PDA Entity Default under Section 21.2.
- (c) If this Agreement is terminated under Section 21.3(a) and Section 21.3(b) does not apply, PennDOT shall:
 - (i) pay the PDA Entity an amount equal to the PDA Entity's Allowed Costs that have been incurred but not previously reimbursed, that are directly attributable to each Bridge that has not achieved Commercial Close up to the Pre-Development Cost Cap; and
 - (ii) return the PDA Performance Security to the PDA Entity.

21.4 Termination for Failure to Agree on Form of Agreement for First Package

- (a) If despite PennDOT and the PDA Entity negotiating in Good Faith, PennDOT and the PDA Entity are unable to agree to the form of the Project Agreement in accordance with Section 12.1, in such case by the time PennDOT and the PDA Entity are required to have agreed to the form of the Project Agreement and PA Technical Provisions for the First Package under Section 12.1, then PennDOT may, by delivering a written notice to the PDA Entity, terminate this Agreement with immediate effect.
- (b) If this Agreement is terminated in accordance with Section 21.4(a), PennDOT shall:
 - (i) reimburse the PDA Entity for all of the PDA Entity's Allowed Costs incurred but not previously reimbursed up to the Pre-Development Cost Cap; and
 - (ii) return the PDA Performance Security to the PDA Entity.

21.5 Exclusive Termination Rights

This Article 21 (Termination) contains the entire and exclusive rights of PennDOT and the PDA Entity to terminate this Agreement and receive payments in connection with such termination under this Agreement when applicable, and any and all other rights to terminate under Law are waived to the maximum extent permitted by Law.

21.6 Post-Termination Obligations

Upon expiration of the PDA Term or any earlier termination of this Agreement for any reason, the provisions of this Section 21.6 shall apply. The PDA Entity shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due to the PDA Entity or PennDOT on account of termination. If the PDA Entity fails to timely comply with the provisions of this Section 21.6, as judged by PennDOT in its sole discretion, then upon notice from PennDOT to the PDA Entity making reference to this

Section 21.6, the PDA Entity hereby stipulates that surrenders, and shall be deemed to have, surrendered its access rights to the Project and Sites and otherwise under this Agreement.

- (a) In all cases, prior to receipt by the PDA Entity of a notice of termination (and in no cases later than the Early Termination Date):
 - (i) the PDA Entity shall continue performing the PDA Work in accordance with, and without excuse from, all the standards, requirements and provisions of this Agreement, and without curtailment of services, quality and performance;
 - (ii) at PennDOT's option, it may call for increased oversight by PennDOT or a PennDOT-Related Entity of the Project and the PDA Entity's compliance with the obligations under this Agreement, to such level as PennDOT reasonably sees fit to protect against curtailment of services, quality and performance; and
 - (iii) not later than 90 Days prior to a Termination Date, or, if applicable, within three days after the PDA Entity receives or delivers a notice of termination, the PDA Entity shall meet and confer with PennDOT for the purpose of developing an interim transition plan for the orderly transition of the PDA Work, demobilization and transfer of all PDA Work and Project control to PennDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 Days after the date the PDA Entity 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.
- (b) The transition plan described under paragraph (iii) above, shall:
 - (i) be in form and substance acceptable to PennDOT in its Good Faith discretion;
 - (ii) include and be consistent with the other provisions and procedures set forth in this Section 21.6, all of which procedures the PDA Entity shall promptly follow, regardless of any delay in preparation or acceptance of the transition plan;
 - (iii) include a plan to promptly deliver to PennDOT or its designee possession of all the property, data and documents described herein; and
 - (iv) include an estimate of costs and expenses to be incurred by both Parties in connection with the implementation of the transition plan.
- (c) On the Termination Date, or as soon as thereafter as is possible, the PDA Entity shall relinquish and surrender full control of the Project and the PDA Work to PennDOT, and shall cause all persons and entities claiming under or through the PDA Entity to do likewise, in at least the condition required by the transition plan finalized and agreed to by the Parties.
- (d) On the later of the Termination Date or the date the PDA Entity relinquishes full control, PennDOT will have the exclusive right to, and shall assume responsibility, at its expense for the Project, subject to any rights to damages that PennDOT has against the PDA Entity where the termination is due to a PDA Entity Default.

- (e) If as of the Termination Date, the PDA Entity has entered into any other contract for permitting or otherwise related to the PDA Work, PennDOT may elect, by notice to the PDA Entity, to continue in effect such contract or require its termination. If PennDOT elects to continue the contract in effect, then the PDA Entity shall execute and deliver to PennDOT a written assignment, in form and substance acceptable to PennDOT, acting reasonably, of all of the PDA Entity's right, title and interest in and to the contract, and PennDOT will assume in writing the PDA Entity's obligations thereunder that arise from and after the Termination Date. If PennDOT elects to require termination of the contract, then the PDA Entity shall take all reasonable action to effect termination of such contract, including settlement of all outstanding liabilities and claims arising out of such contract.
- (f) The PDA Entity shall take all action that may be necessary, or that PennDOT may direct, for the protection and preservation of the Project, the PDA Work, data, documentation and other property (including Intellectual Property).
- (g) On or about the Termination Date, the PDA Entity shall execute and deliver to PennDOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to PennDOT, acting reasonably, assigning and transferring to PennDOT all of the PDA Entity's right, title and interest in and to the following:
 - (i) all completed or partially-completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, as-built and record plans (if any), surveys, and other documents and information pertaining to the PDA Work, the design or construction of the Project or any Utility Adjustments (PennDOT acknowledges and agrees that any use of the foregoing then-bearing the seal of a licensed professional engineer is at PennDOT's sole risk);
 - (ii) all samples, borings, boring logs, geotechnical data and similar data and information relating to the PDA Work and the Project;
 - (iii) all Books and Records relating to the PDA Work and the Project;
 - (iv) 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 Article 24 (Intellectual Property); and
 - (v) all other Proprietary Intellectual Property and Intellectual Property used or owned by the PDA Entity or any Affiliate relating to the PDA Work, the Project, provided that the transfer of any Intellectual Property shall be subject to Article 24 (Intellectual Property).
- (h) On or about the Termination Date, the PDA Entity shall execute and deliver to PennDOT a written assignment, in form and substance acceptable to PennDOT, acting reasonably, of all of the PDA Entity'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 PDA Work.
- (i) On or about the Termination Date, the PDA Entity shall execute and deliver to PennDOT a written assignment, in form and substance acceptable to PennDOT, acting reasonably, of all PDA Entity's right, title and interest in and to all warranties.

- (j) The PDA Entity shall otherwise assist PennDOT in such manner as PennDOT may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Project, the PDA Work and their management to PennDOT, and shall, if appropriate and if requested by PennDOT, take all steps as may be necessary to enforce the provisions of this Agreement pertaining to the surrender of the Project.
- (k) For a period of four years following the Termination Date, the PDA Entity shall maintain a secure archive copy of all electronic data (including archived Project Data) transferred to PennDOT.

21.7 No Effect on Validity of Executed Project Agreements

Any termination of this Agreement under this Article 21 (Termination) shall have no effect on the validity of any previously executed Project Agreement.

22. REDUCTION IN SCOPE OF THE AGREEMENT

22.1 NEPA Non-Approval of Bridges

- (a) If the NEPA Approvals for a Bridge are not obtained for any reason, then:
 - (i) PennDOT may remove such Bridge from the scope of this Agreement;
 - (ii) the Pre-Development Cost Cap shall decrease by 1/9th for each Bridge removed pursuant to this paragraph (a);
 - (iii) the PDA Performance Security shall be reduced by \$500,000 for each Bridge removed pursuant to this paragraph (a); and
 - (iv) PennDOT shall pay the PDA Entity an amount equal to the PDA Entity's Allowed Costs incurred but not previously reimbursed that are directly attributable to such Bridge, up to the Pre-Development Cost Cap, at the earlier of Financial Close for the next Package that will achieve Financial Close or termination of this Agreement.
- (b) For the avoidance of doubt, the removal of any Bridge from the scope of this Agreement due to NEPA non-approval for any reason contemplated under this Section 22.1 shall have no effect on the validity of any previously executed Project Agreement.

22.2 PennDOT Right to Remove a Bridge At Any Time For Convenience

- (a) PennDOT may, by notice to the PDA Entity, remove a Bridge from the scope of this Agreement at any time for convenience prior to Commercial Close of the relevant Project Agreement.
- (b) If a Bridge is removed from the scope of this Agreement under Section 22.2(a), PennDOT shall pay the PDA Entity an amount equal to the sum of: (i) all of the PDA Entity's Allowed Costs incurred but not previously reimbursed that are directly attributable to such Bridge being removed (which amount shall not be subject to the Pre-Development Cost Cap); plus (ii) the product of Allowed Costs under clause (i) above multiplied by the PDA Proposal Equity IRR; plus (iii) applicable demobilization and breakage costs in connection with the

removal of such Bridge from the scope of this Agreement. PennDOT shall make any payment under this paragraph (b) upon the earlier of Financial Close for the next Package that will achieve Financial Close or termination of this Agreement.

- (c) For the avoidance of doubt, the removal of any Bridge from the scope of this Agreement under this Section 22.2 shall have no effect on the validity of any previously executed Project Agreement.

22.3 Reduction in Scope for PennDOT Non-Approval of Compliant Package Proposal

- (a) If PennDOT rejects a compliant Package Proposal, the Bridges included in such Package will be removed from the scope of this Agreement with immediate effect.
- (b) If the scope of this Agreement is reduced in accordance with Section 22.3(a), PennDOT shall pay the PDA Entity an amount equal to the sum of: (i) all of the PDA Entity's Allowed Costs incurred but not previously reimbursed that are directly attributable to the Bridges in such Package (which amount shall not be subject to the Pre-Development Cost Cap); plus (ii) the product of Allowed Costs under clause (i) above multiplied by the PDA Proposal Equity IRR; plus (iii) applicable demobilization and breakage costs in connection with the removal of such Bridges from the scope of this Agreement. PennDOT shall make any payment under this paragraph (b) upon the earlier of Financial Close for the next Package that will achieve Financial Close or termination of this Agreement.

22.4 Ramifications of Scope Reduction

- (a) If a Bridge is removed from the scope of this Agreement during the PDA Term and the PDA Entity can demonstrate that, as a result of such reduction, certain fixed cost elements of the D&C General Conditions Costs that were included in the D&C General Conditions Costs Percentage commitment made under the PDA Proposal cannot be maintained, PennDOT and the PDA Entity shall engage in an open-book process to negotiate an adjustment to the D&C General Conditions Cost Percentage in Good Faith.
- (b) If a Bridge is removed from the scope of this Agreement during the PDA Term and the PDA Entity can demonstrate that, as a result of such reduction, other elements of the PDA Proposal, including any PDA Proposal Commitments, cannot be maintained, PennDOT and the PDA Entity shall negotiate adjustments to such elements in Good Faith.

23. RECORDS AND AUDIT

23.1 Maintenance and Inspection of Records

- (a) The PDA Entity shall keep and maintain all of its Allowed Costs relating to its performance of PDA Work for the Project, including related Books and Records and copies of all original documents delivered to PennDOT during the PDA Term (including but not limited to the Allowed Costs Report required under Section 10.3), in accordance with the applicable provisions of this Agreement and in accordance with Good Industry Practice.
- (b) The PDA Entity shall make all of the information described in paragraph (a) available for inspection by PennDOT at all times during normal business hours, without charge. PennDOT may conduct any such inspection upon two Business Days' prior written notice, or unannounced and without prior notice where there is Good Faith suspicion of fraud or

criminal activity. When conducting any inspection, PennDOT may make copies, extract information and materials, and take notes.

- (c) The PDA Entity shall provide copies of the information described in paragraph (a) to PennDOT as and when reasonably requested by PennDOT.
- (d) The PDA Entity shall retain all of the information described in paragraph (a) for four years following the end of the PDA Term. If any provision of this Agreement or Law specifies any longer time period for retention of particular records, such time period will prevail.
- (e) Despite Section 23.1(d), all information described in paragraph (a) that relates to Disputes being processed or actions brought under the Dispute Resolution Procedures must be retained and made available until any later date that such Disputes and actions are finally resolved.

23.2 Audits

- (a) In addition to any other specific audit rights that PennDOT may have under this Agreement, PennDOT will have such rights to review and audit the PDA Entity, its Contractors, and their respective Books and Records as PennDOT deems necessary for the purposes of verifying compliance with this Agreement, Law, and Governmental Approvals as well as confirming the amount of any termination payment owed by PennDOT under this Agreement and the verification of Allowed Costs.
- (b) The PDA Entity represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with any audit by PennDOT, and shall use Reasonable Efforts to cause all Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with such audits.
- (c) The PDA Entity shall (and shall ensure that any Contractor will) include appropriate terms in each contract in order to provide PennDOT with access and audit rights in accordance with the terms of this Article 23 (Records and Audit).
- (d) Nothing in this Agreement shall in any way limit the constitutional and statutory powers, duties, and rights of elected Commonwealth officials, including the independent rights of the Pennsylvania Auditor General, in carrying out their legal authority. The PDA Entity understands and acknowledges that:
 - (i) the Pennsylvania Auditor General may conduct an audit or investigation of any entity receiving funds from the Commonwealth directly under this Agreement or indirectly through a Contract;
 - (ii) any acceptance of funds directly under this Agreement or indirectly through a contract acts as acceptance of the authority of the Pennsylvania Auditor General, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and
 - (iii) an entity that is the subject of an audit or investigation must provide the Pennsylvania Auditor General with access to any information such auditor considers relevant to the investigation or audit.

23.3 **Inquiries from the Commonwealth Legislature**

The PDA Entity shall support PennDOT in responding to any inquiries from the Pennsylvania legislature regarding the Project, including by providing PennDOT with any information and or PDA Entity personnel that PennDOT reasonably requires to respond timely to those inquiries.

24. **INTELLECTUAL PROPERTY**

24.1 **Proprietary Intellectual Property**

- (a) The PDA Entity shall deliver, or cause to be delivered, to PennDOT copies of all Proprietary Intellectual Property owned by or licensed to the PDA Entity that it uses in performing the PDA Work, excluding any pre-existing intellectual property of the PDA Entity used to generate any deliverable under this Agreement. All Proprietary Intellectual Property will be and will remain the exclusive property of the PDA Entity, notwithstanding any copies of the Proprietary Intellectual Property provided to PennDOT.
- (b) PennDOT and each PennDOT-Related Entity shall have and is hereby granted by the PDA Entity, 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 the PDA Entity. PennDOT's rights to exercise the foregoing license shall commence and endure only at the following times:
 - (i) from and after expiration or earlier termination of the Term, for any reason whatsoever;
 - (ii) during any time that PennDOT is exercising any step-in rights pursuant to Section 20.4;
 - (iii) during any time that a receiver is appointed for the PDA Entity, Major Team Member, or Contractor, or during any time that there is pending a voluntary or involuntary proceeding in bankruptcy in which the PDA Entity, or Major Team Member, or Contractor, is the debtor; or
 - (iv) during any time that the PDA Entity has been replaced.
- (c) Subject to the license and rights granted to PennDOT pursuant to this Article 24 (Intellectual Property), PennDOT will not at any time sell any Proprietary Intellectual Property of the PDA Entity 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 purpose except in connection with the Project.
- (d) All sublicenses shall be subject to paragraph (f) below. Nothing in this Project Agreement shall prohibit or limit either Party's use of information (i) previously known to it without obligation of confidence, (ii) independently developed by it, (iii) acquired by it from a third party that is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement.
- (e) PennDOT will:

- (i) not disclose any Proprietary Intellectual Property of the PDA Entity to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of PennDOT relating thereto;
 - (ii) if and to the extent permitted under Law, enter into a commercially reasonable confidentiality agreement, at the initiation of the PDA Entity, with respect to the licensed Proprietary Intellectual Property; and
 - (iii) include, or where applicable require such Commonwealth 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 the PDA Entity 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.
- (f) Notwithstanding any contrary provision of this Agreement, in no event shall PennDOT, any PennDOT-Related Entity, any of its Constituents or regional Governmental Entity be liable to the PDA Entity, any Affiliate of the PDA Entity, or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in paragraph (e) above if such breach is not the result of gross negligence or intentional misconduct or is required under the provisions of the RTKL or a court order or other legal requirement. The PDA Entity hereby irrevocably waives all claims to any such damages.
- (g) The PDA Entity 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.
- (h) With respect to any Proprietary Intellectual Property owned by a Person other than the PDA Entity, including any Affiliate, and other than PennDOT or a Governmental Entity acting as a contractor, the PDA Entity 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 the PDA Entity and PennDOT, 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 PennDOT or a Commonwealth or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 24.1.

24.2 PennDOT Intellectual Property

- (a) Except for Proprietary Intellectual Property, all Intellectual Property (“**PennDOT Intellectual Property**”) have been specially ordered and commissioned by PennDOT 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 PennDOT owns the copyright.

(b) **Obligation to Assign to PennDOT**

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 PennDOT is not the owner or author, the PDA Entity agrees to assign to PennDOT, or cause all Contractors to assign to PennDOT, if applicable, all rights, title and interest in all Intellectual Property, excluding Proprietary Intellectual Property, in such work product and related materials.

(c) **Creation**

Design Documents shall become PennDOT Intellectual Property upon preparation. All other submittals under Exhibit 6 (PDA Work Requirements) prepared or obtained by the PDA Entity or any PDA-Related Entity in connection with the performance of the PDA Entity's obligations under this Agreement shall become PennDOT Intellectual Property upon the PDA Entity's or any PDA-Related Entity's preparation or receipt thereof.

(d) **Restricted License; Restricted Use**

PennDOT hereby grants to the PDA Entity a revocable, non-exclusive, and, without PennDOT's prior written consent, non-transferable, non-sub-licensable, fully paid up license to use and implement, solely in connection with the performance of the PDA Work and for the PDA Term (including any period of the PDA Entity's performance of post-termination or post-expiration obligations), the PennDOT Intellectual Property; provided that the PDA Entity may sub-license any PennDOT Intellectual Property solely in connection with the performance of the PDA Work to any Contractor party to any Key Contract without PennDOT'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 PDA Term (whichever is shorter) and that such contract will include a clause stating that such Contractor cannot sub-license such PennDOT Intellectual Property without the prior written consent of the PDA Entity (which consent the PDA Entity shall not give unless it obtains the prior written consent of PennDOT). For the avoidance of doubt, any license granted pursuant to this Section 24.2(d) is revocable upon the Early Termination Date or the end of the PDA Term. If the PDA Entity or any PDA-Related Entity creates or develops any improvements, modifications, enhancements or derivative works created or developed by the PDA Entity or any PDA-Related Entity will be deemed to be PennDOT Intellectual Property under the terms of this Agreement.

(e) **Restoration**

The PDA Entity shall be responsible for any loss of or damage to the PennDOT Intellectual Property and any of the work-made-for-hire described above while it is in the possession or control of the PDA Entity or any PDA-Related Entity. Any such loss or damage shall be restored at the PDA Entity's expense.

(f) **Access**

During the PDA Term and the period of performance of any post-termination obligations, the PDA Entity 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 PennDOT seeking such access.

24.3 Escrowed Documents

(a) Generally

Prior to the Effective Date, the PDA Entity has delivered to PennDOT the Escrowed Documents. The Escrowed Documents will be held until the later to occur of: (a) 180 days have elapsed from termination of this Agreement; and (b) all Disputes and Claims regarding this Agreement have been settled.

(b) Availability for Review

Upon at least two Business Days' prior notice, the PDA Entity and PennDOT may jointly examine, through one or more designees, all or any part of the Escrowed Documents during regular business hours. The Party undertaking an examination need not have or state a specific reason to examine such material. PennDOT shall be entitled to review all or any part of the Escrowed Documents in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. PennDOT shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, without limiting PennDOT's obligations under the RTKL or by court order; provided, however, that copies of such documents will not be distributed to any third parties other than the attorneys and experts of PennDOT and any mediator or court considering a Dispute, and that all copies of such documents (other than those delivered to any mediator or court) will be either destroyed or returned to the depository (or to the PDA Entity if the Escrowed Documents have been returned to it pursuant to the terms of this Agreement) upon final resolution of the negotiations or Disputes.

(c) Intellectual Property Escrow

- (i) The PDA Entity acknowledges and agrees that PennDOT shall be entitled to access any software and Proprietary Intellectual Property pursuant to this Section 24.3(c):
 - (A) in the case of such Proprietary Intellectual Property owned by the PDA Entity, when (1) this Agreement is terminated for any reason, (2) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the PDA Entity occurs, (3) the PDA Entity is dissolved or liquidated, or (4) the PDA Entity 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, when this Agreement is terminated for any reason and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor 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 Section 24.1(b).
- (ii) Instead of delivering such software, Source Code, Source Code Documentation, and Proprietary Intellectual Property directly to PennDOT, the PDA Entity may

elect to deposit it into the Escrowed Documents, and PennDOT shall have such rights of access thereto as are set forth in this Section 24.3.

- (iii) PennDOT's rights with respect to Escrowed Documents shall survive expiration or earlier termination of this 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.

24.4 Further Assurance

The PDA Entity shall execute, and shall cause the PDA-Related Entities to execute, such further documents and to do such further acts as may be necessary or reasonably required by PennDOT to perfect, register, or enforce PennDOT's ownership or rights of any Proprietary Intellectual Property that is to be assigned or licensed to PennDOT under this Article 24 (Intellectual Property).

25. RIGHT TO KNOW LAW

25.1 The PDA Entity acknowledges that PennDOT is subject to and required to comply with the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, *et seq.* ("**RTKL**"); therefore, this Agreement and records of the Project may be the subject of requests for records under the RTKL.

25.2 Upon written notification from PennDOT that it requires the PDA Entity's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the PDA Entity's or a PDA-Related Entity's possession constituting, or alleged to constitute, a public record in accordance with the RTKL ("**Requested Information**"), the PDA Entity shall or shall cause such PDA-Related Entity to:

- (a) provide PennDOT, within ten (10) days after receipt of written notification, access to, and copies of, any document or information in the PDA Entity's or PDA-Related Entity's possession arising out of this Agreement that PennDOT reasonably believes is Requested Information and may be a public record under the RTKL; and
- (b) provide such other assistance as PennDOT may reasonably request in order to comply with the RTKL with respect to this Agreement.

25.3 If the PDA Entity or a PDA-Related Entity considers the Requested Information to include a request for a "**Trade Secret**" or "**Confidential Proprietary Information**" (as those terms are defined by the RTKL) or other information that the PDA Entity or a PDA-Related Entity considers exempt from production under the RTKL, the PDA Entity or the PDA-Related Entity must notify PennDOT and provide, within seven Days after receiving the written notification, a written statement executed by a representative of the PDA Entity or the PDA-Related Entity explaining why the requested material is exempt from public disclosure under the RTKL.

25.4 PennDOT will rely upon the written statement from the PDA Entity or the PDA-Related Entity in denying a RTKL request for the Requested Information unless PennDOT determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should PennDOT determine that the Requested Information is clearly not exempt from disclosure, the PDA Entity or the PDA-Related Entity shall provide the Requested Information within five Business Days after receipt of written notification of PennDOT's decision; provided that the PDA Entity or the PDA-

Related Entity shall be allowed to redact any Trade Secret or Confidential Proprietary Information in accordance with the RTKL.

- 25.5 If the PDA Entity or a PDA-Related Entity fails to provide the Requested Information within the time period required by this Article 25 (Right to Know Law), the PDA Entity shall indemnify and hold PennDOT harmless for any Losses that PennDOT may incur as a result of the PDA Entity's or the PDA-Related Entity's failure, including any statutory damages assessed against PennDOT.
- 25.6 PennDOT will reimburse the PDA Entity for any costs associated with complying with this Article 25 (Right to Know Law) only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- 25.7 The PDA Entity or the PDA-Related Entity may file a legal challenge to any PennDOT decision to release a record to the public with the Office of Open Records, or in the Commonwealth courts; however, the PDA Entity shall indemnify PennDOT for any legal expenses incurred by PennDOT as a result of such a challenge and shall hold PennDOT harmless for any Losses that PennDOT may incur as a result of the PDA Entity's failure, including any statutory damages assessed against PennDOT, regardless of the outcome of such legal challenge. The PDA-Related Entity shall also indemnify PennDOT for any legal expenses incurred by PennDOT as a result of any challenge by a PDA-Related Entity and shall hold PennDOT harmless for any Losses that PennDOT may incur as a result of the PDA-Related Entity's failure, including statutory damages assessed against PennDOT, regardless of the outcome of such legal challenge. As between the Parties, PennDOT agrees to waive all rights or remedies that may be available to it against the PDA Entity as a result of PennDOT's disclosure of Requested Information pursuant to the RTKL.
- 25.8 The PDA Entity's and PDA-Related Entity's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the PDA Entity or a PDA-Related Entity has Requested Information in its possession.

26. ASSIGNMENT AND TRANSFER; FUNDAMENTAL CHANGES

26.1 Assignment by the PDA Entity

The PDA Entity shall not assign, transfer, pledge, mortgage, or otherwise encumber any of its rights or obligations under this Agreement without the prior written consent of PennDOT.

26.2 Assignment by PennDOT

PennDOT may, upon the prior written notice to the PDA Entity, but without the PDA Entity's consent, transfer and assign all or any portion of its rights, title and interests in and to this Agreement, the Project, and the Sites, to any Governmental Entity that:

- (a) succeeds to the governmental powers and authority of PennDOT; and
- (b) has sources of funding to perform the payment obligations of PennDOT under this Agreement that are at least as adequate and secure as PennDOT's at the time of the assignment.

26.3 **Change of Organization or Name**

- (a) The PDA Entity shall not change the legal form of its organization without providing prior written notice to PennDOT.
- (b) If the PDA Entity changes its name, the PDA Entity shall promptly (and in any event within 10 Business Days after such change) provide PennDOT with written notice of such name change and appropriate supporting documentation.

27. **CHANGE IN OWNERSHIP OF PDA ENTITY**

27.1 **PennDOT Approval**

- (a) Within 30 Business Days after receiving a complete Notice of Proposed Change in Ownership, PennDOT shall notify the PDA Entity whether or not PennDOT approves of the proposed Change in Ownership and if any conditions will be imposed on the PDA Entity.
- (b) PennDOT may approve (and include any conditions to its approval) or withhold its approval to the proposed Change in Ownership under Section 27.1 in its absolute discretion.

27.2 **Costs**

The PDA Entity shall reimburse PennDOT for all reasonable out-of-pocket expenses (including reasonable and proper fees of consultants and legal counsel) incurred by PennDOT in connection with their review of any proposed Change in Ownership within 30 Days after receiving an invoice from PennDOT with respect to their respective costs.

27.3 **Restrictions on Change in Ownership**

- (a) The PDA Entity shall not voluntarily or involuntarily effect or allow any Change in Ownership unless the Change in Ownership has been approved in writing by PennDOT (in its absolute discretion), in accordance with Section 27.1, and complies with any conditions that may be imposed by PennDOT in connection with that approval.
- (b) Notwithstanding any other provision of this Agreement to the contrary, any Change in Ownership that does not change the percentage of the issued share capital or membership interests in the PDA Entity owned (directly or indirectly) by each Equity Member will not be subject to the approval by PennDOT under Section 27.1.

27.4 **Notifications of Proposed Changes in Ownership**

- (a) At least 60 days prior to the occurrence of any proposed Change in Ownership, the PDA Entity shall provide PennDOT with a detailed Notice of Proposed Change in Ownership and obtain PennDOT's approval, which approval shall be at the absolute discretion of PennDOT. PennDOT shall respond within 30 Business Days of receipt of the Notice of Proposed Change in Ownership.
- (b) Each Notice of Proposed Change in Ownership must provide any information that PennDOT may reasonably require in connection with its approval under Section 27.1.

- (c) For any proposed Change in Ownership, the PDA Entity shall provide to PennDOT, promptly upon request, all information and documentation as PennDOT may request as may reasonably relate to the proposed Change in Ownership or the new owner (or part owner).
- (d) After the Change in Ownership has been approved by PennDOT, the PDA Entity shall notify PennDOT in writing that a Change in Ownership has been completed no later than 10 Business Days after it has been completed.

28. DISPUTE RESOLUTION

28.1 Consultation and Initial Decision of Contract Manager

- (a) All Disputes shall follow the Dispute Resolution Procedures set forth in this Article 28 (Dispute Resolution).
- (b) The PDA Entity shall submit a Dispute to the Contract Manager within fifteen Days of the Dispute arising. Such submittal shall not constitute a claim for purposes of 62 Pa.C.S. § 1712.1.
- (c) The Contract Manager and the PDA Representative shall first consult in Good Faith in an attempt to promptly resolve the Dispute. Participation in Good Faith consultation shall not excuse a failure to comply with the time limits set out in Section 28.2 below.
- (d) As part of their Good Faith consultation, the Contract Manager and the PDA Representative may agree to confer with the Steering Committee to assist in resolving the Dispute.
- (e) If 30 Days after a Dispute is referred to the Contract Manager, or as extended upon agreement by the Parties in a term no greater than 90 Days, the Dispute is not resolved by the Contract Manager and the PDA Representative through the means set forth in subsections (b) through (d), then, the Contract Manager shall issue a written decision to the PDA Entity regarding the Dispute (“**Initial Decision**”) within 15 Business Days.
- (f) The Initial Decision will be provided to the PDA Entity by email, with a hard copy delivered by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This Initial Decision shall not constitute a final determination by the Contract Manager of PennDOT for purposes of 62 Pa.C.S. § 1712.1.

28.2 Appeal of Initial Decision

- (a) The PDA Entity may appeal an Initial Decision by submitting: (i) a written notice of appeal (“**Notice of Appeal**”) to PennDOT, with a copy to the Contract Manager; and (ii) a claim in relation to the Dispute with the Contract Manager pursuant to 62 Pa.C.S. § 1712.1(b) (a “**Chapter 17 Claim**”) within 15 Days after receiving notice of the Initial Decision. The Notice of Appeal and Chapter 17 Claim shall be filed within six months after the date the Dispute accrues.
- (b) If the PDA Entity does not file a Notice of Appeal and a Chapter 17 Claim within 15 Days after receiving the Initial Decision and within 6 months after the accrual date of the Dispute, the PDA Entity will be deemed to have accepted the Initial Decision and will have

irrevocably waived and released any Claim with respect to the matter that is the subject of the Dispute and any Notice of Appeal and Chapter 17 Claim filed after the 15 Day period will be dismissed.

- (c) A Notice of Appeal must include:
 - (i) an explanation of the Dispute, including relevant facts and reference to all relevant contract provisions;
 - (ii) all pertinent data and correspondence relating to the Dispute;
 - (iii) a copy of the Initial Decision; and
 - (iv) a simple, concise and direct statement of the basis of the appeal (including the amount of the Claim or relief requested and all supporting documentation).
- (d) Within 30 Days after receiving a Notice of Appeal, PennDOT may request that the PDA Entity produce additional material and information, including Books and Records or other tangible records or information, in support of the Notice of Appeal. Within 10 Days after receipt of such a request, the PDA Entity shall produce the additional material and information requested or identify grounds for not producing the information or documents.
- (e) The PDA Entity and the Contract Manager will be afforded an opportunity to be heard and to offer evidence in support of their respective positions regarding the Dispute. Within 45 Days after receiving a Notice of Appeal, or if Section 28.2(d) applies, within 10 Days after receiving all additional information requested under Section 28.2(d), PennDOT or the Department of State will determine and notify the PDA Entity and Contract Manager of the procedural rules (and timings) for any hearing and for written submissions (the “**Procedural Rules**”). The Procedural Rules shall provide for the last day of any hearings and receipt of last written submissions to be no later than 75 Days after the date of the filing of the Notice of Appeal.
- (f) If applicable, the hearing before PennDOT or the Department of State, shall be recorded and transcribed.
- (g) PennDOT or the Department of State will make a record of all matters relating to the appeal, including:
 - (i) the nature of the Dispute;
 - (ii) the Initial Decision;
 - (iii) all documentary evidence received by PennDOT;
 - (iv) the written transcript, if any, of a hearing;
 - (v) the final decision of PennDOT; and
 - (vi) any other documentation in the custody of PennDOT relevant to the appeal.
- (h) PennDOT or the Department of State will issue a written decision to the PDA Entity within 120 Days from the Notice of Appeal. This written decision shall constitute a “**Final Determination**” pursuant to 62 Pa.C.S. § 1712.1(d).

- (i) The deadlines as stated in this Section 28.2 or Section 28.4 may be mutually extended in writing with the consent of the Contract Manager for PennDOT and the PDA Representative; any such extension shall also extend the 120-day contract claim deadline under 62 Pa.C.S. § 1712.1(d).

28.3 **Specific Performance and Injunctive Relief**

To the extent provided by Law, a Party may seek specific performance of any obligation under this Agreement or injunctive relief.

28.4 **Right to Appeal**

The Final Determination will be deemed the final decision of PennDOT and is a prerequisite to any petition for judicial review filed in court of any Dispute by the PDA Entity against PennDOT. Within 15 days of the mailing date of a Final Determination partially or fully denying the Claim underlying the subject Dispute, or within 135 days of the submittal of the Notice of Appeal, unless such date has been extended pursuant to Section 28.2(h), whichever occurs first, the PDA Entity may file a statement of claim with the Commonwealth Board of Claims.

28.5 **Continuance of Work During Dispute**

During the course of the dispute resolution process, the PDA Entity shall continue to perform Work (including any Work that is the subject of the Dispute) in a diligent manner and without delay or otherwise conform to PennDOT's decision or order, and will be governed by all applicable provisions of this Agreement.

28.6 **Legal Fees**

Each Party shall bear its own attorney's fees and costs incurred in connection with any Dispute.

29. **LIABILITIES**

29.1 **Consequential Losses**

- (a) Except as otherwise expressly provided in this Agreement, no Party will have the right to any Losses, including specifically punitive, special, and incidental damages, against another other Party for a breach of this Agreement, in tort, or on any other basis whatsoever, to the extent that any Losses claimed by a Party is for Indirect Losses.
- (b) The limitation in Section 29.1(a) will not apply to or limit a Party's right to recover from another Party:
 - (i) any Losses (excluding defense costs) to the extent that they are either covered by the proceeds of insurance required to be carried by the relevant Party pursuant to this Agreement or are required to be insured against under Article 19 (Insurance), or to the extent the PDA Entity is deemed to have self-insured the Loss under Article 19 (Insurance);
 - (ii) Losses, including criminal penalties, arising out of fraud, criminal conduct, reckless or willful misconduct, gross negligence, or bad faith on the part of the relevant Party;
 - (iii) amounts payable, reimbursable, or otherwise due by the PDA Entity or a PDA-Related Entity to PennDOT under an indemnity in this Agreement; or

- (iv) interest, late charges, fees, transaction fees and charges, penalties, and similar charges that this Agreement expressly states are due from the relevant Party.
- (c) The limitation in Section 29.1(a) will also not apply to or limit PennDOT's right to recover from the PDA Entity, any Losses, claims (including claims of any Indemnified Parties), and amounts arising out of, relating to, or resulting from any PDA-Related Entity's gross negligence, reckless or willful misconduct, violation of Law and other illegal activities (or inaction), violation or breach of Governmental Approval or contract, criminal conduct, bad faith, intentional misconduct (which excludes intentional PDA Entity Default), arbitrary or capricious acts, or fraud under or relating to this Agreement. For purposes of this Agreement, "violation or breach of contract" as relates to this Agreement means that the PDA Entity may not assert that the PennDOT's breach of contract damages are Indirect Losses.

29.2 **No Double Recovery**

Notwithstanding any other provision of this Agreement to the contrary, no Party will be entitled to claim or receive all or any portion of any compensation or amount of any Loss from the other Party more than once.

30. **GOVERNING LAW AND JURISDICTION**

30.1 **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth.

30.2 **Submission to Jurisdiction**

The PDA Entity consents to the jurisdiction of any court in the Commonwealth of Pennsylvania, waiving any Claim or defense that such forum is not convenient or proper. The PDA Entity agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Law.

30.3 **Waiver of Jury Trial**

Without in any way abrogating the Dispute Resolution Procedures under Article 28 (Dispute Resolution), when judicial review is allowed under such Dispute Resolution Procedures, the Parties knowingly, irrevocably, voluntarily, and intentionally waive any rights that any may have to a trial by jury with respect to any Claim, counterclaim, or defense based on this Agreement, or arising out of, under, or in any connection with this Agreement, or with respect to any course of conduct, course of dealing, statements (whether oral or written), or actions of any party hereto relating to this Agreement. This provision is a material inducement for all Parties entering into this Agreement. This provision applies only to suits between the Parties arising out of or related to this Agreement and does not apply to third-party claims or suits by or on behalf of the Parties. Each of the Parties (a) certifies that no representative, agent, attorney, or any other Person has represented, expressly or otherwise, that such other Person would not, in the event of any suit, action, or proceedings relating to this Agreement, seek to enforce the foregoing waiver and (b) acknowledge that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 30.3.

31. OTHER

31.1 Amendments

This Agreement can only be amended or replaced by a written instrument duly executed by the Parties.

31.2 Waiver

- (a) No waiver of any obligation, term, condition, or other provision of this Agreement will be valid unless in writing and executed by the waiving Party.
- (b) No Party's waiver of any breach or failure to enforce any of the obligations, terms, conditions, or other provisions of this Agreement at any time will in any way limit or waive that Party's right to subsequently enforce, or compel strict compliance with every obligation, term, condition, or other provision of this Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of any such waiver).
- (c) If the Parties make and implement any interpretation of this Agreement without documenting such interpretation by an instrument in writing executed by all Parties, such interpretation and implementation will not be binding in the event of any future Disputes.

31.3 Independent Contractor; No Agent, Joint Venture, or Partnership

- (a) The PDA Entity is an independent contractor, and nothing contained in this Agreement will be construed as constituting any relationship with PennDOT other than that of developer of the Project and independent contractor.
- (b) The Parties agree that:
 - (i) nothing in this Agreement is intended or will be construed to create any partnership, joint venture, agency, landlord-tenant, lessor-lessee of real property, optionor-optionee, vendor-purchaser, mortgagor-mortgagee, or similar relationship between PennDOT and the PDA Entity; and
 - (ii) in no event will any Party take a position in any tax return, insurance application or questionnaire, financial statement, financial report, regulatory filing, securities filing, loan document, or other writing of any kind that is contrary to the independent contractor relationship that exists between the Parties.
- (c) While the term "public-private partnership" may be used to refer to contractual relationships of the type created by this Agreement, the Parties do not express any intention to form or hold themselves out in law or in practice as a partnership, joint venture, or similar relationship, to share net profits or net losses, or to give PennDOT control or joint control over the PDA Entity's financial decisions or discretionary actions concerning the Project and the PDA Work.
- (d) In no event will the relationship between PennDOT and the PDA Entity be construed as creating any relationship whatsoever between PennDOT and the PDA Entity's employees.
- (e) Neither the PDA Entity nor any of its employees is or shall be deemed to be an employee of PennDOT.

- (f) Except as otherwise expressly provided in this Agreement, the PDA Entity 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 the PDA Entity or any Contractor hires to perform or assist in performing the PDA Work.

31.4 **No Personal Liability**

No Constituent of any PennDOT-Related Entity will be personally liable under any provision of this Agreement, or because of the execution or attempted execution of this Agreement, or because of any breach of this Agreement.

31.5 **Taxes**

The PDA Entity is solely responsible for the payment of taxes accrued or arising out of the performance of its obligations under this Agreement.

31.6 **Successors and Assigns**

This Agreement is binding upon and will inure to the benefit of PennDOT and the PDA Entity and their respective permitted successors and assigns.

31.7 **Survival**

All provisions of this Agreement which by their inherent character should survive expiration or early termination of this Agreement, will survive the expiration or early termination of this Agreement, including Article 6 (Representations and Warranties); Article 18 (Indemnity) and any other indemnities in this Agreement; the express obligations of the Parties following the date of termination; any obligations to pay amounts under this Agreement; Article 23 (Records and Audit); Article 24 (Intellectual Property); Article 25 (Right to Know Law); Article 28 (Dispute Resolution); and this Article 31 (Other).

31.8 **Limitation on 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 toward, any Person not a party to this Agreement, except rights expressly contained in this Agreement.

31.9 **Notices and Communications**

- (a) All notices under this Agreement must 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 email communication followed by a hard copy.
- (b) Notices under Section 31.9(a) shall be sent to the following addresses (or to such other address as may from time to time be specified in writing by such Person without requiring an amendment of this Agreement):

(i) If to the PDA Entity:

Bridging Pennsylvania Partners LLC
Attn: Sarah Schick, Authorized Representative
125 West 55th Street,
New York, NY 10019
Email: SARAH.SCHICK@Macquarie.com and
maccaplegalamericas@macquarie.com

(ii) If to PennDOT:

Michael Bonini, Director of Public-Private Transportation Partnerships Office
Pennsylvania Department of Transportation
400 North Street - 6th Floor
Harrisburg, PA 17120
Email: RA-PDP3MAJORBRIDGES@pa.gov

With a copy to:

P. Oliver Kerwin, Acting Executive Deputy Chief Counsel
Governor's Office of General Counsel
Pennsylvania Department of Transportation
Office of Chief Counsel
400 North Street | P.O. Box 8212 | Harrisburg, PA 17105-8212
Email: pkerwin@pa.gov

(c) Any notice sent personally will be deemed delivered upon receipt, if sent by mail or courier service will be deemed delivered on the date of receipt or on the date receipt at the appropriate address is refused, as shown on the records of the US Postal Service, courier service or other Person making the delivery, and if sent by email communication will be deemed delivered on the date of receipt as shown on the received email transmission (provided the hard copy is also delivered under [Section 31.9\(a\)](#)). All notices (including by email communication) delivered after **4:00 p.m. Eastern Time** will be deemed delivered on the first Business Day following delivery.

31.10 Integration of this Agreement

This Agreement (including all Exhibits) constitute a single, integrated agreement whose terms are interdependent and non-divisible, such that, among other things, no part of this Agreement could be separated from any other part for the purposes of assumption or rejection under §365 of Title 11 of the United States Bankruptcy Code.

31.11 Entire Agreement

This Agreement, and as pertains to certain matters hereunder each executed Project Agreement, contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to their subject matter hereof.

31.12 Severability

- (a) If any Article, Section, Exhibit, schedule, form, appendix, provision, or any part of any of the foregoing, in this Agreement is ruled invalid (including due to a Change in Law) by a court having proper jurisdiction, the Parties shall:
 - (i) promptly (and in any event within 10 Business Days) after such ruling, meet and negotiate a substitute for such Article, Section, Exhibit, schedule, form, appendix, provision, or part, which will, to the greatest extent legally permissible, effect the original intent of the Parties, including any adjustment to PennDOT's compensation to the PDA Entity's account for any change in the PDA Work resulting from such invalidated portion; and
 - (ii) if allowable, necessary or desirable, apply to the court or other decision maker which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.
- (b) The invalidity or unenforceability of any Article, Section, Exhibit, schedule, form, appendix, provision, or any part of any of the foregoing, in this Agreement will not affect the validity or enforceability of the balance of this Agreement, which will be construed and enforced as if this Agreement did not contain such invalid or unenforceable Article, Section, Exhibit, schedule, form, appendix, provision, or any part of any of the foregoing, in this Agreement.

31.13 Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The delivery of an executed counterpart of this Agreement 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 of this Agreement to the other no later than 30 days following the Effective Date and the A&R Effective Date.

31.14 Interpretation

- (a) In this Agreement, unless otherwise stated:
 - (i) headings are for convenience only and do not affect interpretation;
 - (ii) a reference to any agreement, instrument, or other document is to such agreement, instrument, or other document as amended or supplemented;
 - (iii) a reference to this Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments, or other documents attached to or otherwise expressly incorporated in this Agreement or such other agreement;
 - (iv) a reference to an Article, Section number, Exhibit, schedule, form, or appendix is to the Article, Section number, Exhibit, schedule, form, or appendix contained in or attached to this Agreement;
 - (v) a reference to a Person includes the Person's permitted successors and assigns;

- (vi) the words “including”, “includes”, and “include” mean “including, without limitation”, “includes, without limitation”, and “include, without limitation”, respectively;
 - (vii) an obligation to do something “promptly” means an obligation to do so as soon as the circumstances permit, avoiding any unreasonable or unnecessary delay; and
 - (viii) a term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement.
- (b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it, or because that Party relies on a provision of this Agreement to protect itself.
 - (c) The Parties acknowledge and agree that each Party has had the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in, or Dispute regarding, the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of that Party preparing this Agreement or the relevant provision.

31.15 **Payments, Appropriations and Sources of Funds**

- (a) Except as otherwise expressly provided in this Agreement, PennDOT shall make reasonable efforts within 45 Days following termination of this Agreement to make payments to the PDA Entity of any undisputed, unreimbursed amounts that are due and payable to the PDA Entity under this Agreement, subject to paragraph (c).
- (b) Except as otherwise expressly provided in this Agreement, no Party is required to pay amounts due that are being contested in Good Faith in accordance with the Dispute Resolution Procedures in Article 28 (Dispute Resolution).
- (c) With respect to sources of funds for termination payments under this Agreement which may be subject to appropriations, PennDOT hereby covenants and agrees to seek appropriation approval of funds sufficient to pay any amounts due and owing upon termination of this Agreement, including exhausting all available reviews and appeals and doing all other things lawfully within its power to do if such amounts are not appropriated.
- (d) The obligation of PennDOT to pay all amounts due and owing or scheduled to become due and owing from PennDOT to PDA Entity hereunder is a contractual commitment of the Commonwealth or any political subdivision thereof, within the meaning or application of any constitutional provision or limitation, and does not constitute a debt, pledge of the faith, credit, or taxing power, or any other pledge of the Commonwealth or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. PennDOT has no taxing power. The PDA Entity has no taxing power, nor any other right to have taxes levied or to compel appropriations by the General Assembly of the Commonwealth (beyond that in the P3 Law) for any payment of any amounts due and owing or scheduled to become due and owing from PennDOT to the PDA Entity hereunder.

- (e) Except with respect to those sources of funds, if any, that are available for payments required to be made by PennDOT hereunder that as a matter of law are not subject to appropriations, the Parties acknowledge that:
 - (i) the source of funds for payment of all amounts due and owing or scheduled to become due and owing from PennDOT to the PDA Entity hereunder is subject to the availability of funds appropriated to PennDOT by the General Assembly of the Commonwealth and approved by the Governor of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth); and
 - (ii) PennDOT's obligations to provide funding under this Agreement are subject to the appropriation of funds for such purposes by the General Assembly of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth).
- (f) PennDOT shall notify the PDA Entity in writing promptly upon becoming aware of any failure of the Governor or the General Assembly of the Commonwealth to approve such appropriation.
- (g) Notwithstanding anything to the contrary set out herein, the obligations of PennDOT under this Agreement will survive any failure to appropriate sufficient amounts to pay the amounts due and owing or scheduled to become due and owing from PennDOT to the PDA Entity under this Agreement and any expiration or termination of this Agreement and such obligations shall not be impaired, reduced or otherwise affected by any such failure.

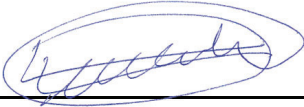
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[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

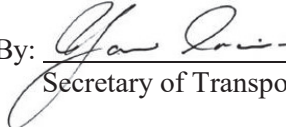
BRIDGING PENNSYLVANIA PARTNERS LLC

By: 
Name: Sarah Schick
Title: Project Director

By: 
Name: Lucas Lahitou
Title: Deputy Project Director

Date: September 29, 2022


COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION


By: 
Secretary of Transportation


Date: 10/6/22

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

APPROVED AS TO FORM AND LEGALITY

By:  10/6/2022
for PennDOT Chief Counsel *nmw* 10/6/2022

By:  2022.10.26 10:51:10
-04'00'
Deputy General Counsel
Office of General Counsel

By:  Digitally signed by David E. Stover,
Senior Deputy Attorney General
Date: 2022.11.23 12:33:15 -05'00'
Deputy Attorney General
Office of Attorney General

FUNDS COMMITMENT DOCUMENT

NO. _____

By: **Rick Zettlemoyer** Digitally signed by Rick Zettlemoyer
Date: 2022.11.29 08:40:23 -05'00'
for Comptroller Operations

EXHIBIT 1

DEFINITIONS

Capitalized terms and acronyms used in this Agreement, including the Exhibits attached hereto, have the meanings given in this Exhibit 1 (Definitions).

“**A&R Effective Date**” means the date provided in the Preamble to this Agreement.

“**A&R PDA**” or “**Agreement**” is defined in the Preamble to this Agreement (and, for avoidance of doubt, includes all its Exhibits).

“**Acceptable Credit Rating**” is defined in Section 5.1(a)(ii).

“**ACORD**” means the Association for Cooperative Operations and Research Development.

“**Administering Employees**” means employees of the PDA Entity whose work related to the Project has not been completed and that are involved in the administration of federal or federal or Commonwealth funds.

“**Affected Third-Party Plan**” means the list prepared by the PDA Entity pursuant to Section 2.7 of Exhibit 6 (PDA Work Requirements).

“**Affiliate**” means,

- (a) any Equity Member;
- (b) any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, PDA Entity or any of its shareholders, members, partners or joint venture members;
- (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) PDA Entity, (ii) any Equity Member or (iii) any Affiliate of the PDA Entity or Equity Member under clause (b) of this definition; and
- (d) any Person that, directly or indirectly, through one or more intermediaries, has assets that are Advised or Managed professionally for investment or asset management purposes on behalf of the investors, participants and/or equity holders in such Person by any other Person referred to in clause (b) of this definition, and where (i) “Managed” means providing a Person with substantially the same services as would be provided by an investment or asset manager pursuant to a customary investment or asset management agreement or similar arrangement; and (ii) “Advised” means providing a Person with advice in relation to the investments of that Person or management of the assets of that Person but not making decisions to implement that advice, such advice being substantially the same as the advisory part of the services which would be provided by an investment manager or asset manager to the Person (and which need not include advice concerning the initial decision to invest) and effectively forms an integral part of the structure.

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. A Person shall be deemed

to be controlled by another Person even if a third-party exercises similar control in respect of the initial Person.

“**Allowed Costs**” means in respect of a Package, the PDA Entity’s documented reasonable internal direct costs and third-party direct costs incurred in performing the PDA Work for that Package prior to Commercial Close of that Package that are permitted as Allowed Costs under Exhibit 12 (Allowed Costs).

“**Allowed Costs Report**” has the meaning given to that term in Section 10.3(a).

“**Alternative Project Delivery**” means delivery under other than traditional design-bid-build delivery, including delivery where project design and construction are integrated. For purposes of this Agreement, the term “Alternative Project Delivery” shall mean delivery that includes private financing and long-term O&M component.

“**Approvals**” means any approval to be obtained by the PDA Entity or the Development Entity from PennDOT or any stakeholder to perform the PDA Work and PA Work, without any limitations to the PDA Entity or Development Entity responsibilities or liabilities.

“**Assumptions Book**” means the data book provided by the PDA Entity under Section 1.6 of Exhibit 7 (Package Proposal Requirements).

“**ASTA**” means the scheduling and tracking software to be used in accordance with Exhibit 6 (PDA Work Requirements).

“**Bank Debt Financing**” has the meaning given to that term in Section 1.2 of Exhibit 7 (Package Proposal Requirements).

“**Baseline PDA Work Schedule**” means the schedule governing the PDA Entity’s progress in accordance with Exhibit 6 (PDA Work Requirements).

“**Baseline Project Schedule**” has the meaning given to that term in Exhibit 8 (Project Agreement Term Sheet).

“**Bi-Weekly Progress Report**” means the report submitted under Section 2.5.3 of Exhibit 6 (PDA Work Requirements).

“**Board of Certified Safety Professionals**” means the organization described at <https://www.bcspp.org/>.

“**Bond Financing**” has the meaning given to that term in Section 1.2 of Exhibit 7 (Package Proposal Requirements).

“**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 PDA-Related Entity or Affiliate relating to the Project, including (a) all pre-development, design and construction documents, and all operations and maintenance documents (including Submittals, Contracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders), (b) income statements, balance sheets, statements of cash flow and changes in financial position, capital expenditures and budgeted maintenance results relating to the Project, (c) 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 PDA-Related Entity or any of its or their Contractors in connection with the Project, (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 this Agreement, (e) any other “Books and Records” or words of similar effect as specifically required or identified under any Law or Governmental Approval, and (f) any of the foregoing that disclose or embody Intellectual Property. For purposes of the requirements of this Agreement to maintain Books and Records, the term “Books and Records” includes documents or information that are subject to the attorney-client privilege, but for the purposes of the requirements under this Agreement to provide access to Books and Records, the term specifically excludes Books and Records that are subject to attorney-client privilege, unless and until such privilege is waived or access is granted or disclosure required pursuant to Law.

“**Bridge**” means any one, or a specific one, of the nine sites identified below:

- (a) I-81 Susquehanna
- (b) I-80 Nescopeck Creek Bridges
- (c) I-78 Lenhartsville Bridge Replacement
- (d) I-80 over Lehigh River Bridge
- (e) I-95 Girard Point Bridge Improvement
- (f) I-83 South Bridge
- (g) I-80 Canoe Creek Bridges
- (h) I-80 North Fork Bridges
- (i) I-79 Widening, Bridges and Bridgeville Interchange Reconfiguration.

“**Bridges**” means more than one Bridge.

“**BST**” means boring sampling and testing.

“**Build America Bureau**” means the organization described at <https://www.transportation.gov/buildamerica/>.

“**Business Day**” means any day that is not a Saturday, a Sunday, a Commonwealth public holiday, or a federal public holiday.

“**Buy America**” means 23 C.F.R. § 635.410.

“**CFR**” means the Code of Federal Regulations.

“**Change in Law**” means, in either case, when legally binding on the PDA Entity:

- (a) the adoption of any Law of (i) the Commonwealth (or political subdivision), or (ii) 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 PennDOT, 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 PennDOT (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 Commonwealth (or political subdivision) or such local government (or political subdivision and applicable to Department) in effect on the Setting Date, or

- (b) any change, modification, amendment, or alteration to, repeal or revocation (in whole or in part), or change to judicial interpretation of any Law of (i) the Commonwealth (or political subdivision), or (ii) a local government or political subdivision meeting the additional criteria set forth in clause (a)(ii)(A) or (a)(ii)(B) of this definition, after the Setting Date, in each case that is materially inconsistent with the Laws of the Commonwealth (or political subdivision) or such local government (or political subdivision and applicable to Department) in effect on the Setting Date;

excluding, however,

- (i) any new or changed Law of the Commonwealth or a local government (or political subdivision of either) that also constitutes or causes (A) a change in or new Project Standards related to Utility Adjustments, or (B) any Change in Project Standards (unless such Change in Project Standards is required due to a Change in Law);
- (ii) any new or changed Law of the Commonwealth or a local government (or political subdivision of either) pending, passed or adopted but not yet effective as of the Setting Date;
- (iii) any change to Buy America requirements; and
- (iv) any new or changed tax Laws of the Commonwealth or a local government (or political subdivision of either) that constitutes or causes a change in, or new, tax assessed against any PDA-Related Entity or any of their Constituents, results in the levy of any ad valorem property taxes on the PDA Entity's Interest, or otherwise.

“Change in Ownership” means:

- (a) any sale, transfer, assignment, conveyance, or disposal of any legal, beneficial, or equitable interest in any or all of the shares or membership interests in the PDA Entity;
- (b) any change in the direct or indirect control over:
 - (i) the voting rights conferred on the shares or membership interests of the PDA Entity;
 - (ii) the right to appoint or remove directors of the PDA Entity;
 - (iii) the right to receive dividends or distributions of the PDA Entity;
 - (iv) the direction or control of the management of the PDA Entity or the Project; or

- (c) any other arrangements that have or may have the same effect as paragraph (a) or paragraph (b) of this definition.

Notwithstanding the foregoing, the following shall not constitute a Change in Ownership:

- (i) a change in possession of the power to direct or control the management of the PDA Entity or a material aspect of its business due to a bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;
- (ii) a change in possession of the power to direct or control the management of the PDA Entity or a material aspect of its business due to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of the PDA Entity, (but not if the PDA Entity is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction a Prohibited Person;
- (iii) an upstream reorganization or transfer of direct or indirect interests in the PDA Entity 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 the PDA Entity;
- (iv) a transfer of interests to or between managed funds or accounts that are under common ownership or control other than a change in the management or control of a fund that manages or controls the PDA Entity;
- (v) the exercise of minority veto or voting rights (whether provided by Law, by the PDA Entity's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the PDA Entity, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, PennDOT has received copies of such agreements; or
- (vi) a transfer of interests to or between Affiliates, 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 the PDA Entity.

For purposes of this definition only, a Person shall be deemed to own shares or membership interests in another Person if such Person owns the legal, beneficial, and equitable interest in their relevant shares or membership interest of the other Person.

Notwithstanding the foregoing, any Change in Ownership that does not change the percentage of the issued share capital or membership interests in the PDA Entity owned (directly or indirectly) by each Equity Member will not be deemed a "Change of Ownership" for purposes of this Agreement.

"Claim" means any and all claims, disputes, demands, suits, actions, or legal or administrative proceedings asserted, initiated or brought under or relating to this Agreement or a particular interpretation of the terms of this Agreement.

"Commercial Close" means the date that the applicable Project Agreement is executed by all of the parties thereto and approved as to form by the Commonwealth.

“Committed Investment” means for any Package:

- (a) Any form of direct investment of good and immediately available funds by Package Equity Members, including the purchase of equity shares in and/or the provision of subordinate debt to a Development Entity; or
- (b) An irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, in good and immediately available funds, by a date which is no later than the Final Acceptance Date, coupled with an on-demand letter of credit issued by or for the account of a Package Equity Member naming the Development Entity as beneficiary, satisfying the requirements of the Project Agreement.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Company Information Summary” means Annex A to Exhibit 7 (Package Proposal Requirements).

“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 individuals only), partners, employees, agents, representatives, consultants, attorneys, contractors, successors, and assigns.

“Construction Health and Safety Technician” means the Person identified in Exhibit 6 (PDA Work Requirements).

“Construction Manager” means the Person responsible for Design Work and construction Work as defined in the Project Agreement.

“Construction Period” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“Construction Quality Control Manager” or **“CQCM”** means the Person responsible for quality assurance of Project construction as identified in Exhibit 6 (PDA Work Requirements).

“Contract Amount” has the meaning set forth under Exhibit 6 (PDA Work Requirements).

“Contract Manager” has the meaning given to the term in Section 7.1(a), and the initial Contract Manager is the individual identified as such as Exhibit 3 (Initial Designation of Representatives).

“Contractor” means any Person with whom the PDA Entity has entered into any contract to perform any part of the PDA Work or provide any services, materials, equipment, hardware or supplies for any part of the Project on behalf of the PDA Entity, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The Lead Engineering Firm, Lead Construction Contractor, and Lead Maintenance Contractor are each a “Contractor”.

“Contractor Integrity Provisions” means Part N of Exhibit 13 (Federal and State Requirements).

“Contractor Responsibility Provisions” means Part M of Exhibit 13 (Federal and State Requirements).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Controls Manager” means the Person responsible for Project controls as set forth under Section 2.1 of Exhibit 6 (PDA Work Requirements).

“CPI-U” means CPI for All Urban Consumers (BLS Series ID CUUR0000SA0) as published by the Bureau of Labor Statistics using a reference year of 1982-84 that equals 100.0 or, if such index in its present form becomes unavailable, such similar index as may be agreed by the Parties, acting reasonably. If such index is revised so that the base year differs from that set forth above, the inflation index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

“D&C” means design and construction.

“D&C Costing Model” means the model described in Section 12 of Exhibit 6 (PDA Work Requirements).

“D&C Costs” means the design and construction cost included in each Package Proposal, including right-of-way costs.

“D&C General Conditions Cost Percentage” means the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs, D&C Markup Costs, and any mutually agreed D&C Work cost contingencies) for each Package on account of D&C General Conditions Costs in the D&C Costing Model required under Section 12 of Exhibit 6 (PDA Work Requirements), which is identified in Attachment 1 (*Relevant Proposal Values*) to this PDA.

“D&C General Conditions Costs” means direct project overhead costs, incurred on the contract for supervision and administration of the overall contract. For the avoidance of doubt, D&C General Conditions Costs shall not include contingencies and shall include the following items:

- (a) bonds, all types;
- (b) non-payroll insurance;
- (c) licenses, permits, and fees;
- (d) staffing including, but not limited to, oversight, supervision, administration, management, and safety;
- (e) site security;
- (f) subsistence (covers any expenses for staff outside of the travel, lodging, relocation, per diem);
- (g) travel;
- (h) lodging;
- (i) relocation/housing expenses;
- (j) per diem;
- (k) vehicles for project oversight including, but not limited to, registrations, fuel, maintenance, and insurance;
- (l) technology and communications;

- (m) project safety expense;
- (n) temporary facilities including, but not limited to, rent, security and access control, utilities, office equipment, office expenses, furniture, insurance, and taxes;
- (o) temporary staging areas, fuel depots, and storage yards; and
- (p) miscellaneous including certifications for staff required for the work, and incidentals.

For the avoidance of doubt, D&C General Conditions Costs exclude day-to-day Development Entity overhead expenses (i.e. SPV costs). Development Entity overhead or SPV costs prior to the Final Acceptance Date will be in addition to the D&C General Conditions Costs.

“**D&C Markup Costs**” means general and administrative indirect overhead costs and profit applied to self-performed and subcontracted D&C Work for each Package. D&C Markup Costs shall include all markups applied to all D&C Work cost categories, including labor, equipment, materials, and subcontract costs.

“**D&C Markup Percentage**” means the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs, D&C Markup Costs, and any mutually agreed D&C Work cost contingencies) for each Package on account of D&C Markup Costs in the D&C Costing Model required under Section 12 of Exhibit 6 (PDA Work Requirements), which is identified in Attachment 1 (Relevant Proposal Values) to this PDA.

“**D&C Period**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**D&C Work**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**Davis Bacon Act**” has the meaning set forth in Section 15.9(a).

“**Day**” or “**day**” means a calendar day, except when used in the defined term “**Business Day**”.

“**DBE**” or “**Disadvantaged Business Enterprise**” or “**DBE Firm**” means, in accordance with 49 CFR Part 26, a small for-profit business concern that is listed at <https://paucp.dbesystem.com/> and certified by the Pennsylvania Unified Certification Program (“PAUCP”) as having satisfied the DBE certification requirements.

“**DBE Obligation**” means non-discrimination and use of certified DBEs in contracting per 49 CFR Part 26.

“**DBE Reporting Forms**” means Form EO-402, Form EO-354 and Form EO-354OS.

“**DBE Submittal Forms**” means Form EO-380 for federal construction projects and Form EO-385 for federally-funded service agreements.

“**DBE Uniform Report**” means the reports required by FHWA setting forth DBE commitments, awards and payments for the Project.

“**DBFM**” is defined in paragraph (G) of the Recitals.

“**DBFM Key Personnel**” means the individuals contemplated under Section 2.1.2.1 of Exhibit 6 (PDA Work Requirements).

“DBFM Required Personnel” means the individuals contemplated under Section 2.1.2.2 of Exhibit 6 (PDA Work Requirements).

“DCP” means dynamic cone penetrometer.

“Debarment Regulations” means:

- (a) Federal Executive Order no. 12549 (February 18, 1986);
- (b) Federal Executive Order no. 12689 (August 16, 1989);
- (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103 -355, 108 Stat. 3327);
- (d) 2 CFR Part 180 “OMG Guidelines to Agencies On Government-wide Debarment and Suspension (Nonprocurement)”;
- (e) 62 Pa.C.S § 531;
- (f) 67 Pa.Code § 457.13;
- (g) 48 CFR Subparts 9.4;
- (h) Executive Order 12549; and
- (i) DOT Order 4200.5G.

“DEP” means either the United States or the Pennsylvania Department of Environmental Protection, as the case may be.

“Department,” “agency,” or “department or agency entering into this transaction,” shall be construed to mean PennDOT, except where a different department or agency is specified.

“Design Documents” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“Design Field View Submission” means the submission identified in Exhibit 6 (PDA Work Requirements) and DM-4.

“Design Lead” means the entity responsible for the design scope as set forth in Exhibit 6 (PDA Work Requirements) and DM-4.

“Design Quality Management Plan” or “DQMP” means the plan described in Section 2.8 of Exhibit 6 (PDA Work Requirements).

“Design Quality Manager” means the Person responsible for the quality of the overall Project design as set forth under Exhibit 6 (PDA Work Requirements).

“Design Work” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“Design-Build Project Manager” means the Person responsible for management of the design and construction of the Project (with primary responsibility for Project permitting and schedule).

“Development Entity” means the entity that enters into a Project Agreement with PennDOT, whose members, stockholders, and/or partners are Equity Members and Affiliates of the PDA Entity.

“Development Entity Default” means a default by a Development Entity under a Project Agreement that:

- (a) occurs during the term of the applicable Project Agreement; and
- (b) gives PennDOT a right to terminate the Project Agreement if not remedied within any applicable cure period.

“Development Entity-Related Entity” means each of the following:

- (a) Constituents of the Development Entity; and
- (b) Affiliates of the Development Entity.

“Dispute” means any dispute between PennDOT and the PDA Entity concerning their respective rights and obligations under this Agreement, including with respect to any Claim, alleged breach, or failure to perform, and any remedy.

“Dispute Resolution Procedures” means the procedures for resolving disputes in Article 28 (Dispute Resolution).

“Distributions” means, whether in cash or in kind, any:

- (a) dividend or other distribution with respect to share capital;
- (b) reduction of capital, redemption, or purchase of shares or any other reorganization or variation to share capital;
- (c) payments made by the Development Entity under the Package Equity Member Funding Agreement (whether of principal, interest, breakage costs, or otherwise);
- (d) payment, loan, contractual arrangement, or transfer of assets or rights directly to the extent that, in each case, it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
- (e) receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms; or
- (f) the early release or cancellation of any contingent debt or equity funding liabilities of the Development Entity, the amount of such release or cancellation being deemed a Distribution for the purpose of calculating any refinancing gain.

“District” means a PennDOT district.

“Dollars” means U.S. dollars.

“DOT” means the United States Department of Transportation.

“**Early Termination Date**” means the effective date of termination for any reason prior to the date Financial Close is achieved for the last Project Agreement that is subject to this Agreement, pursuant to the terms set forth in Article 21 (Termination).

“**e-Builder**” means the required form of project folder for data and document sharing, records of the Work, Submittals and formal communication as set forth under Section 2.5.2 of Exhibit 6 (PDA Work Requirements).

“**EEO**” means equal employment opportunity.

“**EEO Manager**” means the PDA Entity’s and Development Entity’s employee(s) responsible for ensuring each Contractor does not discriminate against employees based on sex, race, gender, origin or other legally protected groups, through training and completing required federal forms for compliance, as required under Law and Exhibit 8 (Project Agreement Term Sheet).

“**Effective Date**” means the date set forth in the Preamble to this Agreement.

“**Eligible Insurance Provider**” means an insurance provider meeting the requirements set forth in Section 19.2(a).

“**Eligible Security Issuer**” means:

- (a) with respect to a letter of credit, any Person; and
- (b) with respect to a demand guarantee, any surety bond provider licensed to do business in the Commonwealth;

which, in each case, has a credit rating for long-term, unsecured debt of not less than “A-/A3” from one of the Rating Agencies, and which can be presented for payment by facsimile or by electronic means, and that in each case is not an Affiliate of the PDA Entity.

“**eMarketplace**” means the Commonwealth’s eMarketplace portal accessible at <http://www.emarketplace.state.pa.us/>.

“**Engineer of Record**” means the engineer signing and sealing the ready for construction documents.

“**Enhanced Minimum Wage Provisions**” means the additional provisions pertaining to minimum wages contemplated under Section 15.9(d).

“**Environment**” means air, soils, surface waters (including wetlands), groundwater, land, parkland, 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 Authorization**” means any Approval, including any Governmental Approval, required by any Environmental Law.

“**Environmental Commitment and Mitigation Tracking System**” means the system to be prepared by the PDA Entity described in Section 4.2 of Exhibit 6 (PDA Work Requirements).

“**Environmental Compliance Manager**” or “**ECM**” means the Person identified as such in Section 2.1 of Exhibit 6 (PDA Work Requirements).

“**Environmental Laws**” means any Law 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, 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 Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended, and the Hazardous Materials Transportation Uniform Safety Act of 1990;

- (x) The Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as amended;
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xix) The Bald Eagle and Golden Eagle Protection Act (16 U.S.C. §§ 688 *et seq.*), as amended;
- (xx) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*), as amended;
- (xxi) The Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 *et seq.*), as amended;
- (xxii) Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c), as amended;
- (xxiii) State species-related laws, each as amended; and
- (xxiv) State environment-related laws, each as amended.

“**EPA**” means the United States Environmental Protection Agency.

“**Equity IRR**” means the nominal post-tax internal rate of return on a Committed Investment (on a cash-on-cash basis) over the full term of the Project Agreement, calculated using the Initial Base Case Financial Model, as the discount rate that, when applied to the Distributions gives a net present value equal to the net present value of the Committed Investment. For the purposes of this definition, the phrase cash-on-cash basis means, with respect to the calculation of a financial return, the calculation of such financial return on the basis of cash actually received in relation to cash actually invested (as opposed to cash committed).

“**Equity Member**” means each member of the PDA Entity that will contribute equity as part of the financing of the Project.

“**Equity Member Letter**” means the letter provided in accordance with Section 1.3 of Exhibit 7 (Package Proposal Requirements).

“**Escrowed Documents**” means the documents to be held in escrow pursuant to Section 24.3.

“**FHWA**” means the United States Department of Transportation Federal Highway Administration.

“**Final Acceptance Date**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**Final Determination**” has the meaning set forth in Section 28.2(h).

“**Final Package Proposal Design**” has the meaning set forth under Exhibit 6 (PDA Work Requirements).

“**Finance Documents**” means the funding agreements and security documents in connection with a Package.

“**Financial Close**” means the date on which all of the conditions precedent to financial close under the Project Agreement have been satisfied or otherwise waived in accordance with the Project Agreement.

“**Financial Close Date**” means the date on which Financial Close is achieved.

“**Financial Close Deadline**” means, for each Package, the deadline by which the Development Entity is obligated to achieve Financial Close for that Package under the applicable Project Agreement.

“**Financial Model**” means the model developed and submitted as part of the Financing Plan as set forth in Section 14.1.2 of Exhibit 6 (PDA Work Requirements).

“**Financial Model Auditor**” means the firm required by Section 1.7 of Exhibit 7 (Package Proposal Requirements) to audit the Initial Base Case Financial Model.

“**Financial Officer’s Certificate**” means the certificate certifying the financial strength of information provided as required under Section 1.4 of Exhibit 7 (Package Proposal Requirements).

“**Financing Manager**” means the member of the Proposer team who is responsible for the development of the Financing Plan and associated Committed Investment.

“**Financing Plan**” means the plan for financing, including the component parts in Sections 1.1(a) of Exhibit 7 (Package Proposal Requirements), as developer pursuant to Section 14.1 of Exhibit 6 (PDA Work Requirements).

“**First Package**” means the first Package to be delivered by the PDA Entity’s affiliated Development Entity in accordance with this Agreement under a Project Agreement.

“**First Package Bridge**” means any Bridge identified in the PDA Entity’s PDA Proposal for inclusion in the First Package.

“**First Package Proposal**” means the Package Proposal for the First Package.

“**Force Majeure Event**” means the occurrence of any of the following events after the Effective Date that directly causes either Party (the “**Affected Party**”) to be unable to comply with all or a material part of its obligations under this Agreement:

- (a) war, civil war, invasion, violent act of foreign enemy, or armed conflict;
- (b) nuclear, chemical, or biological contamination unless the source or cause of the contamination is brought to or near the Sites by the PDA Entity or a PDA-Related Entity, or is a result of any breach of the PDA Entity of the terms of this Agreement; or

- (c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near the Sites by the PDA Entity or a PDA-Related Entity, or is as a result of any breach by the PDA Entity of the terms of this Agreement.

“**Fourth Package**” means the fourth Package to be delivered by the PDA Entity’s affiliated Development Entity in accordance with this Agreement under a Project Agreement.

“**FWD**” means falling weight deflectometer.

“**GAO**” means the United States Government Accountability Office.

“**Good Faith**” means the observance of reasonable commercial standards of fair dealing in a given trade or business.

“**Good Faith Efforts**” has the meaning given to that term in 49 CFR Part 26 and 49 CFR Part 26 Appendix A.

“**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, maintenance contractor, or other contractor:

- (a) performing work such as the Work;
- (b) that seeks in Good Faith to comply with its contractual obligations (i.e., with respect to the Project, complying with the Project Agreement Documents) and all Laws and Governmental Approvals;
- (c) that
 - (i) with respect to design or engineering matters, uses the skill, care, diligence, and professional standards ordinarily used by similarly-situated design or engineering professionals;
 - (ii) with respect to construction matters, uses the skill, care, diligence, and professional standards used by similarly-situated professional construction companies seeking to comply with professional standards in their respective disciplines that are accepted as the standards of the industry in the Commonwealth; or
 - (iii) with respect to maintenance matters, uses the skill, care, diligence, and professional standards ordinarily used by similarly-situated maintenance contractors; and
- (d) that seeks to perform such work in a manner commensurate with standards of safety, performance, dependability, efficiency, and economy as would other skilled and experienced designers, engineers, constructors, maintenance contractors, or other contractors, as applicable, engaged in the same type of undertaking:
 - (i) in the United States;
 - (ii) under similar circumstances and conditions (including environmental conditions); and

- (iii) 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, solutions, etc., to the exclusion of all others, but rather a spectrum of possible, but reasonable, practices, methods, solutions, etc., having due regard for, among other things, contractual and legal obligations as well as manufacturers' requirements and warranties.

Without limiting the foregoing, neither the existence of a particular design, construction, or maintenance practice, method, or solution on a completed Commonwealth project, prior acceptance or approval by PennDOT on any such other completed Commonwealth project, nor contemporary acceptance or approval by PennDOT on any other Commonwealth project not yet completed shall be, nor shall be deemed to be, conclusive as to whether a particular design, construction, or maintenance practice or solution constitutes Good Industry Practice; provided, however, that any such prior acceptance or approval may be asserted as evidence of Good Industry Practice, it being understood and agreed by the Parties that such prior acceptances or approvals may have been given for reasons other than PennDOT's assessment that such practices, methods, or solutions constituted Good Industry Practice.

“Governmental Approval” means any approval, permit (including any lane closure permit), permission, consent, license, certificate (including any sales tax exemption certificate), and authorization (whether statutory or otherwise) which is required from time to time in connection with the Project (including PennDOT-Provided Approvals) to be issued by any Governmental Entity.

“Governmental Entity” means the government of the United States of America, the Commonwealth, the cities and counties within the Commonwealth, and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission, or other authority exercising executive, legislative, judicial, regulatory, administrative, or taxing functions of, or pertaining to, the government of the United States of America, the Commonwealth, the cities or counties within the Commonwealth. **“Governmental Entity”** includes PennDOT acting in a regulatory or administrative capacity but does not include PennDOT acting in its capacity as a Party to this Agreement.

“Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

“H&H” means hydrology and hydraulic.

“Handback Requirements” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“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, but is not limited to:

- (a) **“Hazardous Waste”** as defined in 40 C.F.R. Part 261;
- (b) **“Hazardous Substance”** as defined by 42 U.S.C. § 9601(14);

- (c) 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 individual persons in the vicinity of the Project or to the indoor or outdoor Environment;
- (d) soil, or surface water or ground water, contaminated with Hazardous Materials as defined above; and
- (e) 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 Commonwealth or federal court of law (having jurisdiction over the Project).

“**Hazardous Materials Release**” means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, groundwater, or Environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

“**High-Level Timeline and Approach to Packaging**” means the submittal by the same name submitted by the PDA Entity as part of its PDA Proposal.

“**Indemnified Parties**” means PennDOT-Related Entities and their respective Constituents.

“**Independent Quality Firm**” means SAI Consulting Engineers, Inc.

“**Indirect Loss**” means the loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any Claim for consequential, punitive, special, or incidental loss of any nature but excluding any of the same that relate to payments expressly provided for under this Agreement.

“**Information and Communication Technology**” or “**ICT**” means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment, information kiosks and transaction machines, telecommunications equipment, customer premises equipment, multifunction office machines, software, applications, websites, videos, and electronic documents.

“**Initial Base Case Financial Model**” means the tool described in Section 1.6 of Exhibit 7 (Package Proposal Requirements) that a Development Entity shall use to support the Package Proposal.

“**Initial Decision**” has the meaning given to that term in Section 28.1(e).

“**Initial Package Proposal Design**” means the depiction of the basic scope of work for the Bridges within the Package as described in Section 8.1 of Exhibit 6 (PDA Work Requirements).

“**Innovative Concept Submittal**” means has the meaning set forth under Section 10.6.

“Insolvency Event” means:

- (a) the PDA Entity commences a voluntary case seeking liquidation, reorganization, or other relief with respect to the PDA Entity or the PDA Entity’s debts under any U.S. or foreign bankruptcy, insolvency, or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;
- (b) an involuntary case is commenced against the PDA Entity seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such the PDA Entity or the PDA Entity’s debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its 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 it in Good Faith or shall remain undismissed and unstayed for a period of 60 days;
- (c) in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the PDA Entity or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, this Agreement is rejected, including a rejection under Title 11 U.S.C. §365 or any successor statute; or
- (d) any voluntary or involuntary case or other act or event described in paragraphs (a) or (b) occurs (and in the case of an involuntary case is not contested in Good Faith or remains undismissed and unstayed for a period of 60 days) with respect to any Equity Member.

It shall not be an **“Insolvency Event”** where a Person owing to the PDA Entity or an Equity Member has fully met all financial obligations owing to the PDA Entity or Equity Member, as the case may be, in the form of a committed investment and payments or transfers of money or property previously made to or for the benefit of the PDA Entity or Equity Member are not subject to §544, §547, §548, or §550 of the Bankruptcy Code, or any similar Law respecting the avoidance or recovery of preferences or fraudulent transfers, including any applicable enactment of the Uniform Fraudulent Transfer Act).

For **“Insolvency Events”** relating to Major Team Members, the foregoing shall apply, mutatis mutandis.

“Instructions to Proposers” or **“ITP”** means the instructions to proposers contained in the RFP.

“Insurance Policies” means the insurance policies the PDA Entity is required to carry or ensure are carried under Article 19 (Insurance) and Exhibit 10 (Required Insurance for PDA Work).

“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 PDA Work, the Project or Project Data. Intellectual Property includes software used in connection with the Project, Source Code and Source Code Documentation. Intellectual Property is distinguished from submittals and formal communications under this Agreement 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 this Agreement, and other work product and other related materials that disclose Intellectual Property.

“**TTS**” means intelligent transportation systems.

“**Key Contract**” means any contract for PDA Work between the PDA Entity and any of the Lead Engineering Firm, Lead Construction Contractor or Lead Maintenance Contractor.

“**Key Contractors**” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“**Key Personnel**” means the positions described in Section 2.1.1.1 of Exhibit 6 (PDA Work Requirements).

“**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 restriction by a Governmental Entity (including those resulting from the initiative or referendum process, but excluding those by PennDOT within the scope of its administration of this Agreement), as applicable to (or binding on) the Project or the PDA Work, or any party to this Agreement or affiliated Person, whether taking effect before or after the Effective Date, including Environmental Laws. “**Law**” includes any federal or Commonwealth 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 a joint venture of Shikun & Binui – America Inc. and FCC Construction, S.A., which are entities with primary responsibility for work related to design and construction, and other technical development work with respect to the PDA Work, including design management.

“**Lead Engineering Firm**” means STV Incorporated, which is the entity with primary responsibility for design and engineering delivered under the PDA Work.

“**Lead Maintenance Contractor**” means the Development Entity, which will have primary responsibility for Maintenance Work.

“**Lead Underwriter**” means the financial institutions that have primary responsibility for Bond Financing as described in Exhibit 7 (Package Proposal Requirements).

“**Lender**” means any Person that:

- (a) provides Package Debt, together with their successors and assigns; or
- (b) is appointed by any Person referred to in paragraph (a) as its agents, or trustee in connection with the Package Debt.

“**LLCR**” means loan life coverage ratio.

“**LOD**” means limits of disturbance.

“**Loss**” means any loss, damages, injury, liability, obligation, cost, response, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death of Persons, damage or loss of property, and harm or damage to natural resources.

“**Maintenance Costing Model**” means the model described in Section 13 of Exhibit 6 (PDA Work Requirements).

“**Maintenance Costs**” means the cost associated with Maintenance Work included in each Package Proposal.

“**Maintenance During Design and Construction**” means Maintenance Work occurring during the D&C Period.

“**Maintenance During Design and Construction Manager**” means the Person primarily responsible for overseeing Maintenance Work occurring during the D&C Period.

“**Maintenance Limit Drawings**” means the drawings prepared by the PDA Entity pursuant to Section 10 of Exhibit 6 (PDA Work Requirements).

“**Maintenance Limits**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**Maintenance Management Plan**” means the plan for maintenance management as described in Attachment 5 to Exhibit 6 (PDA Work Requirements).

“**Maintenance Period**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**Maintenance Price**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**Maintenance Quality Management Plan**” or “**MQMP**” means the quality management plan for maintenance as described in Attachment 5 to Exhibit 6 (PDA Work Requirements).

“**Maintenance Quality Manager**” or “**MQM**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

“**Maintenance Work**” means maintenance, repair, reconstruction, rehabilitation, restoration, renewal, or replacement of any worn-out, obsolete, deficient, damaged, or under-performing portion of any Package or related infrastructure under a Project Agreement that is not routine maintenance.

“**Maintenance Work General Conditions Cost Percentage**” means the maximum percentage that may be applied to the Maintenance Costs (excluding any mutually agreed Maintenance Work cost contingencies) for each Package on account of Maintenance Work General Conditions Costs in the Maintenance Costing Model required under Section 13 of Exhibit 6 (PDA Work Requirements), which is identified in Attachment 1 (*Relevant Proposal Values*) to this PDA.

“**Maintenance Work General Conditions Costs**” means direct project overhead costs incurred for any contracted/subcontracted Maintenance Work. For the avoidance of doubt, Maintenance Work General Conditions Costs shall include the following items required for subcontracted Maintenance Work for each section:

- (a) bonds, all types;

- (b) non-payroll insurance;
- (c) subsistence (covers any expenses for staff outside of the travel, lodging, relocation, per diem);
- (d) travel;
- (e) lodging;
- (f) per diem;
- (g) project oversight, supervision, and administration;
- (h) vehicles for project oversight, supervision, administration, and management including, but not limited to, registrations, fuel, maintenance, and insurance;
- (i) technology and communications, including, but not limited to, phones, computers, internet connections, radios, and tablets;
- (j) temporary facilities including, but not limited to, rent, security and access control, utilities, office equipment, office expenses, furniture, insurance, and taxes;
- (k) temporary staging areas, fuel depots, laydown areas, and storage yards; and
- (l) miscellaneous including certifications for staff required for the work, and incidentals.

For the avoidance of doubt, Maintenance Work General Conditions Costs exclude day-to-day Development Entity overhead expenses (i.e., Development Entity costs). Development Entity overhead or costs following the Final Acceptance Date will be in addition to the Maintenance Work General Conditions Costs.

“Major Team Member” means each of the:

- (a) Lead Engineering Firm;
- (b) Lead Construction Contractor;
- (c) each Equity Member;
- (d) if an Equity Member is an investment fund, the fund’s general partner(s);
- (e) each Contractor listed as a Nominated Subconsultant or Nominated Subcontractor (as each such term is defined in the RFQ) in the Selected Proposer’s response to the RFQ; and
- (f) the Independent Quality Firm.

“Monthly Feedback Report” means the form set forth at as Appendix 6 to Exhibit 13 (Federal and State Requirements).

“NAICS” means North American Industry Classification System.

“NBIS” means National Bridge Inspection Standards.

“NEPA” means the National Environmental Policy Act.

“NEPA Approvals” means any Approvals required under NEPA.

“Nominated Subconsultant” means any subconsultant to the Lead Engineering Firm identified by name in the SOQ (and which is not otherwise captured by paragraphs (a) to (d) of the definition of Major Team Member).

“Nominated Subcontractor” means any subcontractor to the Lead Construction Contractor identified by name in the SOQ (and which is not otherwise captured by paragraphs (a) to (d) of the definition of Major Team Member).

“Non-Compliant Package Proposal” means a Package Proposal that does not comply with the requirements of this Agreement. The PDA Entity’s exclusion of a First Package Bridge from a Package Proposal due to delay of NEPA Approval as set forth under Section 12.2(e), shall not render such Package Proposal a Non-Compliant Package Proposal.

“Nonconforming Work” means any nonconforming activities or elements of Work as identified in the final PA Technical Provisions.

“Notice of Appeal” has the meaning given to that term in Section 28.2.

“Notice of Proposed Change in Ownership” means the notice provided to PennDOT regarding a Change in Ownership in Section 27.4(a).

“OJT” means on the job training and refers to PennDOT’s OJT program for construction projects.

“OJT Forms” means the required forms to be submitted to PennDOT for each Trainee, the EO-363 Form Contractor’s OJT Program Classification for PennDOT Approval, EO-364 PennDOT OJT Program Enrollment Form, EO-365 Form Highway Contractors Monthly Training Report.

“Organizational Conflict of Interest” has the meaning given to that term in the RFP, including Section 1.12.1 thereof.

“OSD” means off-shore drilling.

“OSHA” means Occupational Safety and Health Administration.

“P3” is defined in paragraph (G) of the Recitals.

“P3 Law” is defined in paragraph (B) of the Recitals.

“PA DEP” means the Pennsylvania Department of Environmental Protection.

“PA Technical Provisions” means the technical provisions attached as an exhibit to a Project Agreement.

“PA UCP DBE Directory” means the public list of DBEs certified in Pennsylvania by PennDOT, Allegheny County, Port Authority of Allegheny, Philadelphia Airport and SEPTA, to contract with PennDOT. It is located at <https://paucp.dbesystem.com/>.

“PA Work” or “Package Work” means the work to be completed by the Development Entity under a Project Agreement.

“**PABs**” means private activity bonds.

“**Package**” means each portion of the Project, as identified by the PDA Entity in collaboration with PennDOT in accordance with Exhibit 6 (PDA Work Requirements), as referenced in paragraph (F) of the Recitals.

“**Package Administrative Proposal**” means the submittals set forth under Section 1.1(c) of Exhibit 7 (Package Proposal Requirements).

“**Package D&C Work**” means all work related to the design and construction of a Package under a Project Agreement.

“**Package Debt**” means all of the outstanding obligations from time to time under the Finance Documents for a Package.

“**Package Equity Member**” means the Equity Members and any additional equity investors for a specific Package that directly hold or will directly hold an equity interest (legal or beneficial) in the applicable Development Entity. Collectively, the “**Package Equity Members**”.

“**Package Equity Member Funding Agreement**” means any loan agreement, credit agreement, or other similar finance agreement or subordination agreement providing for or evidencing Package Equity Member Committed Investment.

“**Package Financial Proposal**” means the plan for financing, including the component parts in Section 1.1(a) of Exhibit 7 (Package Proposal Requirements).

“**Package Proposal**” means the proposal described in Section 12.2.

“**Package Proposal Design**” means the submittal described in Section 8.2 of Exhibit 6 (PDA Work Requirements).

“**Package Proposal Equity IRR**” means Equity IRR reflected in any Package Proposal.

“**Package Qualified Investor**” means, for each Package, each Package Equity Member approved under a Package Proposal for that Package.

“**Package Related Entity**” means, for each Package, each entity in the ultimate ownership structure between the Development Entity and each Package Qualified Investor (not including the Development Entity or the Package Qualified Investors).

“**Package Technical Proposal**” means the submittals set forth under Section 1.1(b) of Exhibit 7 (Package Proposal Requirements).

“**Pandemic Event**” means the occurrence of an epidemic or pandemic in the Commonwealth or directly affecting the Commonwealth (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 Commonwealth 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 PDA Work on the Bridges or travel to or from the Sites with respect to those PDA-Related Entity personnel necessary to advance the PDA Work, as applicable.

“**Party**” means PennDOT and the PDA Entity individually, as the context may require, and “**Parties**” means PennDOT and the PDA Entity collectively, as the context may require.

“**PDA Contract Documents**” means this Agreement and all attachments hereto.

“**PDA EEO Manager**” means the PDA Entity’s employee(s) responsible for ensuring the PDA Entity does not discriminate based on sex, race, gender, origin or other legally protected groups and is also responsible for ensuring all federal and state diversity and civil rights meet compliance requirements through timely reporting.

“**PDA Entity**” means the special purpose entity formed by the Selected Proposer to perform the PDA Work under this Agreement set forth in the Preamble of this Agreement.

“**PDA Entity Default**” has the meaning given to that term in Section 20.1.

“**PDA Entity Default Notice**” has the meaning given to that term in Section 20.2(a).

“**PDA Entity Hazardous Materials Release**” means any Hazardous Materials Release:

- (a) involving any Hazardous Materials arranged to be brought onto the Sites or any other location by any PDA-Related Entity, regardless of cause;
- (b) to the extent attributable to failure to comply with any post-remediation care plan, environmental covenant or other engineering or institutional control by any PDA-Related Entity;
- (c) to the extent attributable to the breach of any Law, Governmental Approval, or this Agreement (including any acts or omissions that are not in accordance with Good Industry Practice), negligence, or willful misconduct by any PDA-Related Entity; or
- (d) without prejudice to the generality of paragraph (c), to the extent attributable to the use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any PDA-Related Entity in breach of any Law, Governmental Approval, or this Agreement,

to the extent attributable to the PDA Entity’s failure to perform Reasonable Investigations consistent with Exhibit 6 (PDA Work Requirements).

“**PDA Entity’s Interest**” means all right, title, and interest of the PDA Entity in, to or derived from this Agreement.

“**PDA Entity’s Project Manager**” means the Person identified as such in the PDA Proposal.

“**PDA Long Stop Date**” means the date identified as such in Exhibit 5 (PDA Milestones and Deadlines).

“**PDA Performance Security**” has the meaning set forth in the RFP.

“**PDA Proposal**” means the proposal submitted by the PDA Entity to PennDOT in response to the RFP.

“**PDA Proposal Commitments**” means the commitments made by the PDA Entity that are contained in Exhibit 9 (PDA Proposal Commitments).

“**PDA Proposal Due Date**” has the meaning given to that term in the Request for Proposals.

“**PDA Proposal Equity IRR**” means the Equity IRR set forth in the PDA Proposal, which is identified in Attachment 1 (Relevant Proposal Values) to this PDA.

“**PDA Quality Management Plan**” means the plan for quality management during the PDA Term described in Section 2.8.1 of Exhibit 6 (PDA Work Requirements).

“**PDA Representative**” shall have the meaning set forth in Section 7.1(a).

“**PDA Term**” means the term of this Agreement as determined under Article 3 (Effective Date and Term).

“**PDA Work**” means, in respect of a Package, all work required to be performed or provided by the PDA Entity prior to Commercial Close of that Package, including work, services and obligations to be performed and provided in connection with the Project under Exhibit 6 (PDA Work Requirements) and other requirements of this Agreement.

“**PDA Work Requirements**” means Exhibit 6 (PDA Work Requirements).

“**PDA Work Schedule**” shall have the meaning set forth in Section 2.6.1 of Exhibit 6 (PDA Work Requirements).

“**PDA-Related Entity**” means each of the following:

- (a) Equity Members;
- (b) Contractors;
- (c) any other Persons performing any of the PDA Work for or on behalf of the PDA Entity;
- (d) any other Persons for which the PDA Entity may be legally or contractually responsible;
- (e) the employees, members, managers, officers, directors, share/stockholders (closed corporations only), partners, agents, representatives, successors, or assigns of any of the foregoing clauses (a) to (d); and
- (f) Affiliates (excluding those in clause (d) of such definition) of the PDA Entity.

“**PDF**” means portable document format.

“**PennDOT**” means the Pennsylvania Department of Transportation.

“**PennDOT BEO**” means the PennDOT Bureau of Equal Opportunity.

“**PennDOT Change Request**” has the meaning given to that term in Section 17(a).

“**PennDOT DBE Program**” means PennDOT’s USDOT approved DBE program.

“**PennDOT DBE Program Manual**” means PennDOT Publication 404-PennDOT DBE Implementation Plan as approved by USDOT.

“**PennDOT Design Manual**” means all parts and components of the design specifications available on the PennDOT website, including Publication 10, Publication 13M, Publication 14M, Publication 15M and Publication 16M.

“**PennDOT Intellectual Property**” has the meaning set forth in Section 24.2(a).

“**PennDOT Parcels**” means those parcels of the Sites that PennDOT owns or has established a right of access to with the appropriate third-party owner of any Third-Party Parcel.

“**PennDOT Project Level Environmental Justice Guidance Manual**” means PennDOT Publication 476 – Project Level Environmental Justice Guidance.

“**PennDOT Project Level Public Involvement Handbook**” means PennDOT Publication 295 – Project Level Public Involvement Handbook.

“**PennDOT Termination Notice**” has the meaning given to that term in Section 21.2.

“**PennDOT-Caused Delay**” means a delay or failure by PennDOT in performing any of its material obligations pursuant to this Agreement by the timeframes set forth in this Agreement.

“**PennDOT-Provided Approvals**” means:

- (a) environmental decision documents approved under NEPA covering the limits of the Project; and
- (b) USACE permit under §404 of the Clean Water Act and accompanying Section 401 Water Quality Certification.

“**PennDOT-Related Entity**” means:

- (a) PennDOT; and
- (b) the Commonwealth.

“**Performing Subcontractor**” has the meaning given to that term in Section 1.2(a)(iii) of Exhibit 12 (Allowed Costs).

“**Person**” means an individual, estate, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization or other company or association, or a Governmental Entity.

“**Placement Agent**” means a private placement agent for the Package.

“**Plan for Maintenance Work and Handback Requirements**” means the plan for maintenance developed by the PDA Entity during the PDA Term pursuant to Section 10 of Exhibit 6 (PDA Work Requirements).

“**PLCR**” means project life cover ratio.

“Pre-Development Cost Cap” means the maximum aggregate amounts of Allowed Costs to be reimbursed to the PDA Entity or Development Entity, for PDA Work performed under this Agreement, which is identified in Attachment 1 (Relevant Proposal Values) to this PDA.

“Pre-Development Milestone” means a milestone identified in Exhibit 5 (PDA Milestones and Deadlines).

“Pre-Development Milestone Deadline” means the deadline identified in Exhibit 5 (PDA Milestones and Deadlines) for completing a particular Pre-Development Milestone.

“Pre-Existing Hazardous Materials” means Hazardous Materials that exist in, on, or under the Sites prior to the date the PDA Entity gains access to the relevant portion of the Sites.

“Procedural Rules” has the meaning set forth in Section 28.2(e).

“Professional Engineer” means a Person with a current professional engineering license.

“Professional Land Surveyor” means a Person with a current professional land surveying license.

“Prohibited Change in Ownership” means:

- (a) any Change in Ownership occurs in breach of Article 27 (Change in Ownership of PDA Entity); or
- (b) any Change in Ownership occurs that involves the transfer of any shares or membership interests to a Prohibited Person.

“Prohibited Person” means any Person who is:

- (a) debarred, proposed for debarment with a final determination still pending, suspended, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or non-procurement transactions with the federal or state government or any department, agency or instrumentality of the federal or state government under any of the Debarment Regulations;
- (b) indicted, convicted, or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the federal or state government or any department, agency or instrumentality of the federal or state government;
- (c) listed on the “Lists of Parties Excluded from Federal Procurement and Non-procurement Programs” issued by the U.S. General Services Administration;
- (d) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Contract (“OFAC”);
- (e) designated on the OFAC list of “Specially Designated Nationals”;
- (f) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC, or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the Commonwealth;

- (g) a banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under §311 of the USA PATRIOT Act;
- (h) located within or is operation from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;
- (i) a financial institution against which the United States Secretary of the Treasury has imposed special measures under §311 of the USA PATRIOT Act;
- (j) a senior foreign political figure or a prohibited foreign shell bank within the meaning of 31 CFR §1010.605; or
- (k) any Person with whom PennDOT is engaged in litigation relating to the performance of a contract or business practices, unless PennDOT has first waived (in PennDOT’s absolute discretion) the prohibition on a transfer to such Person during the continuance of the relevant litigation, by written notice to the transferring equity holder, with a copy to the PDA Entity.

“**Project**” is defined in paragraph (A) of the Recitals.

“**Project Agreement**” or “**PA**” means the public-private transportation partnership agreement executed between PennDOT and a Development Entity that is used to deliver the design, construction, finance, operation, and maintenance works for a Package, as referenced in paragraph (G) of the Recitals.

“**Project Agreement Documents**” means the “Contract Documents” as defined in Exhibit 8 (Project Agreement Term Sheet).

“**Project Agreement Term**” or “**PA Term**” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“**Project Agreement Term Sheet**” means the term sheet for the Project Agreement in Exhibit 8 (Project Agreement Term Sheet).

“**Project Agreement Work**” means, in respect of a Package, all Work, services and obligations to be performed or provided by a Development Entity under a Project Agreement.

“**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 this Agreement, whether from PennDOT Intellectual Property or Proprietary Intellectual Property. “**Project Data**” as a product is distinguished from the Intellectual Property that produced it.

“**Project Debt**” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“**Project Management Plan**” or “**PMP**” has the meaning set forth in Attachment 5 to Exhibit 6 (PDA Work Requirements).

“**Project Manager**” means the Persons identified as such in Section 2.1.1.1.1 of Exhibit 6 (PDA Work Requirements).

“**Project Office**” means the office as identified in Attachment 2 to Exhibit 6 (PDA Work Requirements).

“**Project Portal**” means the secure website the PDA Entity submitted its PDA Proposal through.

“**Proposal**” is defined in paragraph (D) of the Recitals.

“**Proposal Model Audit Report**” means the audit report for the Initial Base Case Financial Model described in Section 1.7 of Exhibit 7 (Package Proposal Requirements).

“**Proposer**” means each firm or team of firms that was shortlisted in accordance with the RFQ and invited to submit a proposal to PennDOT in response to the RFQ, including any changes approved in writing by PennDOT.

“**Proprietary Intellectual Property**” means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the PDA Work that derives commercial value from its protection as a “Trade Secret” or “Confidential Proprietary Information” (as those terms are defined by the RTKL) or otherwise constitutes a trade secret or other confidential proprietary information, or the equivalent, under Law or from its protection under patent or copyright Laws.

“**Public Information and Communication Plan**” or “**PICP**” means the plan to be submitted by the PDA Entity in accordance with Section 2.10 of Exhibit 6 (PDA Work Requirements).

“**Public Information Coordinator**” means the Person identified for such role in Exhibit 6 (PDA Work Requirements).

“**Public Utility Commission**” or “**PUC**” means the organization found at <https://www.puc.pa.gov/>.

“**QA/QC**” means quality assurance & quality control.

“**QMP**” means quality management plan.

“**Quality Assurance Manager**” or “**QAM**” means the party employed by an Independent Quality Firm that is responsible for performance of the quality assurance aspects of overall Project design and construction.

“**Quality Management Plan**” or “**QMP**” means the plan for quality management activities developed by the PDA Entity pursuant to Section 2.8 of Exhibit 6 (PDA Work Requirements).

“**Rating Agency**” means any one, or more than one, of the major national rating agencies (Fitch Ratings, Moody’s Investor Service and Standard & Poor’s Ratings Group) or any other credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization, and approved, in advance, in writing by PennDOT as a “**Rating Agency**” for purposes of this Agreement and Project Agreements.

“**Reasonable Efforts**” means all those steps (if any) in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined, and commercially reasonable Person desiring to achieve that result would take. Reasonable Efforts does not mean that, subject to its other express obligations under this Agreement, the relevant Party is required to expend funds, except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses). For avoidance of doubt, the exercise of “Reasonable Efforts” by PennDOT shall not require PennDOT (or any

other agency of the Commonwealth of Pennsylvania) to exercise any power of eminent domain nor require PennDOT to cause any other such agency to perform any other act (or refrain from taking any act) such agency would otherwise be empowered to perform. “**Reasonable Efforts**” of PennDOT shall not be interpreted to include actions by other Commonwealth entities.

“**Reasonable Investigation**” has the meaning given to that term in Exhibit 8 (Project Agreement Term Sheet).

“**Refinancing**” has the meaning given to that term in Exhibit 8 (Project Agreement Term Sheet).

“**Rehabilitation Work**” has the meaning given to that term in Exhibit 8 (Project Agreement Term Sheet).

“**Rehabilitation Work Schedule**” has the meaning given to that term in Exhibit 8 (Project Agreement Term Sheet).

“**Relief Event**” means:

- (a) any Force Majeure Event;
- (b) any Pandemic Event;
- (c) a PennDOT-Caused Delay;
- (d) Change in Law;
- (e) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under Law that prohibits the performance of a material part of the PDA Work under this Agreement or materially and adversely affects a Party’s performance under this Agreement;
- (f) PennDOT’s failure to perform or observe any of its obligations under this Agreement where such failure causes a delay in the PDA Entity’s performance of its obligations under this Agreement;
- (g) [Reserved]
- (h) following the issuance of NEPA Approval covering any applicable part of the Project, such NEPA Approval is subject to legal challenge or litigation which prevents any Package from achieving Financial Close by the applicable Pre-Development Milestone Deadline; or
- (i) the approvals required under Section 12.5(b) are not timely obtained causing a delay in achieving Commercial Close,

except, in each case, to the extent attributable to any breach of this Agreement, Law or any Governmental Approval by, or any negligent act or negligent omission of, a PDA-Related Entity.

“**Relief Event Notice**” has the meaning set forth in Section 14.2(b).

“**Remedial Action**” means investigation (as and solely to the extent pre-authorized, and on such terms and conditions determined, by PennDOT), remediation or removal of Hazardous Materials under Section 9.4.

“**Request for Package Proposal**” has the meaning set forth in Section 12.1(f).

“**Request for Proposals**” or “**RFP**” is defined in paragraph (D) of the Recitals.

“**Request for Qualifications**” or “**RFQ**” is defined in paragraph (C) of the Recitals.

“**Requested Information**” has the meaning set forth in Section 25.2.

“**Required Personnel**” means the Persons contemplated under Section 2.1.1.2 of Exhibit 6 (PDA Work Requirements).

“**Residual Life**” means, for an element, the period remaining until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

“**RIDs**” or “**Reference Information Documents**” means all written reference information and documents that is provided to the PDA Entity or any PDA-Related Entity via the Project Portal, eMarketplace or any website identified in the RFQ or RFP (in each case including all attachment, exhibits and appendices) by any PennDOT-Related Entity or any of their respective Constituents prior to the Effective Date, including:

- (a) the RFP; and
- (b) all contents of the Project Portal, eMarketplace and Bridge-specific websites set forth in the RFP.

“**Risk Management Plan**” means the plan describing the PDA Entity’s approach to identification, management, mitigation and allocation of Project risks developed pursuant to Section 2.4 of Exhibit 6 (PDA Work Requirements).

“**ROD**” means the Record of Decision for a Bridge’s NEPA documentation.

“**ROW**” means right of way.

“**RTKL**” has the meaning set forth in Article 25 (Right to Know Law).

“**Safety and Security Plan**” means the plan describing the PDA Entity’s approach to safety and security developed pursuant to Section 2.9 of Exhibit 6 (PDA Work Requirements).

“**SBE**” means a small for-profit business concern that is listed at www.dotsbe.pa.gov by PennDOT as having met the requirements of the SBE element of the DBE program.

“**Schedule of Values**” means the submission identified as such in Exhibit 6 (PDA Work Requirements) and DM-4.

“**Second Package**” means the second Package to be delivered by the PDA Entity’s affiliated Development Entity in accordance with this Agreement under a Project Agreement.

“**SEFA**” means schedule of expenditures of federal awards.

“**Selected Proposer**” means the Proposer selected by PennDOT, whose Equity Members formed the PDA Entity to enter into this Agreement.

“**SEPS**” means subsurface exploration planning submission.

“**Service Line**” means:

- (a) 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 individual line to a larger system; or
- (b) any cable or conduit that supplies an active feed from a Utility Owner’s facilities to activate or energize PennDOT’s or a local agency’s lighting and electrical systems, traffic control systems, communications systems, or irrigation systems.

“**Setting Date**” for the First Package, means August 1, 2022, and for any subsequent Packages, means the date of submission for such Package Proposal.

“**Shortlisted Proposers**” means the entities invited by PennDOT to submit a proposal in response to the RFP.

“**Site**” means the geographical area reasonably expected to be a part of the worksite for each Bridge under this Agreement. “**Sites**” means more than one Site.

“**Site Investigations**” has the meaning given to that term in Section 9.2(a).

“**SOV**” means schedule of values.

“**SOQ**” is defined in paragraph (C) of the Recitals.

“**SOQ Due Date**” means August 12, 2021, 11:00 a.m. Eastern Time.

“**Source Code**” and “**Source Code Documentation**” mean software written in programming languages, 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.

“**State**” means the Commonwealth of Pennsylvania.

“**Steering Committee**” means the committee established in accordance with Article 8 (Steering Committee).

“**Subcontractor**” means any other Person with whom any Contractor has further subcontracted, purchased or procured any part of the PDA Work, at all tiers.

“**Submittal**” means each Type 3 Submittal, Type 2 Submittal, and Type 1 Submittal, and in each case, any resubmittal, the PDA Entity is required to make under Exhibit 6 (PDA Work Requirements).

“**Substantial Completion**” means the satisfaction of all conditions to substantial completion to be set out in each Project Agreement.

“**Termination Date**” means (a) the date of expiration of the PDA Term or (b) if applicable, the Early Termination Date.

“**Termination For Convenience Notice**” has the meaning set forth in Section 21.1.

“**Third Package**” means the third Package to be delivered by the PDA Entity’s affiliated Development Entity in accordance with this Agreement under a Project Agreement.

“**Third-Party Claim**” means any and all Claims brought by a Person that is not an Indemnified Party or the PDA Entity with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys’ fees and expenses) sustained or incurred by such Person.

“**Third-Party Loss**” means any and all actual or alleged Loss sustained or incurred by a Person that is not a PennDOT-Related entity or PDA-Related Entity.

“**Third-Party Parcels**” means those parcels of the Sites that are owned by a third party and that PennDOT does not have an established right of access to.

“**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.

“**TIFIA**” means the Transportation Infrastructure Finance and Innovation Act of 1998, codified at 23 U.S.C §§ 601 *et seq.*, as amended from time to time.

“**TIFIA Loan Agreement**” means the TIFIA loan term sheet and agreement from the Build America Bureau available at <https://www.transportation.gov/buildamerica/financing/tifia/tifia-loan-term-sheet-and-agreement>.

“**Trade Secret**” has the meaning set forth in the RTKL.

“**Traffic Control Manager**” means the Person responsible for traffic control as described under Exhibit 6 (PDA Work Requirements).

“**Traffic Control Plans**” means the plans described as such in Section 8 of Exhibit 6 (PDA Work Requirements).

“**Type 1 Submittal**” means any Submittal that is:

- (a) expressed to be subject to the review or comment of PennDOT, as identified in Exhibit 6 (PDA Work Requirements); or
- (b) determined by PennDOT (in its sole discretion) to be a Type 1 Submittal in accordance with Exhibit 6 (PDA Work Requirements).

“**Type 2 Submittal**” means any Submittal that is:

- (a) expressed to be subject to Approval by PennDOT, but which is not a Type 3 Submittal, as identified in Exhibit 6 (PDA Work Requirements); or
- (b) determined by PennDOT (in its sole discretion) to be a Type 2 Submittal in accordance with Exhibit 6 (PDA Work Requirements).

“**Type 3 Submittal**” means any Submittal that is expressed to be subject to Approval by PennDOT in its sole discretion, as identified in Exhibit 6 (PDA Work Requirements).

“**Unamended PDA**” is defined in the Preamble.

“**U.S.C.**” means the Code of Laws of the United States of America.

“**Useful Life**” means for an element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

“**USPP**” means U.S. private placement.

“**Utility**” means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, a combined stormwater and sanitary system, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. The term Utility excludes:

- (a) streetlights and traffic signals;
- (b) intelligent transportation systems and intelligent vehicle highway system facilities; and
- (c) any other line, facility, or system that otherwise meets this definition, but whose owner is PennDOT.

The necessary appurtenances to each Utility facility will be considered part of such Utility. Any Service Line connecting directly to a Utility will be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

“**Utility Adjustments**” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“**Utility Adjustments Work**” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“**Utility Agreements**” means any agreements related to the Project which are entered into with a Utility Owner.

“**Utility Conflict Matrix**” means the matrix to be developed by the PDA Entity pursuant to Section 6 of Exhibit 6 (PDA Work Requirements).

“**Utility Manager**” or “**UM**” means the Person responsible for management of Utilities as described in Exhibit 6 (PDA Work Requirements).

“**Utility Owner**” has the meaning set forth in Exhibit 8 (Project Agreement Term Sheet).

“**Work**” has the meaning set forth under Exhibit 8 (Project Agreement Term Sheet).

ATTACHMENT 1

RELEVANT PROPOSAL VALUES

<u>Proposal</u>	<u>Proposal Value</u>
PDA Work	
PDA Proposal Equity IRR	<u>8.9% (percentage, to the tenth of a percentage point)</u>
Pre-Development Cost Cap (Aggregate for Project)	<u>\$20 million</u>
Project Agreement “Work”	
Development Entity Closing Fee (for each Package)	<u>0% (percentage, to the tenth of a percentage point)</u>
D&C General Conditions Cost Percentage (for each Package)	<u>15.0% (percentage, to the tenth of a percentage point)</u>
D&C Markup Percentage (for each Package)	<u>10.0% (percentage, to the tenth of a percentage point)</u>
Maintenance Work General Conditions Cost Percentage (for each Package)	<u>10.0% (percentage, to the tenth of a percentage point)</u>

PDA EXHIBITS

TABLE OF CONTENTS

EXHIBIT 2 PDA ENTITY OWNERSHIP
EXHIBIT 3 INITIAL DESIGNATION OF REPRESENTATIVES
EXHIBIT 4 RESERVED
EXHIBIT 5 PRE-DEVELOPMENT MILESTONES AND DEADLINES
EXHIBIT 6 PDA WORK REQUIREMENTS
EXHIBIT 7 PACKAGE PROPOSAL REQUIREMENTS
EXHIBIT 8 PROJECT AGREEMENT TERM SHEET
EXHIBIT 9 PDA PROPOSAL COMMITMENTS
EXHIBIT 10 REQUIRED INSURANCE FOR PDA WORK
EXHIBIT 11 KEY PERSONNEL FOR PDA WORK
EXHIBIT 12 ALLOWED COSTS
EXHIBIT 13 FEDERAL AND STATE REQUIREMENTS

EXHIBIT 2

PDA ENTITY OWNERSHIP

Entity	Percentage of Ownership of the PDA Entity
Macquarie Infrastructure Developments LLC	70%
Shikun & Binui Concessions USA, Inc.	30%

EXHIBIT 3

INITIAL DESIGNATION OF REPRESENTATIVES

1. **Contract Manager**

Michael Bonini

Director of Public-Private Transportation Partnerships Office, Pennsylvania Department of Transportation
400 North Street - 6th Floor
Harrisburg, PA 17120
Email: RA-PDP3MAJORBRIDGES@pa.gov

2. **PDA Entity Representative**

Sarah Schick

Authorized Representative, Bridging Pennsylvania Partners
125 West 55th Street
New York, NY 10019
Email: Sarah.Schick@Macquarie.com

With a copy to:

Email: ibgcflegalna@macquarie.com

EXHIBIT 4
RESERVED

EXHIBIT 5

PRE-DEVELOPMENT MILESTONES AND DEADLINES

Milestone	Deadline
Compliant Package Proposal for the First Package is delivered to PennDOT	September 7, 2022
Financial Close of the Project Agreement for the First Package achieved	December 31, 2022
Compliant Package Proposals for all Packages delivered to PennDOT	June 30, 2026
PDA Long Stop Date	December 31, 2026

EXHIBIT 6

PDA WORK REQUIREMENTS

[see attached]

TABLE OF CONTENTS

- 1 General..... 5
 - 1.1 Project Description..... 5
 - 1.2 Approach to PDA Work..... 6
 - 1.3 Division of Bridges into Packages 6
- 2 Project Management 7
 - 2.1 Personnel 7
 - 2.1.1 PDA Organization..... 7
 - 2.1.2 Project Agreement Organization..... 11
 - 2.2 Project Agreement Project Management Plan 15
 - 2.3 Partnership..... 15
 - 2.4 Risk Mitigation..... 16
 - 2.5 Meetings, Data Sharing and Submittals 17
 - 2.5.1 Meetings..... 17
 - 2.5.2 Data Sharing and Submittals..... 17
 - 2.5.3 Reporting on Progress of PDA Work..... 24
 - 2.6 Schedule 25
 - 2.6.1 Pre-Development Agreement Work Schedule 25
 - 2.6.2 Updates to the PDA Work Schedule..... 26
 - 2.6.3 Project Agreement Work Schedule..... 26
 - 2.6.4 Schedule of Values..... 28
 - 2.7 Stakeholder Coordination and Permitting 29
 - 2.7.1 Coordination with Stakeholders..... 29
 - 2.8 Quality Management 31
 - 2.8.1 Pre-Development Agreement Quality Management Plan 31
 - 2.9 Safety Management..... 32
 - 2.9.1 PDA Term Safety Management..... 32
 - 2.9.2 Project Agreement Term Safety Management..... 32
 - 2.10 Public Outreach and Engagement..... 33
 - 2.10.1 Pre-Development Agreement Public Outreach and Engagement 33
 - 2.10.2 Project Agreement Public Outreach and Engagement 33
- 3 Technical Provisions..... 35
 - 3.1 Pre-Development Agreement Technical Provisions 35
 - 3.2 Project Agreement Technical Provisions 35
 - 3.3 Innovative Concept Submittals 35

4	Environmental	37
4.1	Environmental Process.....	37
4.2	Environmental Compliance.....	37
4.3	Minimum PDA Work with Respect to Environmental Compliance.....	37
4.3.1	Environmental Impacts	37
5	Right-of-Way.....	39
5.1	Right-of-Way and Easement Assessment	39
5.2	PDA Activities for Right-of-Way and Easement Acquisition	39
6	Utilities	40
6.1	Identifying Utility Work.....	40
6.1.1	Obtaining Data	40
6.2	Utility Agreements	40
6.3	Utility Clearances.....	41
6.4	Potential for Early Utility Adjustment Work During the PDA.....	41
7	Site Investigations.....	42
7.1	Geotechnical Site Investigations	42
7.2	Land Surveying	43
8	Design.....	44
8.1	Initial Package Proposal Design.....	44
8.2	Package Proposal Design	47
9	Community and Workforce Engagement.....	51
9.1	Disadvantaged Business Enterprises (DBE)	51
9.2	Equal Employment Opportunity (EEO).....	51
10	Maintenance and Handback Requirements.....	53
10.1	Plan for Maintenance Work and Handback Requirements	53
10.2	Maintenance Limit Drawings	54
11	[reserved]	55
12	D&C Work Pricing	56
12.1	D&C Cost Amount and Price Reasonableness.....	56
12.1.1	The D&C Costing Model.....	56
12.1.2	D&C Cost Reasonableness Determination	57
12.1.3	FHWA Concurrence	57
13	Maintenance Work Pricing	58
13.1	Maintenance Costs.....	58

13.1.1	Maintenance Costing Model	58
13.1.2	Maintenance Cost Reasonableness Determination	58
14	Financing Workstream.....	59
14.1	Financing Plan Development.....	59
14.1.1	Financing Plan Contents	59
14.1.2	Financial Model	59
14.1.3	Credit Rating.....	60
14.1.4	TIFIA Financing	60
14.1.5	Non-TIFIA Debt Competition	60
14.1.6	Equity Commitments	61
15	Package Technical Proposal Submission.....	62
	Attachment 1.....	64
	Attachment 2.....	65
	Attachment 3.....	70
	Attachment 4.....	71
	Attachment 5.....	80
1	Draft Project Management Plan	80
1.0	Management and Staffing Plan	80
1.1	Document and Data Management	81
1.1.1	Electronic Document Management System.....	81
1.1.2	Document and Data Management Plan.....	83
1.2	Risk Management Plan.....	83
1.3	PennDOT-To-Be-Formed Development Entity Communication Plan	84
1.4	Public Information and Communication Plan.....	84
1.5	ROW Acquisition Plan.....	84
1.6	Utility Work Plan	84
1.7	Waste Management Plan.....	85
1.8	Comprehensive Environmental Protection Plan	86
1.9	Quality Management Plan.....	86
1.9.2	Quality Management Organization.....	92
1.10	Maintenance Management Plan.....	93
1.10.1	Planned Maintenance Activities.....	95
1.10.2	Maintenance Manual.....	95
1.10.3	Rehabilitation Work Plan.....	96
1.10.4	Maintenance Safety and Security Plan.....	98

1.10.5	Transition and Coordination Plan	98
1.11	Affected Third-Parties Plan	98
1.12	Safety and Security Plan.....	98
1.13	Emergency Management and Disaster Recovery Plan.....	98
1.14	Transportation Management Plan.....	99

LIST OF TABLES

Table 1 - List of Bridges	5
Table 2 - PDA Submittals Matrix	19
Table 3 - Initial Package Proposal Design Components.....	45
Table 4 - Package Proposal Design Components	48

1 GENERAL

1.1 Project Description

Subject to Article 22 of the PDA, the Bridges subject to reconstruction or replacement as part of this Project are identified in Table 1 - List of Bridges, below.

Table 1 - List of Bridges

Major Bridge Project Name	Crossing	PennDOT Website	PennDOT District
I-78 Lenhartsville	Maiden Creek; SR 143	penndot.gov/i78Lenhartsville	5
I-79 Bridgeville	SR 50; Chartiers Creek	penndot.gov/i79Bridgeville	11
I-80 Canoe Creek	Canoe Creek; SR 4005 (Tippecanoe Road)	penndot.gov/i80CanoeCreek	10
I-80 Lehigh River	Lehigh River, Reading Blue Mountain and Northern Railroad; SR 1005 (River Road)	penndot.gov/i80LehighRiverBridge	5
I-80 Nescopeck	Nescopeck Creek	penndot.gov/i80Nescopeck	4
I-80 North Fork	North Fork Redbank Creek; Water Plant Road	penndot.gov/i80NorthFork	10
I-81 Susquehanna	Susquehanna River	penndot.gov/i81Susquehanna	4
I-83 South	Susquehanna River	penndot.gov/i83SouthBridge	8
I-95 Girard Point	Schuylkill River	penndot.gov/i95GirardPoint	6

The PDA Entity shall be responsible for planning, organizing, and coordinating the PA Work with the understanding that the respective to-be-formed Development Entity(s) will be responsible for performing the PA Work.

The PA Work includes, but is not limited to, the investigations, coordination, design, construction, and maintenance of:

- roadway improvements;
- bridge, wall, and other structures reconstruction and rehabilitation;
- drainage improvements;
- Utility Adjustment Work;
- aesthetics and landscaping;
- signing, pavement marking, ITS, and lighting;
- bicycle and pedestrian facilities;
- maintenance and protection of traffic; and
- other appurtenant items.

In addition, the PA Work includes but is not limited to:

- stakeholders coordination and management;
- assisting with ROW acquisitions activities;
- permitting;
- environmental compliance;
- public information and communications; and
- project management.

1.2 Approach to PDA Work

The PDA Work Requirements are minimum requirements and desired outcomes of the PDA Work. The PDA Entity shall perform or cause to be performed all of the PDA Work Requirements for the Bridges in the Project; perform the PDA Work such that all Bridges are made part of a viable Package; ensure each Package advances the goals of the Project; and otherwise ensure all Packages are subject to Project Agreements.

The order of precedence within these PDA Work Requirements shall be as follows:

1. Amendments to PDA Work Requirements and all exhibits and attachments to such amendments;
2. Requirements expressly stated in these PDA Work Requirements;
3. Attachment 1 (*Draft Project Agreement Technical Provisions Term Sheet, Part 1: Bridge-specific Technical Requirements*);
4. Attachment 2 (*Draft Project Agreement Technical Provisions Term Sheet, Part 2: Project-wide Technical Requirements*);
5. Attachment 3 (*Draft Project Agreement Technical Provisions Term Sheet, Part 3: List of Special Specifications and Provisions*);
6. Attachment 4 (*Draft Project Agreement Technical Provisions Term Sheet, Part 4: List of PennDOT Publications, Standards, Manuals, Specifications and References*); and
7. Attachment 5 (*Draft Project Management Plan Requirements*).

Additionally, but with less precedence, unless otherwise agreed to by PennDOT, the PDA Entity shall perform the PDA Work Requirements in accordance with the applicable PennDOT publications, standards, specifications, and manuals and treat all non-obligatory requirements within those PennDOT publications, standards, manuals, specifications, and references as obligatory. Should any PennDOT publications, standards, manuals, specifications, and references conflict, the more stringent requirement shall prevail, unless otherwise agreed to by PennDOT.

1.3 Division of Bridges into Packages

PDA Entity shall divide the Bridges into Packages in accordance with the PDA and this Section 1.3 (Division of Bridges into Packages).

The PDA Entity shall comply with the following, unless otherwise agreed to in writing by PennDOT, when dividing the Bridges into Packages:

- select the Bridges to be recommended to PennDOT for inclusion in the First Package in accordance with the PDA Entity's High-Level Timeline and Approach to Packaging submitted in the PDA Proposal;
- divide the Bridges to maximize the portion of the Project that may be assured of delivery in the first Package;
- divide the remaining Bridges into Packages based upon performance of PDA Work that demonstrates the viability of each such subsequent Package as to financeability and operability in final form; and
- divide the Bridges into Packages to meet the milestones set forth in Exhibit 5 (Pre-Development Milestones and Deadlines).

2 PROJECT MANAGEMENT

2.1 Personnel

The PDA Entity shall be responsible for staffing the PDA Work and ensuring that the Key Personnel and Required Personnel are performing their respective roles and responsibilities.

2.1.1 PDA Organization

The PDA Entity shall develop and submit to PennDOT a PDF roster and PDF organizational chart of the PDA Entity's personnel and subconsultants performing PDA Work ("**PDA Roster and Organizational Chart**"). The PDA Entity shall submit the PDA Roster and Organizational Chart in accordance with Section 2.5.2 (Data Sharing and Submittals) and shall include a narrative of:

- details on responsibilities and how staff for the design, construction, maintenance, and handback shall be integrated;
- details of management structures and management systems to be used;
- the issue resolution process including procedures to resolve issues at the lowest staff level possible and escalation procedures that will be used to resolve issues within the PDA Entity, with stakeholders, and with PennDOT;
- details of the interface protocols and systems the PDA Entity and the PDA -Related Entities shall utilize for interaction among each other, with PennDOT, and with stakeholders;
- how multiple Package Proposal submissions will be staffed; and
- how staff will interact between the PDA Work and PA Work, including staff who may have responsibilities on more than one Bridge or Package.

The PDA Entity shall ensure the PDA Roster and Organizational Chart includes each individuals' name, title, employer, responsibilities, role, phone number, and email address. The PDA Roster and Organizational Chart shall include a narrative which explains the PDA Entity's staffing continuity across the entire PDA Term.

The PDA Entity shall maintain a current PDA Roster and Organizational Chart throughout the PDA Term and notify PennDOT of any organizational chart, roles, or contact information changes as a revised Type 1 Submittal within five (5) Business Days after the change occurs.

The PDA Entity shall develop the PDA Roster and Organizational Chart of the PDA Entity to include the Key Personnel and Required Personnel responsibilities and qualifications outlined in Section 2.1.1.1 (Key Personnel) and Section 2.1.1.2 (Required Personnel).

2.1.1.1 Key Personnel

The PDA Entity shall provide the Key Personnel for the PDA Term as identified in Subsections 2.1.1.1.1 (Project Manager) through 2.1.1.1.7 (Design Lead). With respect to the Maintenance Manager and Design Lead roles, the PDA Entity shall include in its PDA Roster and Organizational Chart submission information and materials sufficient for PennDOT to determine whether such individual possesses the qualifications, capability, and experience required for such role under this Section 2.1.1.1 (Key Personnel).

2.1.1.1.1 Project Manager

The Project Manager shall be, at a minimum, responsible for leading the PDA Entity's team and serve as the single point of contact for all contract administration and correspondence with PennDOT. At a minimum, the Project Manager shall:

- be an employee of the PDA Entity (or a Major Team Member but not the Independent Quality Firm);

- have no less than two (2) years in an executive position within an engineering firm, construction contractor, P3 developer, P3 investment firm or P3 special purpose vehicle or similar project-specific organization; and
- have no less than five (5) cumulative years of experience post-award that included detailed design and construction in a commercial or technical role in at least one highway transportation infrastructure project procured under an Alternative Project Delivery method.

2.1.1.1.2 Design-Build Project Manager

The Design-Build Project Manager during the PDA Term shall be, at a minimum, responsible for management, planning, and execution of the design and construction for the Project including permitting, coordinating with Governmental Entities and third-parties, scheduling, and cost estimating. At a minimum, the Design-Build Project Manager shall have:

- no less than ten (10) years of highway transportation infrastructure project management experience as project manager; and
- served as project manager on at least two highway transportation infrastructure projects involving roadway and bridge aspects of similar complexity, size, and scope.

2.1.1.1.3 Construction Manager

The Construction Manager during the PDA Term shall be, at a minimum, responsible for overseeing the planning of the day-to-day construction operations, materials, equipment, and labor needs, including quality control, for the future PA Work with a primary responsibility of adherence to design and construction specifications, standards and requirements. At a minimum, the Construction Manager shall have:

- no less than ten (10) years of highway transportation infrastructure construction experience as a superintendent, construction manager, or the functional equivalent; and
- served as a superintendent, construction manager, or the functional equivalent on at least two highway transportation infrastructure projects involving roadway and bridge aspects of similar complexity, size, and scope.

2.1.1.1.4 Quality Assurance Manager

The Quality Assurance Manager (QAM) shall be, at a minimum, responsible for performance of the quality assurance aspects throughout the PDA Term. At a minimum, the QAM shall:

- be an employee of an Independent Quality Firm (the QAM may not be the same person who will ultimately serve as a design quality assurance manager or construction quality assurance manager);
- have no less than ten (10) years of highway transportation infrastructure design and construction experience as a lead design engineer (or functional equivalent) and/or construction project manager (or functional equivalent);
- have experience on at least two highway transportation infrastructure projects involving roadway and bridge aspects of similar complexity, size, and scope; and
- be a registered and licensed Professional Engineer in the Commonwealth.

2.1.1.1.5 Financing Manager

The Financing Manager shall be, at a minimum, responsible for the planning the financing of each of the Packages for the Project. At a minimum, the Financing Manager shall:

- have experience in successfully structuring, receiving commitments, and achieving financial close on a diverse range of financing structures for projects of a similar size, scope and complexity.

2.1.1.1.6 Maintenance Manager

The Maintenance Manager shall be, at a minimum, responsible for the overall operation, design, construction, maintenance, contract administration, and handback matters on behalf of the to-be-formed Development Entity during the Maintenance Period. During the PDA Term, the Maintenance Manager shall be, at a minimum, responsible for planning of these operations. At a minimum, the Maintenance Manager shall:

- have a minimum of fifteen (15) years of recent experience with lifecycle costs, bridge and roadway elements maintenance, asset management, inspections, and reporting; and
- have a bachelor's degree or equivalent.

2.1.1.1.7 Design Lead

The Design Lead during the PDA Term shall be a design professional reporting to the Design-Build Project Manager and shall be, at a minimum, responsible for ensuring that the Package Proposal Designs are in accordance with this the PDA Work Requirements and that design criteria requirements are met. At a minimum, the Design Lead shall:

- have no less than ten (10) years of highway transportation infrastructure project design management experience as project manager;
- have no less than five (5) years of design-build experience;
- have a bachelor's degree or equivalent;
- be an employee of a design firm;
- be a registered and licensed Professional Engineer in the Commonwealth; and
- have served as design project manager on at least two highway transportation infrastructure projects involving roadway and bridge aspects of similar complexity, size, and scope.

2.1.1.2 Required Personnel

The PDA Entity shall provide the Required Personnel for the PDA Term as identified in Subsections 2.1.1.2.1 (Controls Manager) through 2.1.1.2.7 (Lead Engineers).

2.1.1.2.1 Controls Manager

The Controls Manager shall be, at a minimum, responsible for the tracking and reporting of controls throughout the PDA Term, including but not limited to the management of documents, Submittals, Approvals, data, contracts, schedule, and cost. At a minimum, the Controls Manager shall:

- have a minimum of ten (10) years of recent experience with bridge projects controls management;
- have a bachelor's degree or equivalent; and
- have served as Controls Manager or similar position on at least one highway transportation infrastructure project involving roadway and bridge aspects of similar complexity, size, and scope.

2.1.1.2.2 Design Quality Manager

The Design Quality Manager (DQM) shall be, at a minimum, responsible for management of the quality control program for the design and for providing quality assurance reviews of the design Work during the PDA Term. The DQM shall not be involved with direct scheduling or design production activities and shall report directly to the Project Manager, independent of the day-to-day management of the Project. The DQM shall verify the methods and procedures contained in the DQMP are implemented and followed by PDA Entity design staff in the performance of the PDA Work. At a minimum, the DQM shall:

- be a Professional Engineer in the Commonwealth;
- have a bachelor's degree or equivalent;

- have at least ten (10) years of experience in design of transportation projects; and
- have held a similar role on a minimum of two design-build projects of at least two hundred and fifty million dollars (\$250M) in total construction cost.

2.1.1.2.3 Equal Employment Opportunity Manager

The Equal Employment Opportunity (EEO) Manager shall lead the PDA Entity's activities in ensuring all community and workforce engagement requirements described in the Project Documents are achieved. The EEO Manager shall meet the requirements of the Project Documents.

2.1.1.2.4 Utility Manager

The Utility Manager's (UM) shall, at a minimum, be responsible for the planning and coordination during the PDA Term for the Utility Adjustment Work. At a minimum, the UM shall:

- have at least ten (10) years of relevant experience in coordinating and solving complex Utility Work on highway improvement projects;
- have a bachelor's degree or equivalent;
- be able to demonstrate a solid working relationship with the Utility Owners in the Commonwealth and impacted by the Work; and
- be authorized by the to-be-formed Development Entity to approve all financial and technical modifications associated with Utility Work.

2.1.1.2.5 Environmental Compliance Manager

The Environmental Compliance Manager (ECM) shall be, at a minimum, responsible for oversight, training and tracking the PDA Entity's obligations and proposed PA Work to comply with Environmental Commitments and permit conditions. At a minimum, the ECM shall:

- have at least a bachelor's degree in engineering or an appropriate scientific discipline;
- a minimum of fifteen (15) years of relevant experience;
- have a bachelor's degree or equivalent;
- experience with the policies, practice and procedures used for environmental management by PennDOT; and
- have held a similar role on a minimum of two design-build projects of at least two hundred and fifty million dollars (\$250M) in total construction cost.

2.1.1.2.6 [Reserved]

2.1.1.2.7 Lead Engineers

The PDA Entity shall provide lead engineers for each major discipline required to complete the Package Proposal Designs. The lead engineer shall oversee the development of design for a discipline and is responsible for that aspect of the design. At a minimum, lead engineers shall have the following qualifications:

- a minimum of ten (10) years of experience in design relating to their particular discipline;
- have a bachelor's degree or equivalent;
- preferred experience with design-build delivery and large and complex highway and transportation projects;
- preferred experience with projects in the Commonwealth; and
- be a registered and licensed Professional Engineer or Architect, as applicable, in the Commonwealth.

At a minimum, the following disciplines shall have a designated Lead Engineer:

- structures;

- roadways and pavements;
- geotechnical;
- utilities;
- ITS, signalization, and lighting;
- traffic control;
- hydraulics and hydrology; and
- design aesthetics and landscaping.

2.1.2 Project Agreement Organization

The PDA Entity shall prepare and submit a roster and organizational chart for the to-be-formed Development Entity for each Package (“**Development Entity Roster and Organizational Chart**”). The PDA Entity shall submit the Development Entity Roster and Organizational Chart in accordance with Section 2.5.2 (Data Sharing and Submittals).

The PDA Entity shall develop the Development Entity Roster and Organizational Chart to include the DBFM Key Personnel and DBFM Required Personnel responsibilities and qualifications outlined in Section 2.1.2.1 (DBFM Key Personnel) and Section 2.1.2.2 (DBFM Required Personnel). Unless otherwise approved by PennDOT pursuant to Section 2.1.2.3 (Changes to Key Personnel), the Key Personnel in the Development Entity Roster and Organizational Chart shall be the Key Personnel included in the current PennDOT-accepted PDA Roster and Organizational Chart.

The Development Entity Roster and Organizational Chart shall include separate organizational charts for design, construction, maintenance, quality, and safety and include a narrative which:

- identifies the Key Contractors and Contractors working on the Package;
- explains the to-be-formed Development Entity’s organizational structure for all activities and with that identify how the staff will work together and demonstrate clear reporting lines to leadership within the to-be-formed Development Entity’s organization; and
- explains how multiple Packages will be staffed and how staff will interact from Project Agreement to Project Agreement, including staff who may have responsibilities on more than one Project Agreement.

2.1.2.1 DBFM Key Personnel

The PDA Entity shall identify the DBFM Key Personnel for the PA Term as identified in Subsections 2.1.2.1.1 (Project Manager) through 2.1.2.1.7 (Design Lead).

2.1.2.1.1 Project Manager

The to-be-formed Development Entity’s Project Manager shall be, at a minimum, responsible for leading the to-be-formed Development Entity’s team and serves as the single point of contact for all contract administration and correspondence with PennDOT. At a minimum, the Project Manager shall meet the minimum requirements of Section 2.1.1.1.1.

2.1.2.1.2 Design-Build Project Manager

The to-be-formed Development Entity’s Design-Build Project Manager shall be, at a minimum, responsible for management of the design and construction for the Project Agreement (with primary responsibility for Project permitting and schedule). At a minimum, the to-be-formed Development Entity’s Design-Build Project Manager shall be full-time, co-located in the Project Agreement office, and shall meet the minimum requirements of Section 2.1.1.1.2 (Design-Build Project Manager).

2.1.2.1.3 Construction Manager

The to-be-formed Development Entity’s Construction Manager shall be, at a minimum, responsible for overseeing the day-to-day construction operations, including maintenance and quality control, for the to-

be-formed Development Entity with primary responsibility for construction supervision and adherence to design and construction specifications, standards and requirements. At a minimum, the to-be-formed Development Entity's Construction Manager shall be full-time during Construction, co-located in the Project Agreement office, or on the Bridge Sites as necessary, and shall meet the minimum requirements of Section 2.1.1.1.3 (Construction Manager).

2.1.2.1.4 Quality Assurance Manager

The to-be-formed Development Entity's Quality Assurance Manager (QAM) shall be, at a minimum, responsible for performance of the quality assurance aspects of overall Project Agreement design and construction. The to-be-formed Development Entity's QAM shall report to, and pursuant to the Project Agreement, will owe a duty of care to PennDOT. The QAM shall meet the minimum requirements of Section 2.1.1.1.4 (Quality Assurance Manager)

2.1.2.1.5 Financing Manager

The to-be-formed Development Entity's Financing Manager shall be, at a minimum, responsible for the financing of the Project Agreement. The to-be-formed Development Entity's Financing Manager shall meet the minimum requirements of Section 2.1.1.1.5 (Financing Manager).

2.1.2.1.6 Maintenance Manager

The to-be-formed Development Entity's Maintenance Manager shall be, at a minimum, responsible for the overall operation, design, construction, maintenance, contract administration, and handback matters on behalf of the to-be-formed Development Entity during the Maintenance Period. The to-be-formed Development Entity's Maintenance Manager shall meet the minimum requirements of Section 2.1.1.1.6 (Maintenance Manager).

2.1.2.1.7 Design Lead

The to-be-formed Development Entity's Design Lead shall be, at a minimum, a design professional reporting to the Design-Build Project Manager and shall be the person responsible for ensuring that the overall Project design is completed and that design criteria requirements are met. The to-be-formed Development Entity's Design Lead shall be available in person for meetings when requested by PennDOT, but at a minimum on a weekly basis. The Design Lead shall be available from NTP 2 until all major design milestones have been completed and when requested by PennDOT until twelve (12) months after final acceptance under the Project Agreement. The Design Lead shall meet the minimum requirements of Section 2.1.1.1.7 (Design Lead).

2.1.2.2 DBFM Required Personnel

The Development Entity Roster and Organizational Chart shall identify the Required Personnel for the PA Term as required in Subsections 2.1.2.2.1 (Controls Manager) through 2.1.2.2.12 (Public Information Coordinator). PennDOT reserves the right to request additional Required Personnel, as necessary. For any proposed DBFM Required Personnel not previously accepted by PennDOT as part of its acceptance of either the PDA Roster and Organizational Chart or a previous Package's Development Entity Roster and Organizational Chart, PDA Entity shall clearly identify such change within its Development Entity Roster and Organizational Chart submission.

2.1.2.2.1 Controls Manager

The to-be-formed Development Entity's Controls Manager shall, at a minimum, be responsible for the tracking and reporting of controls throughout the PA Term, including but not limited to the management of documents, Submittals, Approvals, data, contracts, schedule, and cost. The to-be-formed Development Entity's Controls Manager shall meet the minimum requirements of Section 2.1.1.2.1 (Controls Manager).

2.1.2.2.2 Design Quality Manager

The to-be-formed Development Entity's Design Quality Manager (DQM) shall, at a minimum, be responsible for management of the quality control program for the design and for providing quality assurance reviews of the design Work. The to-be-formed Development Entity's DQM shall not be involved with direct scheduling or design production activities; and shall report directly to the Project Manager or other high-level management of the to-be-formed Development Entity, independent of the day-to-day management of the Project.

2.1.2.2.3 Equal Employment Opportunity Manager

The to-be-formed Development Entity's Equal Employment Opportunity (EEO) Manager shall lead the to-be-formed Development Entity's activities in ensuring, at a minimum, all community and workforce engagement requirements described in the Project Documents are achieved. The to-be-formed Development Entity's EEO Manager shall be available as needed during the PA Term to fulfill the duties of the position. The to-be-formed Development Entity's EEO Manager shall meet the requirements of the Project Documents.

2.1.2.2.4 Utility Manager

The to-be-formed Development Entity's Utility Manager's (UM) primary Work shall be, at a minimum, responsible for the performance of all the to-be-formed Development Entity's obligations with respect to Utility Work. The to-be-formed Development Entity's Utility Manager shall be available on site as necessary. The to-be-formed Development Entity's Utility Manager shall meet the minimum requirements of Section 2.1.1.2.4 (Utility Manager).

2.1.2.2.5 Environmental Compliance Manager

The to-be-formed Development Entity's Environmental Compliance Manager (ECM) shall be, at a minimum, responsible for oversight, training and tracking the to-be-formed Development Entity's obligations to comply with Environmental Authorizations and permit conditions. The Environmental Compliance Manager shall be available on site as needed for the PA Work. . The to-be-formed Development Entity's ECM shall meet the minimum requirements of Section 2.1.1.2.5 (Environmental Compliance Manager).

2.1.2.2.6 [Reserved]

2.1.2.2.7 Lead Engineers

The to-be-formed Development Entity shall provide lead engineers for each major discipline required to complete the Design Work. The to-be-formed Development Entity's lead engineers shall be, at a minimum, responsible for overseeing the development of design for a discipline and is in responsible charge of that aspect of the Design Work. The to-be-formed Development Entity's Lead Engineer positions must be filled for the duration of the D&C Work; the Person holding such position is expected to be on-site in the Project Agreement office as needed. The discipline lead may be the Engineer of Record for a portion of the design but is not required to be so. The lead engineers shall meet the minimum requirements of Section 2.1.1.2.7 (Lead Engineers).

2.1.2.2.8 Safety Manager

The to-be-formed Development Entity's Safety Manager shall be, at a minimum, responsible for achieving the safety goals of the PA. This shall be a full-time role through the Construction Period and a part-time role as required for the remainder of the PA Term. The to-be-formed Development Entity's Safety Manager shall:

- have at least ten (10) years of progressive safety experience, five (5) years of which must be safety management experience, on complex heavy civil projects for the position during

the Construction Period and similar experience on maintenance projects for the position during the Maintenance Period;

- have a bachelor's degree or equivalent;
- certification as a Construction Health and Safety Technician or higher certification issued by the Board of Certified Safety Professionals;
- completion of the Occupational Safety and Health Administration (OSHA) 30-hour Safety and Health Course; and
- training and current certification for CPR and First Aid.

2.1.2.2.9 Traffic Control Manager

The to-be-formed Development Entity's Traffic Control Manager shall be, at a minimum, responsible for supervising and continuously monitoring the installation and maintenance of all traffic control devices. The to-be-formed Development Entity's Traffic Control Manager shall be on-site during the Construction Period as needed and shall have the following qualifications:

- a minimum ten (10) years of experience providing traffic control services on projects of a similar complexity;
- have a bachelor's degree or equivalent;
- an American Traffic Safety Services Association Traffic Control Supervisor certification; and
- excellent communications skills, community outreach skills and experience presenting to and interacting with the public.

2.1.2.2.10 Construction Quality Control Manager

The to-be-formed Development Entity's Construction Quality Control Manager (CQCM) shall be, at a minimum, responsible for management of the quality of the construction Work per the CQMP and shall be devoted to the Project on a full-time basis through the Construction Period. The to-be-formed Development Entity's CQCM shall not be involved with scheduling, design, or production activities and shall report directly to the Project Manager or other high-level management of the to-be-formed Development Entity, independent of the day-to-day management of the Project. The to-be-formed Development Entity's CQCM shall verify the methods and procedures contained in the CQMP are implemented and followed by the to-be-formed Development Entity and the to-be-formed Development Entity-Related Entities in the performance of the Work. The to-be-formed Development Entity's CQCM shall:

- preferably be a Professional Engineer in the Commonwealth;
- have a bachelor's degree or equivalent;
- have at least fifteen (15) years of experience in construction of bridge and highway projects; and
- have held a similar role on a minimum of two design-build projects of at least \$250M in total construction cost.

2.1.2.2.11 Maintenance Quality Manager

The to-be-formed Development Entity's Maintenance Quality Manager (MQM) shall be, at a minimum, responsible for oversight and implementation of the MQMP and shall be devoted to the Project as needed to perform their duties throughout the PA Term. The to-be-formed Development Entity's MQM shall not be involved with scheduling, design, or production activities and shall report directly to the Project Manager or other high-level management of the to-be-formed Development Entity, independent of the day-to-day management of the Project. The to-be-formed Development Entity's MQM shall verify the methods and procedures contained in the MQMP are implemented and followed by the to-be-formed Development Entity and the to-be-formed Development Entity-Related Entities in the performance of the Work. The to-be-formed Development Entity's MQM shall have:

- a minimum of fifteen (15) years of experience in maintenance and asset management for transportation infrastructure;
- have a bachelor's degree or equivalent; and
- demonstrated experience with the inspection and maintenance of roadways and bridges in the US and preferably in the Commonwealth.

2.1.2.2.12 Public Information Coordinator

The to-be-formed Development Entity's Public Information Coordinator shall be, at a minimum, be responsible for leading the to-be-formed Development Entity's public involvement activities as necessary starting at the PA Commercial Close through the final acceptance of the PA, and as needed during the Maintenance Period. The to-be-formed Development Entity's Public Information Coordinator shall have:

- a minimum of ten (10) years of experience in public involvement for transportation projects including having held a similar role on a minimum of two design-build projects of at least \$250M in total construction cost;
- preferably have led at least one project in the Commonwealth, managing public involvement, stakeholder coordination and community engagement;
- experience with the policies, practice and procedures used for public involvement by PennDOT;
- have a bachelor's degree or equivalent; and
- have strong writing and verbal communications and community outreach skills including the ability to address opposition to projects and potentially controversial issues.

2.1.2.3 Changes to Key Personnel

If the PDA Entity wishes to use Key Personnel for a PA other than those included in the PennDOT-accepted PDA Roster and Organizational Chart, the PDA Entity shall (a) clearly identify any such changes within its Development Entity Roster and Organizational Chart submission; and (b) include in such submission information and materials sufficient for PennDOT to determine whether each such proposed substitute Key Personnel possesses the qualifications, capability, and experience required for such role under this Section 2.1.2 (Project Agreement Organization).

PennDOT will have the right to review the qualifications, capability, and experience of any proposed substitute Key Personnel. PennDOT will also have the right to and interview and have both formal and informal discussions with, any proposed substitute Key Personnel.

PennDOT may approve or reject the appointment of any substitute Key Personnel position in its sole discretion. If PennDOT rejects a proposed substitute Key Personnel, the PDA Entity shall repeat the process set forth in this Section 2.1.2.3 (Changes to Key Personnel) until PennDOT has approved a proposed substitute Key Personnel.

2.2 Project Agreement Project Management Plan

The PDA Entity shall develop and submit to PennDOT a draft Project Management Plan (PMP) for the PA Term. The PDA Entity shall develop the PMP in anticipation of the to-be-formed Development Entity using this PMP for the PA Term, upon acceptance by PennDOT. The PMP shall be developed in accordance with Attachment 5 (*Draft Project Management Plan Requirements*) and submitted in accordance with Section 2.5.2 (Data Sharing and Submittals).

2.3 Partnership

In addition to the responsibilities identified in the PDA, the Steering Committee, as it relates to the PDA Work, shall assist with accommodating and facilitating daily interactions between the Parties as necessary.

2.4 Risk Mitigation

The PDA Entity shall develop and submit to PennDOT a Risk Management Plan per Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements. The Risk Management Plan shall describe the approach to identification, management, mitigation, and allocation of Package risks, include a risk matrix, and identify the following, at a minimum:

- risks to the successful outcome of the Package grouped by logical categories;
- technical risks including the resiliency of bridges, pavements, embankments, and roadway slopes;
- design risks;
- construction risks;
- maintenance risks;
- available opportunities to enhance the PA outcome, also logically grouped;
- potential qualitative and quantitative impacts caused by the occurrence of the identified risks or opportunities;
- the likelihood the risks or opportunities could occur;
- mitigation strategies and specific measures to eliminate, prevent, or reduce the impact of risks or increase the probability of an opportunity to occur;
- the residual probability the risk still exists after the mitigation is implemented; and
- specific procedures to implement in the event such risks occur and mitigate the consequences.

Following PennDOT's initial acceptance of the PDA Entity's Risk Management Plan, the PDA Entity shall submit an updated Risk Management Plan with each subsequent Bi-Monthly Progress Report.

As part of the risk mitigation approach set forth in the Risk Management Plan and implemented by the PDA Entity, the PDA Entity must accommodate and facilitate monthly risk workshops with PennDOT, within ten (10) Business Days after submitting the Risk Management Plan, to evaluate the potential risks to the PDA Work and PA Work and develop and prioritize potential methods of eliminating, minimizing, mitigating or managing these risks. The PDA Entity shall identify and perform strategies to mitigate risk, which strategies shall include, but not be limited to:

- performing due diligence such as collecting and analyzing as-builts, historical documents, and other sources;
- obtaining necessary field data through surveys, borings, test holes (utility subsurface investigations), etc.;
- performing necessary studies and engineering analyses such as constructability reviews, scheduling, cost estimating, alternative design evaluations, mitigation studies, innovative design or construction techniques, etc.; and
- applying lessons learned to the Package from other similar work performed for PennDOT and on other similarly complex projects.

The PDA Entity is responsible for the identification, assessment, avoidance, minimization and mitigation of risk throughout the PDA Work with the goal of developing a Package Proposal which effectively addresses the potential risks.

2.5 Meetings, Data Sharing and Submittals

2.5.1 Meetings

The PDA Entity must accommodate and facilitate weekly PDA Work progress meetings with PennDOT, or as often as mutually deemed necessary by the Parties, to collaborate and review the progress of the PDA Work for each Bridge.

The PDA Entity shall facilitate additional meetings with PennDOT as deemed necessary by PennDOT. The PDA Entity shall conduct meetings with stakeholders as necessary to advance the PDA Work and Project goals. PennDOT shall be given five (5) Business Days prior email notice of, and shall be provided the opportunity to attend, any such meeting.

PDA Entity shall provide the following for each meeting:

- a record of meeting attendees;
- meeting agendas with specified purpose and stated objectives;
- draft meeting minutes including action items with responsible parties for each meeting within five (5) Business Days after the conclusion of the meeting; and
- final meeting minutes including action items with responsible parties for each meeting within five (5) Business Days after issuing draft meeting minutes or within two (2) Business Days after receiving comments from PennDOT, whichever is latest, up to seven (7) days.

In addition, the PDA Entity shall accommodate and facilitate monthly PDA progress meetings with PennDOT at a programmatic level, starting within thirty (30) days after the Effective Date of the PDA, to cover:

- a review of the previous month's Bi-Monthly Progress Reports;
- a discussion of the overall progress of the PDA Work relative to the Baseline PDA Work Schedule and critical path;
- a discussion on the Allowed Costs incurred to date;
- a discussion of the high-level activities planned for the upcoming reporting period;
- a discussion of issues encountered, and the actions taken to resolve;
- a discussion of any unresolved items from the previous meeting;
- a discussion of any other new items; and
- a discussion on action items with responsible parties and deadlines for follow-up action.

2.5.2 Data Sharing and Submittals

The PDA Entity shall use an e-Builder system, supplied by PennDOT, for data and document sharing, records of the PDA Work, Submittals and formal communication. The e-Builder project site shall be in use within fourteen (14) days after the Effective Date of the PDA. The PDA Entity shall ensure that PennDOT has full viewing, downloading, and uploading rights to all documents. The PDA Entity shall host e-Builder training sessions for PennDOT employees as may be necessary and as requested by PennDOT. On the date of the Package Proposal submissions, the PDA Entity shall provide PennDOT with an electric file storage transfer of all folders and files associated with the PDA activities into PennDOT's electronic storage and management systems. Prior to the Package Proposal submissions, the PDA Entity shall coordinate with PennDOT to ensure the data transfer is compatible, placed, and linked in the appropriate PennDOT's electronic storage and management systems.

The PDA Entity shall prepare and submit to PennDOT a list of Submittals in accordance with this Section 2.5.2 (Data Sharing and Submittals). The list of Submittals shall indicate which Submittals the PDA Entity will submit to PennDOT in connection with the PDA Work for each Package. The PDA Entity shall include with the list of Submittals a description of each Submittal identifying the contents and purpose, the status,

the planned schedule for submission, the anticipated level of review to be provided by PennDOT, an indication of whether or not the Submittal will be subject to the proper QA/QC processes per the PDA Quality Management Plan in accordance with Section 2.8.1 (Pre-Development Agreement Quality Management Plan), the Submittal Type, and the duration of reviews expected. The PDA Entity shall provide an updated list of Submittals in each Bi-Monthly Progress Report. The PDA Entity shall maintain the list of Submittals so it is current during the PDA Term. Under no circumstances is the list of Submittals, below, to be construed as exhaustive and the PDA Entity shall be solely responsible for meeting any and all Submittal requirements of the PDA Work Requirements and the PDA and its respective Exhibits.

In accordance with the PDA, there are Bridge-specific, generic Package-specific, and overarching PDA-specific Submittals required as part of the PDA Work; the “Submit One Per” column in the table, below, gives the proper designation of each Submittal in this regard.

The “Submittal Type” column designates the level of PennDOT responsibility to review, comment, or approval each submittal. Type 1 Submittal, Type 2 Submittal, and Type 3 Submittal shall have the meaning as defined in the PDA.

As applicable, the PDA Entity shall use the documents submitted with its Proposal as a basis and further develop the documents submitted with its Proposal for the Submittals listed in Table 2 - PDA Submittals Matrix, below. At a minimum, the PDA Entity shall submit to PennDOT the Submittals identified in Table 2 - PDA Submittals Matrix and follow their respective requirements prescribed in Table 2 - PDA Submittals Matrix and throughout these PDA Work Requirements.

Table 2 - PDA Submittals Matrix

Submittal	Submit One Per	Submittal Type	Referenced PDA Work Requirements Section	PennDOT Initial Review Timeline (Business Days)	PDA Entity Resubmission Deadline (Business Days)	Subsequent PennDOT Review Timeline (Business Days)	To be Submitted
PDA Work Schedule	PDA	1	2.6.1 (Pre-Development Agreement Work Schedule)	10	15	5	Within 5 Business Days after the Effective Date of the PDA.
PDA Roster and Organizational Chart	PDA	1	2.1.1 (PDA Organization)	10	5	5	Within 5 Business Days after the Effective Date of the PDA.
PDA Bi-Weekly Progress Report	PDA	1	2.5.3 (Reporting on Progress of PDA Work)	10	5	5	Every two weeks, starting within 10 Business Days after Effective Date of the PDA
PDA Quality Management Plan	PDA	1	2.8.1 (Pre-Development Agreement Quality Management Plan)	10	5	5	Within 15 Business Days after Effective Date of the PDA.
List of Submittals to PennDOT during PDA Work	PDA	1	2.5.2 (Data Sharing and Submittals)	10	5	5	Within 15 Business Days after Effective Date of the PDA.
Initial Package Proposal Design	Bridge	2	8.1 (Initial Package Proposal Design)	10	10	5	At least 60 Business Days prior to respective Package Proposal submittal date.
Components of the Initial Package Proposal	As deemed	2	8.1 (Initial Package Proposal Design) and	10	10	5	Prior to the respective Initial

Submittal	Submit One Per	Submittal Type	Referenced PDA Work Requirements Section	PennDOT Initial Review Timeline (Business Days)	PDA Entity Resubmission Deadline (Business Days)	Subsequent PennDOT Review Timeline (Business Days)	To be Submitted
Design and components of the Package Proposal Design (if applicable).	necessary by the PDA Entity.		8.2 (Package Proposal Design).				Package Proposal Design and Package Proposal Design. Not to exceed the limitations set forth in Section 8.1 (Initial Package Proposal Design) and Section 8.2 (Package Proposal Design).
ICs (if applicable)	Concept	3	3.3 (Innovative Concept Submittals)	10	5	5	No later than the date of the Initial Package Proposal Design submittal for the respective Bridge.
Risk Management Plan	Bridge	1	2.4 (Risk Mitigation)	10	10	5	At least 60 Business Days prior to respective Package Proposal submittal date.
Affected Third-Parties Plan	Bridge	1	2.7.1.3 (Approvals, Permits, and Reviews Tracking)	10	10	5	At least 60 Business Days prior to respective Package Proposal submittal date.
Financing Plan including:	Package	1	14.1 (Financing Plan Development)	10	10	5	At least 60 Business Days

Submittal	Submit One Per	Submittal Type	Referenced PDA Work Requirements Section	PennDOT Initial Review Timeline (Business Days)	PDA Entity Resubmission Deadline (Business Days)	Subsequent PennDOT Review Timeline (Business Days)	To be Submitted
a. Credit rating work plan; b. TIFIA financing plan; c. Non-TIFIA debt competition work plan; and d. Equity commitments work plan.							prior to respective Package Proposal submittal date.
ROW Plans (if applicable)	Bridge	3	5.1 (Right-of-Way and Easement Assessment)	10	10	5	1) With the respective Initial Package Proposal Design; and 2) With the respective Package Proposal Design.
Draft Baseline Project Schedule	Package	1	2.6.3 (Project Agreement Work Schedule)	10	10	5	1) With the respective Initial Package Proposal Design; and 2) With the respective Package Proposal Design.
Draft SOV	Package	1	2.6.4 (Schedule of Values)	10	10	5	1) With the respective Initial Package Proposal Design; and 2) With the respective Package Proposal Design.

Submittal	Submit One Per	Submittal Type	Referenced PDA Work Requirements Section	PennDOT Initial Review Timeline (Business Days)	PDA Entity Resubmission Deadline (Business Days)	Subsequent PennDOT Review Timeline (Business Days)	To be Submitted
D&C Costing Model	Package	1	12.1 (D&C Cost Amount and Price Reasonableness)	10	10	5	1) With the respective Initial Package Proposal Design; and 2) With the respective Package Proposal Design.
Maintenance Costing Model	Package	1	13.1 (Maintenance Costs)	10	10	5	1) With the respective Initial Package Proposal Design; and 2) With the respective Package Proposal Design.
Development Entity Roster and Organizational Chart	Package	1	2.1.2 (Project Agreement Organization)	10	5	5	At least 40 Business Days prior to respective Package Proposal submittal date.
Package Proposal Design	Bridge	2	8.2 (Package Proposal Design)	10	15	5	At least 40 Business Days prior to respective Package Proposal submittal date.
Utility Conflict Matrix	Bridge	1	6 (Utilities)	10	5	5	With the respective Package Proposal Design submittal.
Maintenance Limit Drawings	Bridge	1	10.2 (Maintenance Limit Drawings)	10	5	5	With the respective Package Proposal Design submittal.

Submittal	Submit One Per	Submittal Type	Referenced PDA Work Requirements Section	PennDOT Initial Review Timeline (Business Days)	PDA Entity Resubmission Deadline (Business Days)	Subsequent PennDOT Review Timeline (Business Days)	To be Submitted
Plan for Maintenance Work and Handback Work	Package	1	10.1 (Plan for Maintenance Work)	10	5	5	With the respective Package Proposal Design submittal.
Project Agreement Draft Project Management Plan	Package	1	2.2 (Project Agreement Project Management Plan)				With the respective Package Technical Proposal submittal.
Package Technical Proposal	Package	3	15 (Package Technical Proposal Submission)				With the Package Proposal submittal.
Project Agreement Environmental Commitment and Mitigation Tracking System	Package	1	4.2 (Environmental Compliance)	10	5	5	Within 20 Business Days after the respective Package Proposal submittal date.

These review timelines are specifically for PennDOT reviews. Reviews with other Bridge stakeholders may require additional timeframes. Should the review timelines shown in the table above be insufficient for a specific Submittal, the Steering Committee shall determine an acceptable review timeline for that Submittal.

The RIDs may indicate that certain aspects of Bridge designs have prior PennDOT-issued approvals. Such prior PennDOT-issued approvals will not relieve the PDA Entity of its duties to perform the requirements of these PDA Work Requirements and meet its obligations in accordance with the PDA. Prior PennDOT-issued approvals shall not be acceptable in lieu of any Submittal content requirements.

Unless otherwise stated in the PDA Contract Documents, the PDA Entity shall provide to PennDOT a PDF electronic copy of each Submittal along with the native, electronic files when requested by PennDOT. The PDF Submittal shall have the signature of an authorized representative of PDA Entity. The PDA Entity shall include with each Submittal a transmittal cover sheet in a form acceptable to PennDOT. At a minimum, any plan presentation shall adhere to the requirements of PennDOT Publication 14M, Design Manual Part 3 Plans Presentation (DM-3). Submittals composed of multiple parts shall have each part clearly identified and the parts arranged in a logical sequence. Every portion of the Submittal shall be noted on the transmittal.

Resubmittals of any Submittal may be required if deemed necessary by PennDOT or any stakeholder with jurisdiction over the PDA Work or the PA Work or a portion thereof. The PDA Entity shall develop each resubmittal to address comments received from a prior Submittal in a manner satisfactory to the commenting party. The PDA Entity shall resubmit any Submittal as many times as necessary to address comments from PennDOT or any stakeholder with jurisdiction over the PDA Work or the PA Work or a portion thereof. Resubmittal timelines are provided in Section 2.5.2 (Data Sharing and Submittals).

2.5.3 Reporting on Progress of PDA Work

The PDA Entity shall prepare a Bi-Weekly Progress Report identifying activities having occurred over the previous reporting period. The PDA Entity shall submit the Bi-Weekly Progress Reports in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements. At a minimum, the PDA Entity shall include the following items in the Bi-Weekly Progress Reports:

- a summary of the PDA Entity's activities for the previous reporting period;
- a listing of any problems or issues encountered, steps taken to mitigate each problem or issue and any problems or issues resolved since the last report;
- the PDA Entity's progress against the Baseline PDA Work Schedule, in accordance with Section 2.6.1 (Pre-Development Agreement Work Schedule), with a comparison to the previous Bi-Monthly Progress Report, an analysis of the critical path, and detailed explanations and mitigations for any schedule lags;
- an eight (8) week look-ahead of upcoming PDA Work activities and meetings for the PDA Entity and PennDOT;
- conclusions of any Site Investigations or other field investigations, testing, or studies completed by the PDA Entity;
- a listing of properties where additional environmental assessments have occurred or shall occur including any properties where the status of environmental risk remains unknown;
- a summary of all stakeholder coordination activities, their status, and any required actions by the PDA Entity, PennDOT, or stakeholders;
- a summary of all public outreach and community engagement activities conducted by the PDA Entity and PennDOT;
- a list of open issues to be resolved between the Parties;

- an updated Risk Management Plan per Section 2.4 (Risk Mitigation) with a summary of the ongoing risk assessments and mitigation activities performed by the PDA Entity and PennDOT;
- a summary of the Allowed Costs accrued to date;
- monthly DBE/SBE Status Report;
- an updated list of Submittals per Section 2.5.2 (Data Sharing and Submittals);
- an updated Affected Third-Parties Plan per Section 2.7.1.3 (Approvals, Permits, and Reviews Tracking);
- an updated Utility Conflict matrix, as necessary, per Section 6.1 (Identifying Utility Work);
- an update on what steps the PDA Entity and PennDOT have taken to advance the ROW acquisition process of properties, if any;
- identification of any decisions needed and the party responsible for the decision; and
- anticipated list of decisions or Approvals needed within the next ninety (90) days.

2.6 Schedule

2.6.1 Pre-Development Agreement Work Schedule

The PDA Entity shall prepare a PDA work schedule in accordance with this Section 2.6.1 (the “**PDA Work Schedule**”) and submit such PDA Work Schedule to PennDOT in accordance with Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements. The PDA Work Schedule shall consist of an updated and comprehensive schedule of the activities required to complete the PDA Work. The PDA Entity shall maintain this schedule as the PDA Work is performed in a manner necessary to ensure it accurately represents the current status of the PDA Work. The first PDA Work Schedule that is submitted by the PDA Entity and accepted by PennDOT will be the baseline PDA Work Schedule (the “**Baseline PDA Work Schedule**”).

The PDA Entity shall prepare the PDA Work Schedule using software compatible with ASTA and present relationships and interdependencies between the individual activities required to complete the PDA Work. The PDA Entity shall provide PennDOT with the PDA Work Schedule upon PennDOT’s request. Following the initial updated PDA Work Schedule submittal required under Section 2.5.2 (Data Sharing and Submittals), the PDA Entity shall provide PennDOT with ongoing PDA Work Schedule updates in the Bi-Monthly Progress Reports as required under Section 2.5.3 (Reporting on Progress of PDA Work), and shall otherwise provide PennDOT with an updated PDA Work Schedule upon PennDOT’s request.

The PDA Work Schedule developed by the PDA Entity must include the following details:

- a detailed description of PDA Work activities to be performed, including:
 - the scheduling assumptions and the identification of the critical path;
 - a work breakdown structure capturing the PDA Work activities and Submittals;
 - milestones or other constraining events;
 - a highlighted critical path;
 - available float for activities, where applicable;
 - appropriate logic ties and interdependencies to show overall approach to sequencing, including logical relationships between activities logically tying the activities to avoid open ends;
 - activities used in lieu of lags wherever possible;
 - a depiction of the PDA Work to be performed by subcontractors, Utility Owners, Governmental Entities, and third-parties;
 - any PennDOT, Utility Owner, Governmental Entity, or third-party Approvals required and the dates by which such Approvals are necessary;

- any additional ROW or easement acquisitions, if applicable, per Section 5 (Right-of-Way); and
 - required interfaces with other projects, localities, municipalities and other Governmental Entities;
- a depiction of the required coordination with stakeholders, including subcontractors, Utility Owners, Governmental Entities, and third-parties;
 - activities for stakeholder Approvals required and the dates by which such Approvals are necessary, including reasonable time for review and approval, including the requirement for multiple submissions if needed;
 - activities required for the development of the D&C Costing Model and the Maintenance Costing Model, including key milestones in the process for determining and agreeing upon the final D&C Amount and availability payments;
 - activities required for the development of the Financing Plan, investment grade ratings, lender and equity commitments, and financial model, including key milestones through to delivery of the model;
 - target dates for the Commercial Close and Financial Close Date for each Package; and
 - any other activities required to submit a compliant Package Proposal and to achieve Commercial Close of each Package.

2.6.2 Updates to the PDA Work Schedule

The PDA Entity shall be responsible for performing the PDA Work in accordance with the Baseline PDA Work Schedule.

Following the submittal of the PDA Work Schedule in accordance with Section 2.5.2 (Data Sharing and Submittals), the PDA Entity shall submit a revised PDA Work Schedule to PennDOT as a Type 3 Submittal within five (5) Business Days after any of the following events:

- becoming aware of any circumstance that would materially impact the timing of PDA Package Submittal, completion of the PDA Work, or Commercial Close;
- Relief Event granted by PennDOT;
- PennDOT requesting a revised PDA Work Schedule; and
- a change to the critical path.

Upon acceptance by PennDOT of a revised PDA Work Schedule, the accepted revised PDA Work Schedule shall become the new Baseline PDA Work Schedule.

The PDA Entity shall ensure that PennDOT has electronic access at all times to the current version and all earlier versions of the PDA Work Schedule in both native electronic file format and in PDF on e-Builder.

2.6.3 Project Agreement Work Schedule

The PDA Entity shall prepare a draft baseline project schedule for the proposed PA Work in each Package using ASTA (the “**Baseline Project Schedule**”). The PDA Entity shall prepare and submit reviewable PDF and native file versions of the draft Baseline Project Schedule in accordance with Section 2.5.2 (Data Sharing and Submittals).

At a minimum, the PDA Entity shall include the following in the draft Baseline Project Schedule:

- milestones or other constraining events;
- a highlighted critical path;
- available float for activities, where applicable;

- appropriate logic ties and interdependencies to show overall approach to sequencing, including logical relationships between activities logically tying the activities to avoid open ends;
- activities used in lieu of lags wherever possible;
- a depiction of the required coordination with stakeholders, including subcontractors, Utility Owners, Governmental Entities, and third-parties;
- a depiction of the PA Work to be performed by stakeholders, including subcontractors, Utility Owners, Governmental Entities, and third-parties;
- activities for stakeholder Approvals required and the dates by which such Approvals are necessary, including reasonable time for review and approval, including the requirement for multiple submissions if needed;
- reasonable time for design, reviews, construction, and maintenance activities related to stakeholders;
- reasonable time needed to complete all ROW and easement acquisitions, including condemnation proceedings;
- required interfaces with other projects, localities, municipalities and other Governmental Entities;
- financing related milestones and key workstreams as it relates to structuring and securing private financing commitments for delivery of the Package; and
- all activities required by to complete the PA Work in sufficient detail such that:
 - there is a separate design, construction, maintenance, and handback schedule for each Bridge in the Package;
 - submittal review and acceptance timelines are shown; and
 - maintenance activities are shown during the Maintenance During D&C period and the Maintenance Period.

The PDA Entity shall continually update and refine the draft Baseline Project Schedule as necessary to ensure it accurately represents the status of the ongoing PDA Work and the contemplated schedule with respect to performance of the Package Work. After the PennDOT acceptance of the initial submission of the draft Baseline Project Schedule with the Initial Package Proposal Design, the PDA Entity shall resubmit an updated and revised draft Baseline Project Schedule with the Package Proposal Design as required under Section 2.5.2 (Data Sharing and Submittals).

The draft Baseline Project Schedule shall divide the Work into cost- and resource-loaded schedule activities not to exceed twenty-one (21) days, except for design and procurement activities where a greater duration than twenty-one (21) days may be used if needed. The duration and logical relationships of the schedule activities (or summaries at phase level) shall be based on the actual duration and relationships anticipated, with tasks linked. All activities shown in the schedule, with the exception of the first and last activities, shall have a minimum of one predecessor and a minimum of one successor activity. In developing the draft Baseline Project Schedule, specific attention shall be given to long-lead items such as materials, approvals or interactions with third-parties which may affect the critical path.

The PDA Entity shall use standard and consistent schedule activity identification numbers, textual descriptions, and codes in all draft Baseline Project Schedule submittals, in a manner acceptable to PennDOT.

Each PA Milestone shall be separately identified and be assigned a “finish no later than” constraint date.

No unspecified milestones, constraints, float suppression techniques, or use of schedule activity durations, logic ties, and/or sequences deemed unreasonable by PennDOT, shall be used in the draft Baseline Project Schedule. The draft Baseline Project Schedule Submittal shall clearly and individually define the progression of the Work within the applicable time frame by using separate schedule activities. The critical

path shall be highlighted in red on all schedules to distinguish critical schedule activities from other schedule activities and float shown for all schedule activities.

The draft Baseline Project Schedule shall include a separate narrative report which describes, in general fashion, the to-be-formed Development Entity's proposed methods of operation for designing and constructing the PA Work. The schedule narrative shall describe the general sequence of design and construction, the proposed critical path of the PA, and all milestones.

The draft Baseline Project Schedule shall include a listing of all Submittals required for the PA Work. Submittal activity durations shall include specific durations for any quality activities needed before the Submittal is provided to PennDOT; activities for review and/or acceptance of the Submittal by the reviewing party; and activities by the to-be-formed Development Entity for resolving review comments.

The PA title and data date shall be displayed on all schedules, charts and diagrams. A legend shall be provided on all schedules, charts and diagrams which indicates the various symbols used and their meanings. Electronic versions shall likewise be uniquely identifiable by filename.

Each update to the draft Baseline Project Schedule shall satisfy all requirements of the draft Baseline Project Schedule set forth under these PDA Work Requirements.

2.6.4 Schedule of Values

The PDA Entity shall develop a draft SOV for the Baseline Project Schedule in accordance with this Section 2.6.4 (Schedule of Values) and submit such draft SOV to PennDOT in accordance with Section 2.5.2 (Data Sharing and Submittals). The draft SOV shall allocate the costs of the design, construction and maintenance activities to the draft Baseline Project Schedule. Such allocation shall accurately reflect the Development Entity's cost for each schedule activity and shall not artificially inflate, imbalance, or front-load line items. The PDA Entity shall ensure the following when developing the draft SOV, at a minimum:

- the draft SOV includes all resources required for each of the Project activities, including materials, labor and equipment;
- the draft SOV resource information includes:
 - materials shown in type and quantity;
 - labor shown in job hours planned for individual craft workers and labor classifications; and
 - equipment shown in job hours, number of pieces, types and sizes; and
- the draft SOV accurately represent the planned labor and equipment hours necessary to achieve the estimated production rates.

Cost and resource loading applied to schedule activity for materials, labor, or equipment quantities shall be based upon only those resources available to the PDA Entity and the to-be-formed Development Entity. Labor-loading of activities may be based upon total number of workers, but, at a minimum upon total number of crews. Major construction equipment to be used by the to-be-formed Development Entity and contractors at all tiers in performing PA Work shall be assigned to applicable activities. The quantity shall represent the estimated effort in-place for the cost and resource loading applied to the schedule activity. schedule activities shall not only be broken down to each element of the PA Work, but each element shall be broken down minimally (for example, Design Work shall be further refined into tasks or disciplines required for a complete Submittal).

The PDA Entity shall continually update and refine the draft SOV so as to ensure it represents an accurate reflection of the current monetary valuation for all contemplated parts of the PA Work, and shall submit and incorporate a then-current draft SOV in each submittal of the Baseline Project Schedule required under these PDA Work Requirements.

2.7 Stakeholder Coordination and Permitting

2.7.1 Coordination with Stakeholders

PennDOT has performed coordination with various stakeholders as depicted in the RIDs. The PDA Entity shall be responsible for any necessary inquiry of or coordination with PennDOT to determine the status of such coordination efforts and the actions necessary to progress such efforts. The PDA Entity shall be responsible for coordinating with stakeholders and achieving necessary stakeholder Approvals per Section 2.7.1.3 (Approvals, Permits, and Reviews Tracking). Stakeholders include but are not limited to:

- Governmental Entities including;
 - PA Department of Conservation & Natural Resources;
 - PA Department of Community and Economic Development
 - PA Department of Environmental Protection;
 - PA Historic and Museum Commission;
 - PA Fish & Boat Commission;
 - PA Game Commission;
 - PA Public Utility Commission;
 - FHWA;
 - US Army Corps of Engineers;
 - Environmental Protection Agency;
 - US Fish & Wildlife Service;
 - PA Association of Conservation Districts;
 - US Coast Guard; and
 - other agencies, as needed;
- permitting agencies;
- Utility Owners;
- railroad owners and operators;
- adjacent communities;
- property owners impacted by the Project; and
- the public.

The PDA Entity shall support PennDOT as may be necessary with respect to periodic reporting, updates, briefings and meetings with federal, state, and local officials, private entities, and the public.

The PDA Entity shall provide PennDOT with a digital copy of any communication with stakeholders.

The PDA Entity shall be responsible for coordinating with PennDOT to establish a list of other infrastructure construction projects that the to-be-formed Development Entity will interface with, especially those projects within or connecting to the Project Sites, or impacted by project detours, if applicable. The to-be-formed Development Entity shall be responsible for coordinating the PA Work with the other projects to ensure the proposed design, construction, and schedules for the Project and other projects are not in conflict. A description of how to-be-formed Development Entity plans to coordinate with other construction projects shall be included in the Affected Third-Parties Plan.

2.7.1.1 Coordination with Railroads

As necessary, the PDA Entity shall support PennDOT with respect to the Public Utility Commission (PUC) process and the development of railroad agreements with railroad owners and operators in accordance with PennDOT Publication 371 (Grade Crossing Manual), 23 CFR Part 646, and 49 CFR Parts 222 & 229. The RIDs include locations at Bridges which may require PUC involvement and railroad agreements and the current statuses of such PUC processes and railroad agreements; provided, however that the PDA Entity shall be responsible for confirming the necessity of each such PUC process and railroad agreements, and

determining the necessity of any additional railroad-related Governmental Approvals and railroad agreements. The PDA Entity shall, as part of the PDA Work, be responsible for coordinating with PennDOT as may be necessary to establish and confirm the PUC process and railroad agreement commitments to railroad owners and operators during the PA Term. The PUC process and railroad agreement commitments may include, but are not limited to:

- schedule commitments;
- design and standards commitments;
- maintenance commitments;
- quality commitments; and
- safety commitments.

The to-be-formed Development Entity shall be responsible for any cost and schedule implications for any to-be-formed Development Entity-inflicted changes to the PUC process and railroad agreement commitments.

2.7.1.2 Permits

As set forth in the RIDs, PennDOT has begun the permitting process for various Bridges; however, the permits set forth in the RIDs are in no manner intended to represent a comprehensive list of the permits required for the PDA Work and Package Work, shall in no manner be relied upon by PDA Entity as such, and the PDA Entity shall be responsible for identifying the permits required for the PDA Work and Package Work.

The PDA Entity shall as part of the PDA Work be responsible for coordinating with PennDOT to identify opportunities to expedite the permitting processes for each Package.

2.7.1.3 Approvals, Permits, and Reviews Tracking

The PDA Entity shall, as part of the PDA Work, determine which stakeholder coordination, Approvals, permits, and reviews must be obtained or performed, respectively, during the PDA Term and PA Term and the required timing of such Approvals, permits, and reviews. PennDOT may in its sole discretion elect to collaborate with PDA Entity as to the permitting process; provided, however, that no such collaboration shall relieve PDA Entity of its obligations under this Section 2.7.1.3 (Approvals, Permits, and Reviews Tracking).

The PDA Entity shall prepare, maintain, and update, an (“**Affected Third-Parties Plan**”) which shall list any Approvals, permits, and reviews that may be required from stakeholders to perform the PDA Work and PA Work and document the status of those Approvals, permits, and reviews. The to-be-formed Development Entity shall be responsible for obtaining Approvals and permits and performing the reviews needed for the respective PA Work. The PDA Entity shall submit the Affected Third-Parties Plan to PennDOT in accordance with Section 2.5.2 (Data Sharing and Submittals). The Affected Third-Parties Plan shall include, without limitation:

- all stakeholder Approvals, permits, and reviews required in connection with the PDA Work and (to the extent these are being advanced as part of the PDA Work) the PA Work;
- the process for the PDA Entity and to-be-formed Development Entity obtaining necessary stakeholder Approvals and permits and performing necessary stakeholder reviews with the exception of the PennDOT-Provided Approvals;
- the anticipated schedule for the PDA Entity and to-be-formed Development Entity obtaining necessary stakeholder Approvals and permits and performing necessary stakeholder reviews with reasonably allocated time for reviews and resubmissions (such information to be provided in the PDA Work Schedule);

- how the PDA Entity and to-be-formed Development Entity intends to confirm and ensure the LOD determined during the PDA Work is compliant with all such stakeholder Approvals, permits, and reviews;
- how the PDA Entity and to-be-formed Development Entity intends to ensure continuous compliance with all Approvals and permits;
- the current status of stakeholder coordination; and
- the action items for stakeholder coordination.

The PDA Entity shall provide PennDOT with a digital copy of any written confirmation of any stakeholder Approvals and permits and results of stakeholder reviews within three (3) Business Days after the occurrence.

2.8 Quality Management

2.8.1 Pre-Development Agreement Quality Management Plan

The PDA Entity shall be responsible for the quality of the PDA Work. The PDA Entity shall develop and submit to PennDOT a PDA Quality Management Plan (QMP) in accordance with Section 2.5.2 (Data Sharing and Submittals). The PDA Entity shall facilitate a quality workshop with PennDOT within ten (10) Business Days after the submittal of the PDA QMP.

The PDA Entity shall develop a PDA QMP for the activities that pertain to the PDA Work Requirements. The PDA Entity's PDA QMP shall include quality control procedures to be utilized to verify, check, and review the quality of the PDA Work (including the quality and accuracy of data) and quality assurance procedures for the design work to confirm the quality control procedures are being followed. At a minimum, the PDA Entity shall ensure the PDA QMP also:

- outlines the roles, rights, and responsibilities of the PDA Entity and PennDOT consistent with Section 2.8.1.1 (PDA Quality Roles and Responsibilities);
- includes a Design Quality Management Plan (DQMP) in accordance with Section 2.8.1.2 (PDA Design Quality Management Plan);
- identifies quality-related key personnel; and
- is consistent with ISO 9001 and ISO 14001 standards for quality and environmental management systems.

2.8.1.1 PDA Quality Roles and Responsibilities

The PDA Entity quality responsibilities shall include, but are not limited to:

- ensuring quality assurance and quality control of the PDA Work;
- maintaining a record of all the PDA Entity inspections, sampling, and testing, of existing site and facility conditions, including but not limited to, date of inspection, sampling and testing undertaken, and the results of such inspections, sampling, and testing;
- providing all the PDA Entity quality records to PennDOT; and
- ensuring the PDA Entity complies with all components of the PDA QMP.

PennDOT's quality responsibilities throughout the PDA Term shall include performing independent quality audits of PDA Work activities, including design, inspections, sampling, and testing. PennDOT's performance of independent quality audits shall by no means relieve the PDA Entity of its responsibility for the quality of the PDA Work.

2.8.1.2 PDA Design Quality Management Plan

The PDA Entity shall prepare a Design Quality Management Plan (DQMP) as part of the PDA QMP describing its policies, procedures, and staffing to manage the quality of the PDA design work. The PDA Entity shall ensure the DQMP describes and includes, at a minimum, the following:

- general quality control and quality assurance procedures to be used for all PDA design work;
- procedures for meeting documentation and design requirements; the organization of design inputs such as design criteria, background reports, field notes, calculations, plans, specifications, schematics and supporting materials needed during the PDA; procedures shall address the specific personnel and roles responsible for the implementation and verification of the procedures;
- quality control and quality review procedures specific to each design discipline (such as structural, civil, utilities), as applicable;
- procedures for providing the education, training and certification, as appropriate, of personnel performing activities affecting or assessing the quality of the Work to ensure such personnel achieve and maintain reasonable proficiency;
- procedures for ensuring the PDA Work is performed according to the DQMP and generally accepted engineering practices;
- specific quality control and quality review procedures, including all required forms and checklists, shall be specified for preparing, verifying and checking all Design Documents, including, but not limited to, plans, reports, and calculations, to ensure they are independently checked and back-checked in accordance with generally accepted engineering practices, showing:
 - the designer and checker clearly identified;
 - specific procedures for verifying any computer programs being used; and
 - procedures for coordinating design work performed by different individuals, disciplines, or firms working in the same area, in adjacent areas, or on related tasks to ensure conflicts, omissions or misalignments do not occur between drawings or between the drawings and the specifications including the coordination of the review, approval, release, distribution and revision of documents involving such parties; and
- procedures to be used by the PDA Entity to track review comments received from any entity including the approach to and schedule for resolving and addressing all review comments.

If PennDOT becomes aware of any evidence the DQMP procedures are not adequate, PennDOT may, at its sole discretion, suspend applicable portions of PDA Work and require correction of design and modifications to the DQMP.

2.9 Safety Management

2.9.1 PDA Term Safety Management

The PDA Entity shall be responsible for managing safety and maintaining safe practices for the PDA Work activities (including, but not limited to, any Site Investigations), including safeguarding the public, third-parties, or any other Persons involved in the PDA Work.

2.9.2 Project Agreement Term Safety Management

As part of the PMP submission, in accordance with Section 2.5.2 (Data Sharing and Submittals), the PDA Entity shall develop the draft Safety and Security Plan, which shall comply with current OSHA requirements and without limitation:

- fully describe the to-be-formed Development Entity’s policies, plans, training programs, Bridge Sites controls, and Incident response plans to ensure the health, safety and security of Project personnel;

- describe all precautions to be used to safeguard the general public during the PA Term;
- discuss the roles, responsibilities and reporting lines for the to-be-formed Development Entity’s safety and security personnel;
- describe the measures to be used to provide for the security of the Bridge Sites including the PennDOT occupied portions of the to-be-formed Development Entity’s facilities;
- document the procedures to protect all electronic documents and records; and
- present how the to-be-formed Development Entity shall comply with Applicable Law, regulations, provisions, and policies governing safety and health.

The draft Safety and Security Plan shall address procedures for immediately notifying PennDOT of all Incidents arising out of or in connection with the performance of the Work, regardless of the location of the Incident.

2.10 Public Outreach and Engagement

2.10.1 Pre-Development Agreement Public Outreach and Engagement

Unless PennDOT elects otherwise, PennDOT will remain the “public face” and serve as the official spokesperson for the Project (including the PDA Work). As part of PDA Work, the PDA Entity shall support PennDOT with public outreach and engagement by providing materials, attending meetings and other support as deemed necessary by PennDOT.

The PDA Entity shall coordinate with PennDOT to facilitate an early and ongoing collaborative dialogue to engage stakeholders and the public in the PDA Work process.

The PDA Entity shall be responsible for coordinating with PennDOT to develop and implement necessary strategies focusing on public information and involvement with the goal of maintaining an open and honest dialogue with the stakeholders through exceptional customer service and responsive correspondence.

2.10.2 Project Agreement Public Outreach and Engagement

During the PA Term, the to-be-formed Development Entity shall support PennDOT in leading the public information and communications activities. Public information and communications shall be in accordance with PennDOT Publication 295, Transportation Project Development Process - Public Involvement Handbook and PennDOT Publication 746, Project Level Environmental Justice Guidance.

As part of the PMP submission, in accordance with Section 2.5.2 (Data Sharing and Submittals), the PDA Entity shall develop a Public Information and Communications Plan (PICP). The PICP shall identify specific outreach or engagement activities, the frequency of those activities, who is responsible for implementing such activities, what modes of communication shall be used and what process the to-be-formed Development Entity shall use in order to measure the effectiveness of the PICP. The PICP shall also discuss the role and responsibilities of the Public Information Coordinator. In preparing this plan, the PDA Entity shall identify the customer groups and develop specific approaches to respond to their concerns and needs in all respects regarding the PA. Such customer groups shall, without limitation, include:

- PennDOT;
- media;
- Governmental Entities;
- regulatory and law enforcement agencies;
- general public residing or working within the general vicinity of the Bridge Sites, or traveling within or across the limits of the Bridge Sites;
- business owners within or adjacent to the Bridge Sites;
- Utilities, railroads, transportation authorities and providers (such as local airports, transit; operators, toll authorities, and other highway concessionaires) affected by the PA Work;

- neighborhood associations, community groups, and other organizations with special interest in the Project;
- major traffic generators which could be affected by closures or construction (such as universities, major employers) and sponsors/coordinators of major regional special events;
- Elected officials;
- schools; and
- first responders.

3 TECHNICAL PROVISIONS

3.1 Pre-Development Agreement Technical Provisions

Attachment 1 (*Draft Project Agreement Technical Provisions Term Sheet, Part 1: Bridge-specific Technical Requirements*), Attachment 2 (*Draft Project Agreement Technical Provisions Term Sheet, Part 2: Project-wide Technical Requirements*), Attachment 3 (*Draft Project Agreement Technical Provisions Term Sheet, Part 3: List of Special Specifications and Provisions*), and Attachment 4 (*Draft Project Agreement Technical Provisions Term Sheet, Part 4: List of PennDOT Publications, Standards, Manuals, Specifications and References*) to these PDA Work Requirements (collectively, the “**Draft PA Technical Provisions Term Sheet**”) sets forth established minimum requirements that the PDA Entity shall, until provided notice by PennDOT to the contrary, comply with in performing the PDA Work (it being acknowledged by PDA Entity that such minimum requirements are subject to modification by PennDOT during the PDA Term).

3.2 Project Agreement Technical Provisions

PennDOT intends to share draft PA technical provisions (the “**Draft PA Technical Provisions**”) with the PDA Entity during the PDA Term. The Draft PA Technical Provisions will include the design, construction, maintenance, and handback baseline requirements and standards for the applicable Package’s Project Agreement.

Within ten (10) Business Days of receiving the Draft PA Technical Provisions from PennDOT, the PDA Entity shall initiate a negotiation process with PennDOT.

The PDA Entity shall develop and maintain a separate Draft PA Technical Provisions working document for each Package, in Microsoft Word format. The PDA Entity shall track proposed changes to the Draft PA Technical Provisions in the working documents and shall receive approval from PennDOT prior to accepting any changes in the working documents, including revisions due to approved Innovative Concept Submittals (ICSs). The PDA Entity shall specify if the proposed changes are Package-specific, Bridge-specific, or Project-wide. The PDA Entity shall document the PennDOT-approved changes through emails or meeting notes and shall store these records on e-Builder. The PDA Entity shall version the working documents on a bi-weekly basis and store all versions on e-Builder.

The Parties shall work in Good Faith to finalize a Package’s PA Technical Provisions, consistent with those set forth in the Draft PA Technical Provisions Term Sheet, by the submittal date of the respective Final Package Proposal Design.

3.3 Innovative Concept Submittals

All Innovative Concept Submittals (ICSs) must be submitted to PennDOT for review in accordance with Section 2.5.2 (Data Sharing and Submittals). All proposed ICSs are subject to acceptance by PennDOT in its sole discretion. The PDA Entity shall prepare ICSs to include (without limitation) the following:

- a narrative explaining the ICS;
- references to the requirements of the Draft PA Technical Provisions Term Sheet or these PDA Work Requirements that are inconsistent with the ICS and an explanation of the nature of the deviations from said requirements;
- identification of the potentially affected Bridges;
- identification of the potential ICS risks;
- identification of impacts to maintenance, handback, and long term performance;
- identification of potential cost implications for the PDA Work and PA Work;
- identification of potential schedule implications for the PDA Work and PA Work;

- identification of any ROW and easements beyond those set forth in the RIDs which shall be necessitated by such ICS;
- identification of potential conflicts with NEPA Approvals and other Approvals; and
- sketches, drawings, and other visuals to help visualize the ICS impacts.

Upon PennDOT approval of an ICS, the PDA Entity may incorporate such ICS within the Package Technical Proposal, provided, however, that the to-be-formed Development Entity shall (a) be solely responsible for the cost and schedule impact of any necessary ICS-related additional activities including but not limited to reviews, analyses, assessments, explorations, NEPA Approvals and other Approvals, permits and findings; (b) be solely responsible for the risk that any Approvals, permits or findings necessary with respect to such ICS are not granted, issued, approved or obtained or timely granted, issued, approved or obtained; and (c) not be entitled to any increase in the D&C Amount or extension of any milestone as a result of any delay or cost associated with the environmental review, analysis, Approvals, permits or findings related to such ICS, including the inability to obtain such Approvals, permits or findings. Any ROW or easement acquisition necessitated by an ICS shall be subject to the PDA Entity-proposed ROW and easement procedures set forth in Section 5.1 (Right-of-Way and Easement Assessment).

4 ENVIRONMENTAL

4.1 Environmental Process

PennDOT is performing separate environmental assessments for each Bridge.

The PDA Entity shall assist PennDOT in achieving NEPA Approvals, as necessary and as requested by PennDOT. The PDA Entity shall notify PennDOT immediately if it becomes aware of a conflict or potential conflict in relation to the PDA Work, the Package Work, or the Project, and any NEPA Approval.

4.2 Environmental Compliance

The PDA Entity shall, in preparing the Package Proposal Design and performing the PDA Work, avoid and minimize any environmental impacts and adverse effects of the PDA Work and Package Work. The Package Proposal must clearly demonstrate the NEPA Approval commitments can be met throughout term of the PA.

The PDA Entity shall prepare an Environmental Commitment and Mitigation Tracking System (ECMTS) to be used with the Package and submit such ECMTS to PennDOT in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements. The PDA Entity shall be responsible for confirming the Package Proposal Design meets the conditions of the NEPA Approval commitments.

The ECMTS shall be the overarching system by which the to-be-formed Development Entity shall ensure the commitments within the NEPA Approvals are implemented. The NEPA Approval commitments will include those made during the NEPA Approval and permitting processes, and other environmental requirements to be carried forward and reflected, as appropriate, in the design and implemented throughout the PDA Work and PA Work. The to-be-formed Development Entity shall utilize the ECMTS to track on-going issues, identify compliances, noncompliances, Nonconforming Work and identify actions required or those already performed to correct any such Nonconforming Work.

The PDA Entity shall perform the PDA Work necessary to confirm the LOD as presented in the NEPA Approval documents is sufficient for completion of the Package Work in accordance with the requirements of the Project Agreement. If the PDA discovers that, after reasonable evaluation of potential avoidance measures, the Package requires additional LOD beyond the LOD identified in the NEPA Approval documents, the PDA Entity shall as part of the PDA Work conduct additional studies, field investigations, and coordination activities needed to obtain approval of changes to the previously obtained NEPA Approvals, permit revisions, and other permits/Approvals.

4.3 Minimum PDA Work with Respect to Environmental Compliance

4.3.1 Environmental Impacts

The PDA Entity shall be responsible for identifying and performing any Site Investigations of environmental features (including but not limited to wetlands, habitat, cultural and natural resources, threatened or endangered species, and archaeological remains) which may be necessary to mitigate and manage associated risks, eliminate the potential for unknown environmental features, and submit a Package Proposal that is compliant with any Environmental Authorizations, Applicable Law, the PDA, and these PDA Work Requirements.

4.3.1.1 Hazardous Materials

The PDA Entity shall perform Site Investigations to (a) identify or confirm the presence, quantity, locations, and potential effect of any Hazardous Materials on or adjacent to the Site, and the potential of the PDA Work and the Package Work to cause a Hazardous Materials Release, (b) minimize and manage the

associated risk, and (c) submit a Package Proposal that is compliant with Applicable Law, the Agreement, and these PDA Work Requirements.

4.3.1.2 Noise

The PDA Entity shall perform noise studies in accordance and as necessary to ensure compliance with Article 9 of the PDA, 23 CFR 772, and PennDOT Publication 24, Project Level Highway Traffic Noise Handbook.

5 RIGHT-OF-WAY

5.1 Right-of-Way and Easement Assessment

PennDOT has performed analyses to identify ROW needs and performed ROW and easements acquisitions necessary for the Project Work as shown in the RIDs. The PDA Entity shall confirm if the PennDOT-identified ROW and easements are sufficient for the proposed PA Work.

The PDA Entity shall notify PennDOT of additional ROW needs through the presentation of ROW Acquisition Plans submitted in accordance with Section 2.5.2 (Data Sharing and Submittals) and developed in accordance with the following:

- PennDOT Publication 10C; DM-1C; Transportation Engineering Procedures;
- PennDOT Publication 14M; DM-3; Plans Presentation;
- PennDOT Publication 16, DM-5, Utility Relocation;
- PennDOT Publication 324, Agricultural Resources Handbook - Volume 1; and
- PennDOT Publication 371, Grade Crossing Manual.

The PDA Entity shall notify PennDOT of additional ROW needs for each Package at least sixty (60) Business Days prior to the applicable Package Proposal submission date. The PDA Entity shall include in the PDA Work Schedule the timeline of its process for evaluating the sufficiency of the PennDOT-identified ROW and easements for the proposed Package Work.

5.2 PDA Activities for Right-of-Way and Easement Acquisition

If PennDOT accepts that an additional ROW parcel proposed by PDA Entity pursuant to Section 5.1 (Right-of-Way and Easement Assessment) is necessary for the proposed PA Work, then as part of the PDA Work, the PDA Entity shall prepare for PennDOT signature a Notice of Intent to Enter for the identified ROW. Upon PennDOT's execution of a Notice of Intent to Enter, the PDA Entity shall perform studies, surveys, tests and soundings on the property, in accordance with Applicable Law and as may be necessary to evaluate the sufficiency of the proposed ROW for inclusion in the Project. The PDA Entity shall progress the ROW acquisition process through the development of ROW Plan revisions and expansion of the environmental clearance. In the event any such ROW acquisition activities become necessary, PDA Entity shall include an estimated timeline of such activities in subsequent updates to the PDA Work Schedule.

6 UTILITIES

6.1 Identifying Utility Work

The PDA Entity shall be responsible for identifying and incorporating into the Package Proposal Design any Utility Adjustment Work necessary to deliver the Package. The PDA Entity shall submit to PennDOT a Utility Conflict Matrix in accordance with Section 2.5.2 (Data Sharing and Submittals), which, without limitation, indicates the following information for the potential Utility Adjustment Work:

- the approximate locations, size, owner, and contents of each potential Utility impact;
- the anticipated level of effort for the Utility Adjustment Work (avoidance, impact minimization, protection in place, or relocation);
- the anticipated schedule for Utility Owner reviews and Approvals for the Utility Adjustment Work;
- the anticipated construction schedule of the Utility Adjustment Work;
- the approximate cost of the Utility Adjustment Work;
- the approximate costs for the Utility Coordination and Investigation Work;
- which entity will pay for the Utility Adjustment Work;
- which entity, to-be-formed Development Entity or respective Utility Owner, will perform the Utility Adjustment Work;
- any pre-qualifications, insurance, permits, certifications, or other requirements which are required for the to-be-formed Development Entity to perform the necessary Utility Adjustment Work; and
- any potential risks that could delay the Utility Adjustment Work.

After the initial Utility Conflict Matrix submittal, the PDA Entity shall submit an updated Utility Conflict Matrix with each subsequent Bi-Monthly Progress Report.

6.1.1 Obtaining Data

Except for any Utility Owner engagement and coordination which PennDOT elects to undertake in its sole discretion, the PDA Entity shall be responsible for engagement and coordination with Utility Owners as may be necessary in connection with delivery of the Package, including submission of a Package Proposal Design that:

- identifies the potential Utility-related impacts associated with the Package;
- eliminates, minimizes, mitigates or manages risk of potential unknown Utilities or unforeseen field conditions impacting schedule or cost; and
- complies with any agreements with Utility Owners and this Section 6 (Utilities).

6.2 Utility Agreements

PennDOT has entered into agreements and coordinated with select impacted Utility Owners as shown in the RIDs. PennDOT may on an ongoing basis identify to PDA Entity additional Utility agreements that in its sole discretion are necessary with respect to the Package.

If the PDA Entity elects to alter the any such Utility agreements, the PDA Entity shall be responsible for coordinating proposed changes, renegotiations of such Utility agreement(s), and achieving PennDOT and Utility Owner execution of such altered Utility agreement(s).

For the avoidance of doubt, PennDOT shall serve as the Project counterparty under each Utility agreement.

Notwithstanding the foregoing, PDA Entity shall as part of the PDA Work bear final responsibility for identifying and confirming all Utility agreements necessitated by and necessary to complete the PA Work and performing any due diligence and Site Investigations necessary to identify or confirm the necessity of,

develop, and conform the Project Proposal to, any Utility agreement. Upon PennDOT or PDA Entity's identification of a necessary Utility agreement, the PDA Entity (and following Commercial Close, the to-be-formed Development Entity) shall be responsible for negotiating and coordinating with the applicable Utility Owner as to such Utility agreement (including facilitating PennDOT's signature thereof). For such instances where a Utility agreement is necessary, a Utility agreement must be executed between PennDOT and the Utility Owner prior to any Utility Adjustment Work being performed on the respective Utility.

The PDA Entity shall, as part of the PDA Work, cooperate and coordinate with, and support PennDOT with respect to any due diligence, design progression, and negotiation necessary in connection with such Utility agreements, such that the to-be-formed Development Entity shall be responsible for all schedule and cost risks associated with the Utility agreements. The PDA Entity shall confirm the following within each Utility agreement:

- the roles and responsibilities of the parties with respect to performance of Utility Adjustment Work;
- the scope of Utility Adjustment Work;
- the contractor and subcontractor permits, trainings, prequalifications, or other requirements needed for performing the Utility Adjustment Work; and
- the anticipated schedule of the Utility Adjustment Work.

The PDA Entity and the to-be-formed Development Entity shall be responsible for adhering to the requirements of executed Utility agreements. The Package Proposal shall conform in all respects and take into account the design, schedule, and cost implications of each Utility agreement.

6.3 Utility Clearances

The PDA Entity (and following Commercial Close, the to-be-formed Development Entity) shall be responsible for identifying and obtaining the "Utility Clearance" for each Bridge Site as required and in accordance with PennDOT Publication 16, DM-5 Utility Relocation.

6.4 Potential for Early Utility Adjustment Work During the PDA

PennDOT has performed analyses to identify Utility Adjustment Work which has the potential to be performed by the applicable Utility Owner during the PDA Term. The PDA Entity shall be responsible for coordinating with PennDOT to confirm, upon submittal of the draft Baseline Project Schedule and Package Proposal Designs, whether any such relocations should proceed prior to Commercial Close of the respective PA; provided, however, for the avoidance of doubt, that performance of any such Utility Adjustment Work shall be subject to PennDOT acceptance. The PDA Entity shall be responsible for coordinating such Utility Adjustment Work with the applicable Utility Owner (and PennDOT in accordance with Article 9 of the PDA).

7 SITE INVESTIGATIONS

The PDA Entity shall be responsible for identifying and performing Site Investigations to complete the PDA Work Requirements, minimize and mitigate risk to PennDOT and the to-be-formed Development Entity, and submit a compliant Package Technical Proposal.

The PDA Entity shall perform all Site Investigations in accordance with the PDA Article 9 and in accordance with PennDOT Publication 213, Temporary Traffic Control Guidelines. The PDA Entity shall be responsible for coordinating with PennDOT to determine District-specific restrictions to the PDA Work such as allowable work hours and allowable lane closure hours.

7.1 Geotechnical Site Investigations

The PDA Entity shall perform necessary geotechnical investigations or tests in accordance with the following standards, at a minimum:

- Subsurface borings providing standard penetration tests and rock core drilling, material description and classification following the requirements of PennDOT Publication 222, Geotechnical Investigation Manual and PennDOT Publication 293, Geotechnical Engineering Manual. Borings shall be of sufficient depth below foundation as outlined in PennDOT Publication 293 Table 3.2.4-2;
- Sieve analysis with gradation curves (AASHTO T-88, “Standard Method of Test for Particle Size Analysis of Soils”), Atterberg Limits (AASHTO T 89, “Standard Method of Test for Determining the Liquid Limit of Soils” and AASHTO T 90, “Standard Method of Test for Determining the Plastic Limit and Plasticity Index of Soils”), Hydrometer Analysis (AASHTO T88), AASHTO and Unified Soil Classifications, adequate to represent soil layers imparting lateral loads and soil layers resisting foundation loads;
- California Bearing Ratio (CBR) testing shall be performed on pavement subgrade materials in accordance with AASHTO T 193, “Standard Method of Test for The California Bearing Ratio”. The PDA Entity shall collect samples for testing in accordance with PennDOT Publication 293, Geotechnical Engineering Manual, Section 3.7.10;
- Dynamic cone penetrometer (DCP) or falling weight deflectometer (FWD) may be considered for estimating Resilient Modulus of the subgrade soil if reliable correlations are available and approved by the PennDOT Central Office Pavement Design and Central Office Geotechnical Sections, per PennDOT Publication 293 Geotechnical Engineering Manual;
- Unconfined compressive strength tests of intact rock core samples or point load tests representing rock layers subject to foundation loads to assure materials have adequate strength to resist long-term foundation loads determined according to ASTM D 7012, “Standard Method of Test for Compressive Strength and Elastic Moduli of Intact Rock Core Specimens under Varying States of Stress and Temperatures”, Method C or ASTM D 5731, “Standard Test Method for Determination of the Point Load Strength Index of Rock and Application to Rock Strength Classifications”; and
- Point Load Strength test of rock core samples representing rock layers subject to foundation load to assure materials have adequate strength determined according to ASTM D5731 shall only be used when inadequate samples exist for unconfined compressive testing following ASTM D 7012.

The PDA Entity shall prepare a Subsurface Exploration Program Submission (SEPS) detailing the proposed exploration program and submit such SEPS for each Bridge with the Initial Package Proposal Design submittal. The PDA Entity shall indicate in the SEPS whether the PDA Entity intends to perform geotechnical explorations at each Bridge.

The PDA Entity shall be required to use prequalified drillers and certified boring inspectors approved and certified by PennDOT, in accordance with PennDOT Publication 222 Geotechnical Investigation Manual. Prequalified drillers shall be approved as Class A by PennDOT. For in-water borings, the PDA Entity shall use a prequalified driller approved by PennDOT as Class S for the Off-Shore Drilling (OSD) specialized borings sampling and testing (BST). For other proposed drilling methods listed in Table 1, Note 17 of PennDOT Publication 222 Geotechnical Investigation Manual, the prequalified driller shall be approved by PennDOT as Class S for the respective specialized BST.

As applicable, the PDA Entity shall submit a Laboratory Testing Request for review and approval, including the laboratory test assignments by sample, supporting boring logs and core box photographs indicating the rock specimen(s) to be tested. Laboratory testing shall adhere to the requirements of PennDOT Publication 293, Geotechnical Engineering Manual Chapter 4 or as specified herein, whichever is more stringent.

As applicable, the PDA Entity shall use laboratory testing methods published by ASTM or AASHTO for determining non-presumptive geotechnical design parameters. Laboratory testing shall be performed by an accredited AASHTO Materials Reference Laboratory on representative soil and rock samples to determine shear strength parameters and consolidation parameters with laboratory testing assignments determined based on encountered soil and rock conditions. These tests may include but are not limited to:

- AASHTO T 236, “Standard Method of Test for Direct Shear Test of Soils under Consolidated Drained Conditions”;
- AASHTO T 297, “Standard Method of Test for Consolidated, Undrained Triaxial Compression Test on Cohesive Soils”;
- Consolidation design parameters of soils – AASHTO T 216, “Standard Method of Test for One-Dimensional Consolidation Properties of Soils”;
- Unconfined compressive strength of intact rock – ASTM D 7012, “Standard Method of Test for Compressive Strength and Elastic Moduli of Intact Rock Core Specimens under Varying States of Stress and Temperatures”, Method C; and
- Point Load Strength – “Standard Test Method for Determination of the Point Load Strength Index of Rock and Application to Rock Strength Classifications” ASTM D5731 is to be used only when inadequate samples exist for unconfined compressive testing following ASTM D 7012.

7.2 Land Surveying

The PDA Entity shall be responsible for identifying and performing all necessary land surveying, and shall bear the risk of the precision, accuracy, and comprehensiveness of all surveys and mapping. Such surveying and mapping shall be performed (without limitation) in accordance with the following requirements and standards:

- surveying performed by the PDA Entity shall be conducted under the direction of a Professional Land Surveyor registered in the Commonwealth; and
- PennDOT Publication 122M, Surveying and Mapping Manual.

8 DESIGN

The PDA Entity shall as part of the PDA Work prepare an Initial Package Proposal Design and a Package Proposal Design for each Bridge which shall be in accordance with this Section 8 (Design) and Section 2.5.2 (Data Sharing and Submittals). The PDA Entity shall prepare the Initial Package Proposal Design and Package Proposal Design in a manner that meets the goals of the Project and maximizes value to PennDOT.

The PDA Entity shall not submit Initial Package Proposal Designs and Package Proposal Designs in violation of the following limitations:

- No more than five (5) Initial Package Proposal Designs may be in the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.
- No more than three (3) Package Proposal Designs may be in the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.

Initial Package Proposal Designs and Package Proposal Designs submitted in violation of the limitations, above, will not be acknowledged by PennDOT; the PDA Entity shall resubmit such submissions when no longer in violation with the limitations, above.

8.1 Initial Package Proposal Design

The Initial Package Proposal Design is intended to clearly depict the basic scope of the PA Work including critical features such as limits of the PA Work, the LOD, ROW, impacts to environmental features, utilities, and major elements for all engineering disciplines. The PDA Entity shall develop and submit the Initial Package Proposal Design to PennDOT in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements.

Without limitation, the Initial Package Proposal Designs shall meet requirements of the relevant PennDOT Design Manuals and shall include the components identified in Table 3 - Initial Package Proposal Design Components, below.

At the PDA Entity's discretion, components of Initial Package Proposal Designs may be submitted to PennDOT for review prior to the respective Bridge's Initial Package Proposal Design submission in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements, however, the submissions of these components shall not violate the following:

- the limitations set forth in Table 3 - Initial Package Proposal Design Components, below; and
- no more than thirty (30) Initial Package Proposal Designs components may be under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.

Components of the Initial Package Proposal Designs submitted in violation of these limitations will not be acknowledged by PennDOT; the PDA Entity shall resubmit such components when no longer in violation with the limitations, above.

Table 3 - Initial Package Proposal Design Components

Initial Package Proposal Design component	Maximum number of component submissions allowed under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.
Identification and mapping of the LOD showing any changes required from the LOD included with the NEPA Approvals	6
Design Field View Submission: established alignments, profiles, and typical cross-sections for roadways with an emphasis on elimination of Design Exceptions and including the Safety Review Certification	6
Design Exception requests, if required (if not revised from those shown in the RIDs, prior PennDOT-approved Design Exceptions do not need new Design Exception requests)	6
Type, Size and Location studies for all proposed structures including plans, reports, and design calculations (per Design Manual Part 4, in lieu, a Streamlined Type, Size and Location Submission may be used, if applicable)	6
Structure Foundation Report for all proposed structures per Design Manual Part 4, (in lieu, a Streamlined Foundation Submission may be used, if applicable)	6
Preliminary Geotechnical Engineering Report for all roadways, which at a minimum includes: <ul style="list-style-type: none"> • geotechnical boring information and logs (including stick logs) or plan to acquire this information; • geotechnical test results or plan for testing to be completed; • preliminary project plans overlaid on soil maps; and • identification of any proposed changes to existing adjacent soil slopes 	6
Preliminary staging plans showing the detail of the planned sequence of construction including:	6

Initial Package Proposal Design component	Maximum number of component submissions allowed under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.
<ul style="list-style-type: none"> • proposed work zone locations and a logical depiction of how the Bridge construction shall advance from inception to completion; • planned roadway, shoulder, ramp, and lane closures; • description of detours associated with each closure; and • traffic analysis to support the proposed detour 	

8.2 Package Proposal Design

The Initial Package Proposal Design must be approved by PennDOT prior to the Package Proposal Design submittal. Using the Initial Package Proposal Design submittal and the PennDOT-provided comments thereto as a basis, the PDA Entity shall prepare and submit to PennDOT a Package Proposal Design in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements to support the Package Proposal. The PDA Entity's Package Proposal Design shall include plans, reports, studies, and other documents needed to quantify and describe the Package and shall otherwise be sufficiently detailed to allow PennDOT to perform independent cost validation and garner the necessary approvals needed to reach Commercial Close for each Package. Design documents shall be in a format which best conveys the presented information such as 3D graphics, individual plan sheets, and narrative reports. The PDA Entity-produced electronic drawing format shall follow PennDOT Publication 14M, Design Manual Part 3, Plans Presentation.

Without limiting any other requirements of these PDA Work Requirements or the PDA, the Package Proposal Designs shall meet requirements of the relevant PennDOT Design Manuals and shall include the components identified in Table 4 - Package Proposal Design Components, below.

At the PDA Entity's discretion, components of Package Proposal Designs may be submitted to PennDOT for review prior to the respective Bridge's Package Proposal Design submission in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements, however, the submissions of these components shall not violate the following:

- the limitations set forth in Table 4 - Package Proposal Design Components, below; and
- no more than seventy (70) Package Proposal Designs components shall be under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.

Components of the Package Proposal Designs submitted in violation of these limitations will not be acknowledged by PennDOT; the PDA Entity shall resubmit such components when no longer in violation with the limitations, above.

PennDOT anticipates that the PDA Entity will submit the Package Proposal Designs in a logical order depending on which Bridges have been identified for which Package, however, for the avoidance of doubt, the PDA Entity shall include in each submittal of a Package Proposal Design which Package the respective Bridge is planned to be in. Upon submittal of the last Package Proposal Design for the last Bridge proposed in a Package, the PDA Entity shall notify PennDOT in writing that it has submitted its final Package Proposal Design for that respective Package ("**Final Package Proposal Design**").

Table 4 - Package Proposal Design Components

Package Proposal Design component	Maximum number of component submissions allowed under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.
Results of Site Investigations and other due diligence efforts	No maximum.
Mapping of all known Utilities, including drainage and PennDOT ITS communication, showing: <ul style="list-style-type: none"> • where investigations have been conducted, if any; and • where investigations are planned, if any 	No maximum.
Mapping of railroads showing where investigations have been conducted to confirm the horizontal and vertical locations and corridors, if any	No maximum.
Identification and mapping of the LOD showing any changes required from the LOD included with the NEPA Approvals	No maximum.
A listing of properties where additional environmental assessments have occurred or shall occur including any properties where the status of environmental risk remains unknown	6
The identification of any restrictions or special requirements to specific elements of the Work beyond NEPA commitments including stakeholder or District requirements	No maximum.
Wetland delineation	No maximum.
Established alignments, profiles, and typical cross-sections for roadways with an emphasis on elimination of Design Exceptions	No maximum.
PennDOT-approved Type, Size and Location studies for all proposed structures including: <ul style="list-style-type: none"> • plans, reports, and design calculations; • designs of superstructures, substructures and foundations; and 	No maximum.

Package Proposal Design component	Maximum number of component submissions allowed under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.
<ul style="list-style-type: none"> hydrology and hydraulics and scour analysis results 	
<p>Evaluation and recommendation/advancement of the Waterway Permit (Waterway permit for I-83 South Bridge shall include a 2D H&H study for the temporary condition)</p>	No maximum.
<p>PennDOT-approved Structure Foundation Report for all proposed structures per Design Manual Part 4, (in lieu, a Streamlined Foundation Submission may be used, if applicable)</p>	No maximum.
<p>Geotechnical Engineering Report for Roadways</p>	6
<p>Preliminary pavement designs</p>	No maximum.
<p>Preliminary drainage stormwater management designs</p>	6
<p>Draft utility design plans for the Utility Adjustment Work</p>	6
<p>Preliminary layouts for ITS equipment and signing</p>	6
<p>Locations of any new or modified traffic and pedestrian/bike signals</p>	No maximum.
<p>Preliminary lighting concept including identification of power sources</p>	6
<p>Narrative of landscape and aesthetics concepts</p>	No maximum.
<p>Temporary Traffic Control Plans showing the detail of the planned sequence of construction including:</p> <ul style="list-style-type: none"> proposed work zone locations and a logical depiction of how the Bridge construction shall advance from inception to completion; planned roadway, shoulder, ramp, and lane closures, and the expected duration of each; description of detours associated with each closure; 	6

Package Proposal Design component	Maximum number of component submissions allowed under the ten (10) Business Day PennDOT initial review timeline (identified in Table 2 - PDA Submittals Matrix) at one time.
<ul style="list-style-type: none"> ● traffic analysis to support the proposed detour; ● roadway typical section requirements; ● accommodations for pedestrian and bicycle traffic; ● access and coordination with transit systems; ● coordination with first responders; ● business and local/adjacent property owner access; and ● construction vehicle access, staging areas and haul routes 	
Incorporation of any work to be performed by stakeholders, if applicable	No maximum.
Identification of PA Work to relocate, reconstruct, or maintain facilities which are not PennDOT-owned, if applicable	No maximum.
<p>Necessary information for PennDOT’s Bureau of Equal Opportunity (BEO) to establish the DBE goal and OJT goal for the Package, which includes, but is not limited to the following:</p> <ul style="list-style-type: none"> ● detailed scopes of contractable work items and tasks; ● breakdown of the scopes of contractable work items and tasks by market for design, construction and maintenance; ● estimated cost per work item and task; and ● overall Project cost (estimate) 	No maximum.

9 COMMUNITY AND WORKFORCE ENGAGEMENT

9.1 Disadvantaged Business Enterprises (DBE)

The PDA Entity is required to implement PennDOT's policies, through the development and execution of programs and activities to:

- ensure compliance with all requirements in the PennDOT DBE Program according to 49 CFR Part 26 and the Pre-Development DBE Performance Plan submitted with the Proposal;
- utilize PennDOT's DBE Supportive Services.
- monitor the work performed by all subcontractors and especially DBE subcontractors to ensure DBE participation credit is counted for work, services or supplies actually performed by DBE firms as in the DBE Participation Schedule submitted with the Proposal;
- oversee all subcontractors including DBE firms to ensure all firms especially DBE firms receive timely and prompt payments and they are informed about the prompt payment requirements;
- implement programs to assist DBE firms to successfully compete on the project;
- submit DBE payments and reports on a monthly basis to ensure compliance with the prompt payment requirement according to 49 CFR Part 26 and the PennDOT DBE Requirements;
- manage emerging risks associated with the DBE program, including making sure that DBE firms are performing a commercially useful function;
- provide monthly updates and inform the DBE community about the progress of the project and upcoming contract opportunities on the Project;
- comply with the submitted Pre-Development DBE Performance Plan describing the Proposer's plans to meet the PDA DBE goals, including an affirmation regarding its intention to use good faith efforts to achieve the PDA DBE participation goal;
- document any on-going good faith effort, as specified herein, to meet the goal, and shall revise the DBE Plan as appropriate, detailing additional efforts the to-be-formed Development Entity will undertake to meet its DBE commitments, and submit it to PennDOT's Representative for consultation and written approval in accordance with the PDA;
- submit reports and maintain records of DBE participation and labor participation in compliance with the PDA DBE and Civil Rights Requirements and according to the DBE Performance Plan for review and accountability; and
- conduct, at a minimum, monthly meetings with PennDOT and other appropriate attendees to discuss all issues, concerns, and success regarding DBE work performance, payments and activities during the PDA phase.

9.2 Equal Employment Opportunity (EEO)

The PDA Entity is required to ensure that the federal and PennDOT's contractual EEO policies and programs not to discriminate and to take affirmative action to assure equal opportunity as set forth under federal, state, and local laws, executive orders, rules, regulations are adhered to and implemented through activities that:

- inform and educate all subcontractors of EEO requirements and provide enforcement of the EEO program on the Project and with all subcontractors;

- implement a strong EEO policy embraced at all levels of the Project team, including executive leadership;
- ensure all subcontractors managers, supervisors and employees have access to and are provided EEO and diversity training;
- promote an inclusive culture in the workplace by fostering an environment of professionalism and respect for personal differences on the Project;
- recruit, hire, and promote individuals by implementing equal employment practices designed to widen and diversify the pool of candidates considered for employment openings on the Project, including openings in upper-level management as well as the Project subcontractors;
- develop the potential of employees, supervisors, and managers by providing training and mentoring to give workers of all backgrounds the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs. In addition, employees of all backgrounds should have equal access to workplace networks;
- protect against retaliation by providing clear and credible assurances when employees make complaints or provide information related to complaints; the employer shall protect employees from retaliation and consistently follow through on this guarantee; and
- adopt a strong anti-harassment policy, periodically train each employee on its contents, and vigorously follow and enforce it.

10 MAINTENANCE AND HANDBACK REQUIREMENTS

10.1 Plan for Maintenance Work and Handback Requirements

The PDA Entity will be responsible as part of the PDA Work for developing a preliminary plan for performance of the Maintenance Work and satisfaction of the Handback Requirements during the PA Term, (“**Plan for Maintenance Work and Handback Requirements**”) which plan minimizes risk, satisfies the requirements of this Section 10 (Maintenance and Handback Requirements), and is sufficient so as to allow the Development Entity to reach Financial Close. The PDA Entity shall submit such plan to PennDOT in accordance with the submittal requirements set forth in Section 2.5.2 (Data Sharing and Submittals). At a minimum, the PDA Entity shall establish in the Plan for Maintenance Work and Handback Requirements compliance with the following standards:

- PennDOT Publication 23, Maintenance Manual;
- PennDOT Publication 213, Temporary Traffic Control Guidelines;
- PennDOT Publication 238, Bridge Safety Inspection Manual;
- PennDOT Publication 100A, Bridge Management System 2 (BMS2) Coding Manual;
- PennDOT Publication 336 Automated Pavement Condition Surveying Field Manual; and
- PennDOT Publication 242, Pavement Policy Manual.

Without limiting any other requirements of these PDA Work Requirements or the PDA, the Plan for Maintenance Work and Handback Requirements shall include:

- a plan for the Maintenance for during both (1) the D&C Period and (2) the Maintenance Period clearly identifying the approach, methods, staffing, schedule, inspections, reporting frequencies, systems and procedures necessary for the to-be-formed Development Entity to perform the Package Work and ensure each element continuously meets or exceeds the requirements of the Project Documents;
- a description of the to-be-formed Development Entity’s approach to minimize delay and inconvenience to patrons;
- a description of the to-be-formed Development Entity’s approach to minimize the risk of harm to the general public and minimize the risk of damage, disturbance, or destruction of PennDOT property and third-party property;
- a description of the to-be-formed Development Entity’s approach to coordinate with PennDOT and third-parties;
- a plan for adhering the National Bridge Inspection Standards (NBIS) on existing bridges;
- a draft approach and protocols to a bridge emergency at an existing bridge;
- a draft overarching approach to Rehabilitation Work during the entire Maintenance Period, identifying the planned Rehabilitation Work cycles (including replacement cycles) for the major components of the Bridges, and describing the to-be-formed Development Entity’s approach, assumptions, means and methods for the Rehabilitation Work (including Useful Life and Residual Life assumptions) during the entire Maintenance Period; and
- a draft outline of early handback and handback processes including the approach to the assessment of element conditions, the approach to joint inspections of the Bridges, the approach to a phased transition of maintenance responsibilities at each Bridge within a Package, and a draft Transition and Coordination Plan which details how the to-be-formed Development Entity plans to Work with PennDOT to ensure a seamless transfer of Maintenance responsibilities at the end of the term of the PA Term. The Transition and Coordination Plan shall also detail how it is anticipated the to-be-formed Development Entity will coordinate with PennDOT for PennDOT Maintenance Work within the Maintenance Limits during the term of the PA.

10.2 Maintenance Limit Drawings

The PDA Entity shall prepare and submit Maintenance Limit Drawings for both the Maintenance During Design and Construction Period and the Maintenance Period during the PA Term to PennDOT per Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements, showing the delineation of the portions of the Bridge Sites in the Package to be maintained by the to-be-formed Development Entity, PennDOT or any other entity (“**Maintenance Limit Drawings**”).

The drawings shall establish the final boundaries of the Maintenance Limits for each Bridge within the respective Package using the Pennsylvania Location Reference System per PennDOT Publication 336, Automated Pavement Condition Surveying Field Manual. The plans shall cross reference to an inventory, also submitted with the Maintenance Limit Drawings, describing each element of the Project Agreement contained within the Maintenance Limits. The inventory shall include:

- an asset maintenance responsibility matrix with performance criteria, previously confirmed with PennDOT;
- an asset condition assessment, including asbestos assessments, for existing Assets the to-be-formed Development Entity shall maintain during the D&C period with pre-construction video(s) and pictures to capture the condition of existing assets in accordance with PennDOT Publication 238, Bridge Safety Inspection Manual; and
- an asset condition assessment, including asbestos assessments, for existing Assets the to-be-formed Development Entity shall maintain during the Maintenance Period, if applicable, with pre-construction video(s) and pictures to capture the condition of existing Assets in accordance with PennDOT Publication 238, Bridge Safety Inspection Manual.

When a bridge crosses over a river or stream channel, the Maintenance Limits shall include such river or stream channel (including banks and walls) 50 feet upstream and 50 feet downstream, measured from the relevant outer edge of the bridge.

11 [RESERVED]

12 D&C WORK PRICING

12.1 D&C Cost Amount and Price Reasonableness

The PDA Entity and PennDOT shall agree to a total firm, fixed price for each Package's D&C Work. The costing process shall be open-book to allow PennDOT to check and critique values within the D&C Costing Model and Maintenance Costing Model, including but not limited to unit prices, markups, contingencies, and profit margins for the activities, materials, risks, and other line items, as necessary. The PDA Entity shall ensure the D&C Costing Model is compliant with the commitments of the PDA Proposal and the requirements and constraints of the PDA and these PDA Work Requirements.

12.1.1 The D&C Costing Model

The PDA Entity shall prepare a model accounting for all elements, risks and assumptions, including the schedule for performance of the D&C Work for the Package.

The D&C Costing Model shall be based on upon methodology to facilitate cost validation within an agreed-upon schedule (such methodology being subject to PennDOT acceptance). The PDA Entity shall use the D&C Costing Model to develop the cost regardless if the D&C Work is self-performed by the to-be-formed Development Entity, subcontracted with competitive pricing, or competitively solicited. The initial submittal of the D&C Costing Model shall include a Monte Carlo simulation to model variability and risks and generate likely range of costs for the Package.

The PDA Entity shall submit the D&C Costing Model in accordance with Section 2.5.2 (Data Sharing and Submittals). The PDA Entity shall continually update and refine the D&C Costing Model subject to PennDOT acceptance as may become necessary during the performance of the PDA Work. The PDA Entity shall submit a final D&C Costing Model as part of the Package Technical Proposal.

Without limiting any other requirement of these PDA Work Requirements or the PDA, the D&C Costing Model shall satisfy the following criteria:

- set forth a total firm, fixed price for the Package's design and construction Work;
- be based on mutually agreed risk evaluation, mitigation, and management assessment;
- be based on a mutually agreed final scope of work;
- include a separate line item for the D&C General Conditions Costs derived from the D&C General Conditions Cost Percentage;
- include a separate line item for the D&C Markup Costs derived from the D&C Markup Percentage;
- be based on a construction schedule, design drawings and supporting information that are sufficiently detailed so quantities, LOD, ROW, Utility impacts, environmental resource impacts, constructability issues, risk and contingencies can be developed and assessed as needed for the PDA Entity to establish a cost that can be developed and independently verified by PennDOT;
- identify, for each line item of Work if it is to be self-performed, subcontracted with competitive pricing, or competitively solicited;
- be based on mutually agreed values and cost reconciliation;
- be based upon mutually agreed model assumptions and contingencies for possible uncertainties such as estimate variability, variation of inflation, probability of schedule impact occurrences, probability of significant project threats and opportunities, and anticipated market conditions at the time; and
- include assumptions underlying the D&C Costing model.

Mutually agreed upon contingencies included in the D&C Costing Model must not be used to adjust the D&C General Conditions Cost Percentage or the proposed D&C Markup Percentage.

Any information provided by the PDA Entity or any subcontractor on machine-readable media must be provided in a format accessible and readable by PennDOT.

12.1.2 D&C Cost Reasonableness Determination

The PDA Entity shall be responsible for coordinating with PennDOT in developing a proposed cost for the Package, including reconciling any differences with PennDOT's independent cost estimate to enable PennDOT to make a cost reasonableness determination for each Package.

12.1.3 FHWA Concurrence

The PDA Entity acknowledges that if PennDOT issues a finding of cost reasonableness following its review of the finalized D&C Costing Model, such finding will, to the extent required under federal regulations, be reviewed by and subject in all respects to the approval of FHWA.

13 MAINTENANCE WORK PRICING

13.1 Maintenance Costs

The costs of the Maintenance Work set forth in the Initial Base Case Financial Model for each Package shall be subject to the PennDOT's acceptance. The PDA Entity shall ensure the Maintenance Costing Model is compliant with the commitments of the PDA Proposal and the requirements and constraints of the PDA and these PDA Work Requirements.

13.1.1 Maintenance Costing Model

The PDA Entity shall prepare a Maintenance Costing Model that accounts for the elements, risks and assumptions including the schedule of routine planned maintenance, an allowance for unforeseen maintenance, Rehabilitation Work, and satisfaction of the Handback Requirements associated with the Maintenance Work for each Bridge.

The Maintenance Costing Model shall be based upon methodology to facilitate PennDOT's validation of the maintenance costs (such methodology being subject to PennDOT acceptance).

The initial draft of the Maintenance Costing Model shall initially be submitted as part of the Initial Package Proposal Design. The PDA Entity shall continually update and refine the Maintenance Costing Model (subject to PennDOT acceptance) as may become necessary during the performance of the PDA Work. The PDA Entity shall submit a final Maintenance Costing Model as part of the Package Technical Proposal.

The Maintenance Costing Model shall, without limitation:

- be based on a mutually agreed final scope of the Package, including appropriate boundaries based on the Maintenance Limit Drawings agreed to with PennDOT;
- be based on anticipated inventory of assets to be maintained, anticipated work load related to those assets, maintenance activities and percentages to be self-performed and those to be subcontracted, staffing plan and fleet complement, assumptions for routine maintenance, non-routine maintenance and emergency or unforeseen maintenance activities, expected materials on hand, dedicated facilities, renewal assumptions based on life cycle and performance measures and assumptions effecting the cost of maintenance, all of which are sufficiently detailed so benchmarking to similar facilities and similar performance-based contracts can be evaluated by PennDOT;
- be based on mutually agreed contingencies to establish budgets for items anticipated but not supported by a detailed design or plan;
- include a separate line item for the Maintenance Work General Conditions Costs derived from the Maintenance Work General Conditions Cost Percentage; and
- include any assumptions underlying the Maintenance Costing Model.

Mutually agreed contingencies included in the Maintenance Costing Model must not be used to adjust the Maintenance Work General Conditions Cost Percentage. Any information provided by PDA Entity or any subcontractor on machine-readable media must be provided in a format accessible and readable by PennDOT.

13.1.2 Maintenance Cost Reasonableness Determination

The PDA Entity shall be responsible for coordinating with PennDOT in developing a proposed cost for the Package, including reconciling any differences with PennDOT's independent cost estimate to enable PennDOT to make a cost reasonableness determination for each Package.

14 FINANCING WORKSTREAM

14.1 Financing Plan Development

The PDA Entity shall develop and submit to PennDOT a Financing Plan in accordance with Section 2.5.2 (Data Sharing and Submittals) of these PDA Work Requirements. The Financing Plan must include a schedule of activities required to develop a bankable and competitive financing solution to achieve Financial Close. Each submission of the Financing Plan must include details as to the level of development and next steps for each component of the Financing Plan.

At a minimum, the PDA Entity shall provide an updated Financing Plan for each Package every forty (40) Business Days after the initial Financing Plan is submitted until the date the Package Proposal is submitted.

14.1.1 Financing Plan Contents

The PDA Entity's Financing Plan must include:

- financial model meeting the requirements under Section 14.1.2 (Financial Model);
- assumptions book detailing financial model assumptions, the basis for such assumptions, and for the financing related assumptions how they compare to recent comparable transactions;
- a detailed description of market sounding activities with lenders and/or potential equity partners, including the approach to the debt competition;
- a detailed overview of the proposed financing structure and feedback received in the debt competition. This will include, among other items, the types of debt financing being explored (PABs, TIFIA, USPP, taxable public bonds, bank, etc.), terms and conditions and pricing, credit rating requirements, and other structural features required by the various lenders;
- approach to securing investment grade credit rating(s) (where required), including how many ratings will ultimately be required for the proposed financing solution, the rating agencies selected (if any) and the rationale for the selection, the rating level being targeted (if any) and why this level is optimal and results in best value for money to PennDOT;
- the benefits of the Financing Plan, including a detailed explanation of why it is the preferred financing solution compared to other available alternatives and how it results in best value for money to PennDOT; and
- meet commitments provided with the PDA Proposal.

14.1.2 Financial Model

The PDA Entity shall include in the Financing Plan (including any update) a financial model that complies with the requirements set out in Section 1.6 (Initial Base Case Financial Model) of PDA Exhibit 7 (Package Proposal Requirements), except for deviations from such requirements whereby:

- such deviations are only related to a lack of available inputs;
- such deviations include reasonable assumptions as approximations for unavailable inputs;
- any approximations of Allowed Costs are mutually agreed between PennDOT and the PDA Entity and consistent with the respective Pre-Development Cost Caps; and
- such deviations are explicitly noted as deviations and indicated as to the basis of the assumption in the Assumptions Book.

The PDA Entity shall submit an updated financial model upon PennDOT's request.

14.1.3 Credit Rating

The PDA Entity shall include in the Financing Plan a credit rating work plan that details the process to obtain, to the extent required in Section 1.8 (Investment Grade Ratings) of PDA Exhibit 7 (Package Proposal Requirements), at least one indicative investment grade credit rating for each Package.

To the extent required in Section 1.8 (Investment Grade Ratings) of PDA Exhibit 7 (Package Proposal Requirements), (i) the PDA Entity shall contract with at least one credit Rating Agency to obtain a preliminary or indicative investment grade credit rating to support the PDA Entity's Financing Plan and (ii) depending on the reasonableness of the PDA Entity's proposed financing plan, PennDOT reserves the right to request additional rating scenarios for alternative finance structures.

All documentation to be provided to Rating Agencies shall be provided to PennDOT at least five (5) Business Days prior to such submission for PennDOT review, and PennDOT shall be copied simultaneously on all correspondence to Rating Agencies.

14.1.4 TIFIA Financing

Unless otherwise agreed between the Parties, the PDA Entity shall include in the Financing Plan a TIFIA financing work plan which details the process for engaging with the Build America Bureau and securing TIFIA financing, unless PennDOT has confirmed in writing that TIFIA financing shall not be pursued for a Package.

Where applicable, the PDA Entity shall complete all steps required in the TIFIA process, as specified in the Build America Bureau's Credit Programs Guide (<https://www.transportation.gov/buildamerica/financing/program-guide>.) The PDA Entity shall use best efforts to negotiate a draft TIFIA Loan Agreement that reflects the most favorable terms available given the risk profile and characteristics of the Package.

PennDOT may, at its own discretion, participate in meetings and negotiations with the Build America Bureau. All information to be submitted by the PDA Entity to the Build America Bureau in connection with its TIFIA application shall be provided to PennDOT at least 14 days prior to such submission for PennDOT review, and PennDOT shall be copied simultaneously on all correspondence to the Build America Bureau. The PDA Entity shall keep PennDOT apprised of interactions with the Build America Bureau and the status of negotiations, financing terms and structure, TIFIA's credit process, timing, and all other TIFIA related financing matters.

14.1.5 Non-TIFIA Debt Competition

The PDA Entity shall include in the Financing Plan a debt competition work plan which details the process to undertake and complete a competition for any debt instruments (excluding TIFIA) included in the Financing Plan.

The PDA Entity shall undertake a competitive process for any debt it intends to include in its financing for each Package. At a minimum, the PDA Entity's debt competition work plan shall include:

- detailed overview of the proposed financing structure and the various debt financing options that are being explored (PABs, TIFIA, taxable bonds, bank, etc.);
- the feedback from lenders, including indicative terms and conditions and pricing, credit rating requirements, and other relevant terms and structural features;
- credit committee approval processes for the lenders and the status of each lenders approval process / commitment, including confirmation that such lenders can secure commitments in time to achieve the proposed Package financial close timeline; and
- the benefits of the Financing Plan, including a detailed explanation of why it is the preferred financing solution compared to other available alternatives and how it results in best value for money to PennDOT;

PennDOT may, at its own discretion, participate in the competitive selection process. Such participation may only include an express approval (acting reasonably) of the PDA Entity's proposed financing structure (as it relates to PennDOT's financial obligations and risks), including financing agreements and related documentation, which will serve as the basis for a Package Proposal (but excluding, in each case, approval of the specific lenders or underwriters chosen).

14.1.6 Equity Commitments

The PDA Entity shall include in the Financing Plan an equity commitments work plan which details the process to secure equity funding commitments required to meet the total equity funding requirement as shown in a Package's Financing Plan. The aforementioned equity commitments work plan should include a status update on the Equity Members' investment committee and approval process, identifying work completed and outstanding requirements necessary to secure final investment approvals, as well as the status of any letters of credit that will secure equity funding commitments.

15 PACKAGE TECHNICAL PROPOSAL SUBMISSION

The Package Design Proposal must be approved by PennDOT prior to the Package Technical Proposal submission. The PDA Entity shall submit final drafts of certain deliverables referenced under these PDA Work Requirements (the “**Package Technical Proposal**”) to PennDOT as part of its Package Proposal. The Package Technical Proposal shall be a Type 3 Submittal, however, in lieu of a PennDOT approval of the Package Technical Proposal, PennDOT will issue a final determination of a compliant Package Proposal. The PDA Entity shall be responsible for ensuring that all documents included with the Package Technical Proposal have no outstanding comments or questions from PennDOT or stakeholders. The PDA Entity shall include in the Package Technical Proposal the reviewed and updated versions of the following documents, at a minimum:

- written confirmation from PennDOT that all submittal requirements set forth under these PDA Work Requirements have been satisfied for the Package;
- the Package Proposal Design for each Bridge within the Package in accordance with Section 8.2 (Package Proposal Design);
- the D&C Costing Model for the Package in accordance with Section 12 (D&C Work Pricing);
- the Maintenance Costing Model for the Package in accordance with Section 13 (Maintenance Work Pricing);
- the draft Baseline Project Schedule for the Package in accordance with Section 2.6.3 (Project Agreement Work Schedule);
- the draft Schedule of Values for the Package in accordance with Section 2.6.4 (Schedule of Values);
- the draft Project Management Plan for the Package in accordance with Section 2.2 (Project Agreement Project Management Plan) and Attachment 5 and including:
 - the Management and Staffing Plan for each package in accordance with Attachment 5, Section 1.1;
 - the Electronic Document Management System for the Package in accordance with Attachment 5, Section 1.2;
 - the Risk Management Plan for each Bridge within the Package in accordance with Section 2.4 (Risk Mitigation) and in accordance with Attachment 5, Section 1.3;
 - the PennDOT – Development Entity Communication Plan in accordance with Attachment 5, Section 1.4;
 - the PICP for the Package in accordance with Section 2.10.2 (Project Agreement Public Outreach and Engagement) and in accordance with Attachment 5, Section 1.5;
 - the ROW Acquisition Plans for the Package in accordance with Section 5 (Right-of-Way) and in accordance with Attachment 5, Section 1.6;
 - the Utility Work Plan for the Package in accordance with Attachment 5, Section 1.7;
 - the Waste Management Plan for the Package in accordance with Attachment 5, Section 1.8;
 - the Comprehensive Environmental Protection Plan for the Package in accordance with Attachment 5, Section 1.9;
 - the Quality Management Plan for the Package in accordance with Attachment 5, Section 1.10;
 - the Maintenance Management Plan for the Package in accordance with Attachment 5, Section 1.11;

- the Affected Third-Parties Plan for each Bridge within the Package with copies of received Approvals, permits, and reviews in accordance with Section 2.7.1.3 (Approvals, Permits, and Reviews Tracking) and in accordance with Attachment 5, Section 1.12;
- the Safety and Security Plan for the Package in accordance with Attachment 5, Section 1.13;
- the Emergency Management and Disaster Recovery Plan for the Package in accordance with Attachment 5, Section 1.14; and
- the Transportation Management Plan for the Package in accordance with Attachment 5, Section 1.14.

ATTACHMENT 1

Draft Project Agreement Technical Provisions Term Sheet Part 1: Bridge-specific Technical Requirements

Geotechnical	
Bridge-specific Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none">• the Bridge Sites of the I-80 North Fork Bridge and the I-80 Canoe Creek Bridges have a history of slope failures. An analysis and design for slope stability, including analyses for temporary construction conditions loading or altering slopes, shall be included in the geotechnical recommendations for Bridge Projects; and• the Bridge Site of the I-83 South Bridge contains limestone bedrock. The exploration program and geotechnical design for the Bridge Project shall include considerations for karst-related hazards and contingencies to address these hazards.
Structures	
Bridge-specific Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none">• on the I-83 South Bridge, post-tensioned substructure elements are prohibited; and• on the I-80 Canoe Creek, the right shoulder widths on bridge structures in both the eastbound and westbound directions shall be a minimum of 24' wide.

ATTACHMENT 2

Draft Project Agreement Technical Provisions Term Sheet Part 2: Project-wide Technical Requirements

Project Management	
Project-wide Requirements	<p>The PDA Entity shall plan for the to-be-formed Development Entity to be co-located with PennDOT and establish a Project Office for each PA for the duration of the respective PA Term.</p> <p>The to-be-formed Development Entity’s Project Office shall be located in the Harrisburg, Pennsylvania metropolitan area within ten (10) miles of PennDOT’s Central Office, located at 400 North Street, Harrisburg, PA, 17120.</p> <p>The to-be-formed Development Entity shall provide separate, adjoining facilities for PennDOT’s staff located within the same complex(s) as the to-be-formed Development Entity’s Project Office.</p> <p>The to-be-formed Development Entity shall provide PennDOT with facilities at least fourteen (14) Days prior to starting any Work activity involving staff occupying the Project Office.</p> <p>The Project Office shall be established as soon after Financial Close as practical. In general, the Project Office shall:</p> <ul style="list-style-type: none"> • Be Class B or better office space; • provide dedicated office space in both hard-walled offices and dedicated cubicles for [TBD] PennDOT staff and consultants; • provide [TBD] of shared drop-in cubicle space equipped for short-term use (i.e., monitors and a laptop docking station) for shared use with the to-be-formed Development Entity; • be furnished appropriately including chairs, desks, file cabinets, tables, bookcases, etc.; • include sufficient conference rooms with dedicated audio/visual and presentation capabilities for the total staff in the Project Office (including # rooms dedicated to PennDOT’s sole use); • have the required technology including office internet and Wi-Fi; speakerphones, monitors/projectors in the conference rooms; computer network capability for plotters and printers, etc.; • be secure, safe and properly climate-controlled; • have sufficient restroom and break room facilities for the number of staff working from the Project Office; • include janitorial service and maintenance of the facility; and • provide sufficient parking for all staff and guests at no cost to PennDOT. <p>Due to the geographically diverse locations of the Bridges, it is anticipated the to-be-formed Development Entity may desire to establish additional Satellite Offices (field offices) in the proximity of the Bridges. Satellite Offices shall contain the same basic features as the Project Office but be sized according to the actual staff assigned to the facility. Modular office space may be used for Satellite Offices.</p> <p>At a minimum, the to-be-formed Development Entity shall provide the following facilities for PennDOT staff in the Satellite Office:</p> <ul style="list-style-type: none"> • Offices - Enclosed offices for PennDOT’s construction representative (150 square feet).

	<ul style="list-style-type: none"> • Offices/Cubicles - Offices or cubicles for up to two (2) field engineer/inspection/ administration staff (100 square feet each). <p>All Offices and Cubicles shall include electrical and telecommunications, printer and internet access with mobile capabilities, and access to restroom facilities.</p>
Geotechnical	
Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> • for bridges constructed adjacent or near to an existing structure, include analyses for design of temporary support of excavation and cofferdams and design new foundations to be compatible with existing foundations. New foundations shall be designed to not adversely affect existing foundations via induced settlement, lateral loading, increased scour, potentially damaging vibrations, or other means. Provide rationale and/or analysis to demonstrate adequacy of existing foundations subject to additional loading by proposed structures or roadway; and • all subsurface information must be entered and presented using gINT software, as produced by Bentley Corporation, for subsurface data management and reporting.
Roadways and Pavements	
Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> • achieve a 70 mph minimum design speed on Interstate highways; • acknowledge that all pavement designs must be approved by FHWA; • do not reuse existing guide rail, barrier, or other roadside safety devices. If the existing guide rail extends beyond the Construction Limits, replace such guide rail and transition to the existing guide rail within the Construction Limits; • all guiderail and other roadside safety devices shall meet current MASH criteria; • for all widened sections, the interface between the new widened pavement and the existing pavement shall provide a uniform surface of the same material type across all adjacent lanes. In areas where an existing asphalt surface is in place and widening is required, a new surface course for existing and constructed pavement will be required; and • do not use open graded subbase (OGS). Do not reuse existing concrete exhibiting alkali-silica reactivity (ASR).
Bicycle and Pedestrian Facilities	
Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> • accommodate Bicycle and Pedestrian movements during construction on the non-Interstate highways and roadways.
Hydrology and Hydraulics	
Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> • all Interstate project sites must use 2D hydraulic modeling to perform hydraulic analyses to assess the resiliency of the Bridge.

Structures

Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> • reuse of existing substructure units including foundations for all replacement structures is prohibited; • precast concrete barriers are prohibited; • steel sheet pile abutments are prohibited; • partial depth concrete deck panel forms are prohibited; • single coat or two coat paint systems are prohibited; • unarmored bridge deck expansions joints are strictly prohibited; • compression seal bridge deck expansions joints are strictly prohibited; • drilled Shaft Technique shaft shall be used in the following situations: <ul style="list-style-type: none"> ○ when the substructure unit is supported by less than four (4) drilled shafts; ○ when the drilled shaft is supported on soil; ○ other situations where the designer feels that the soil and rock properties used in design needs to be verified. This shall be called out in the foundation approval letter; and ○ where it is deemed necessary that the contractor demonstrate the adequacy of their methods, techniques and equipment; • provide MASH TL-5 barrier on bridges and MASH TL-3 barrier guiderail transitions to roadways; • for cast in place decks, provide a latex modified concrete overlay or polyester polymer concrete overlay to the new deck prior to opening the bridge to traffic and another two (2) years prior to Handback. Additional overlays shall be applied when the ride quality or the integrity of the overlay begins to deteriorate. For LMC, the minimum overlay shall be 1 ¼” mechanical texturing and for PPC, the minimum overlay shall be 1” mechanical texturing; • for precast decks or modular deck units with closure pours, provide a latex modified concrete overlay or polyester polymer concrete overlay prior to opening the bridge to traffic and another two (2) years prior to Handback. Additional overlays shall be applied when the ride quality or the integrity of the overlay begins to deteriorate; • on precast decks, the closure pours shall be made using one of the following methods: ultra-high-performance concrete with mild reinforcement or conventional grout with post tensioning; • on precast decks, at the longitudinal closure pour, the beam/girder haunch shall be cast with an ultra-high-performance concrete. The beam/girder haunch and shear pockets at other beams/girders shall be cast with either an ultra-high-performance concrete or an epoxy grout; • for all bridges, the overlay shall be placed prior to opening the bridge to traffic. Temporary asphalt or other overlay substitute will not be permitted in lieu of the overlay to facilitate opening a bridge to traffic; • for modular girder and deck units comprised of steel girders with concrete deck components, the casting of the deck on the girders for this modular construction shall be performed at a Bulletin 15 approved precast facility. Closure pours shall be made using ultra high-performance concrete with mild reinforcement;
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	<ul style="list-style-type: none"> • bridge designs shall accommodate future redecking in staged construction, ensuring that a minimum of 2 lanes of vehicle traffic in each direction during all stages of construction can be maintained; • mechanically Stabilized Earth (MSE) walls shall not serve as structural foundations for bridges and shall not be subjected to vertical loads from the bridge superstructures; • precast modular walls shall not serve as structural foundations for bridges and shall not be subjected to vertical loads from the bridge superstructures; • GRS Abutments and GRS slopes are prohibited; • cotton duct neoprene bearing pads are prohibited; • the use of post-tensioned substructures such as post-tensioned pier caps are not preferred; • the use of integral pier caps is not preferred; • for prestressed concrete members, the allowance for reinforcement and prestressing strands needs to be higher than the 0.005 kcf generally used for reinforced concrete; • the following is a list of bridge types of bridge components which are specifically restricted from use for all replacement structures; <ul style="list-style-type: none"> ○ multi-cell culverts; ○ multiple lines of pipe; ○ non-Composite superstructure (including, but not limited to, box beams with asphalt overlay); ○ prestressed Concrete hollow core slab with metallic prestressing strands; ○ open Steel Grid Decks; ○ aluminum bridges; ○ timber bridges; ○ metal pipe or culvert structures; ○ structure types specifically restricted in PennDOT Publication 15M; DM-4, Structures, Chapter 2 Sections 2.1.2 or 3.2.1; and ○ fracture critical members.
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Design Aesthetics and Landscaping

Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> • every live, deciduous tree greater than six inches diameter at breast height (“DBH”) which is removed must be replaced with a total quantity of deciduous trees a minimum of 2 inch caliper (size measured 6 inches above the base of the tree) equal to the total DBH size of the tree removed. For example, a 10 inch DBH tree removed could be replaced with (5) two inch caliper trees or (2) three inch and (1) four inch caliper trees; however the replacement quantity will go down if larger caliper trees are used for replacement; • every live, coniferous tree removed must be replaced with a total quantity of coniferous trees equal to the height and width of the tree removed. For example, a 20 ft high x 10 ft wide coniferous tree could be replaced by two (2) 10 ft high x 5 ft wide coniferous trees; • every live shrub, between 3 foot height and 6 foot height, removed must be replaced with a total quantity of shrubs equal to the quantity of shrubs removed;
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	<ul style="list-style-type: none"> the minimum replacement sizes shall be as follows: 2-inch caliper for major deciduous trees, 1.5-inch caliper for minor deciduous trees, 6-foot height for coniferous trees, 3-foot height for deciduous shrubs, and 2-foot height for evergreen shrubs; and each replacement tree should be the same genus and species of the tree removed, unless the tree being removed was identified by the Development Entity as a non-native or an invasive plant species. Regionally native plant species appropriate to the plant hardiness zone shall be used unless local site conditions warrant the use of a non-native plant is identified.
Signing, Delineation, Pavement Marking, Signalization, ITS, and Lighting	
Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> at a minimum, underground conduit shall not be less than 2” or Schedule 40 polyvinyl chloride (PVC); and the minimum conductor size shall be #8 American Wire Gauge (AWG) copper for primary circuits and #12 AWG for underpass lights on the load side of the fusible disconnect.
Maintenance and Protection of Traffic	
Project-wide Requirements	<p>The PDA Entity shall meet the following minimum requirements as such minimum requirements relate to the PDA Work, with the understanding that these requirements shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none"> maintain 2 lanes in each direction at all times on the Interstate highways; and maintain posted speed limits in work zones.

ATTACHMENT 3

Draft Project Agreement Technical Provisions Term Sheet Part 3: List of Special Specifications and Provisions

General	
Special Specifications	<p>The PDA Entity shall meet the following minimum special specifications as such minimum special specifications relate to the PDA Work, with the understanding that these special specifications shall be a basis for the PA Technical Provisions:</p> <ul style="list-style-type: none">• c80201 Item 8621- ____ Mechanically Stabilized Retaining Wall Systems (As Designed);• c80221 Item 8622-0003 Precast Modular Retaining Wall Systems (As Designed)• a10451 Steel Materials for Temporary Bridges;• c10611 Item 9061-2101 (Item 9061-0101) Shop Metallizing and Painting of New Structural Steel;• 9850-2XXX (9850-0XXX) Reclaimed Portland Cement Concrete (RPCC) Aggregate for Rock Lining, Class R-____; and• Item 8000- Specifications for Mass Concrete – Control of Heat of Hydration.

ATTACHMENT 4

Draft Project Agreement Technical Provisions Term Sheet Part 4: List of PennDOT Publications, Standards, Manuals, Specifications and References

Project Management	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to project management:</p> <ul style="list-style-type: none"> • International Standards Organization (Section 3.1); • PennDOT Publication 408, Specifications. and regulatory requirements for record retention (49 CFR 18.42); • PennDOT Publication 14M; DM-3, Plans Presentation (DM-3); • PennDOT Publication 2, Project Office Manual (POM); • PennDOT Publication 19, Field and Laboratory Testing Manual; • PennDOT Publication 34, Approved Aggregate Producers; • PennDOT Publication 35, Qualified Products List for Construction; • PennDOT Publication 41, Producers of Bituminous Mixtures; • PennDOT Publication 42, Producers of Ready-Mix Concrete; • PennDOT Publication 72M, Roadway Construction Standards; • PennDOT Publication 218M, Bridge Design Standards BD-600M Series; • PennDOT Publication 219M. Bridge Construction Standards BC-700M Series; • PennDOT Publication 213, Temporary Traffic Control Guidelines; and • PennDOT Publication 111, Traffic Control-Pavement Markings and Signing Standards.
Public Information and Communications	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to public information and communications:</p> <ul style="list-style-type: none"> • PennDOT Publication 295. Transportation Project Development Process - Public Involvement Handbook; • PennDOT Publication 746, Project Level Environmental Justice Guidance; • 23 CFR 771.111(h); • NEPA Sections 4(f) and 106, PennDOT Publication 10; DM-1, Transportation Program Development and Project Development Process (DM-1); • PennDOT Publication 746, Project Level Environmental Justice Guidance; • Section 508 of the Rehabilitation Act; • ICT Final Standards and Guidelines (508 Refresh) at 36 CFR Part 1194; and • FHWA Form 4260 Section 508 Information and Communication Technology (ICT) Conformance Criteria.
Environmental	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall comply with all existing and future environmental requirements set forth in Applicable Law, technical guidance and policy, and all NEPA Approvals required for the Project.</p>

In addition to Commonwealth and federal regulations, policy, and manuals related to NEPA Approvals, the PDA Entity shall, at a minimum, utilize and comply with the following manuals and policies:

- PennDOT Publication 10B; DM-1B, Post-TIP NEPA Procedures;
- PennDOT Publication 10X, Appendices to DM-1;
- PennDOT Publication 24, Project Level Highway Traffic Noise Handbook;
- PennDOT Publication 216, Community Impact Assessment Brochure;
- PennDOT Publication 217, Community Impact Assessment Handbook;
- PennDOT Publication 295, Transportation Project Development Process – Project Level Public Involvement Handbook;
- PennDOT Publication 319, Needs Study Handbook;
- PennDOT Publication 321, Project Level Air Quality Handbook;
- PennDOT Publication 324, Agricultural Resources Evaluation Handbook;
- PennDOT Publication 325, Wetland Resources Handbook;
- PennDOT Publication 349, Section 4(f) Handbook;
- PennDOT Publication 546, Threatened and Endangered Species Desk Reference;
- PennDOT Publication 640, Indirect & Cumulative Effects Desk Reference
- PennDOT Publication 689, Cultural Resources Handbook;
- PennDOT Publication 745, Section 6(f), Project 70, Project 500, and Other Recreation Grant Guidance;
- PennDOT Publication 746, Project Level Environmental Justice Guidance;
- PennDOT Publication 756, Invasive Species Best Management Practices;
- PennDOT Publication 783, Environmental Permitting Handbook;
- PennDOT Publication 888, Stormwater Control Measure Maintenance Manual;
- PennDOT Publication 13M; DM-2, Highway Design; DM-2, Chapter 10, Drainage Design & Related Procedures, Section 10.5 Waterway Approval; Chapter 20, Wildlife Crossings;
- Aids to Navigation in accordance with Strike-Off Letters 482-13-18;
- OSHA 29 CFR 1910.120 (HAZWOPER Training);
- PennDOT Publication 281, Waste Site Evaluation Procedures Handbook;
- OSHA 29 CFR 1910.120;
- PA Code Title 25, Chapter 105 and Chapter 106 and USACE Clean Water Act Section 401/404. A PA Code Title 25, Chapter 105 Water Obstruction and Encroachment;
- Section 106 of the National Historic Preservation Act;
- Pennsylvania State History Code;
- State History Code Memorandum of Understanding (MOU), PennDOT Publication 689, Cultural Resources Handbook;
- Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”;
- ASTM E 1527, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process";
- Clean Air Act and Amendments and PA Act 120;
- 23 CFR 771;
- 23 CFR 772; and
- 23 CFR 774.

Utilities	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to Utilities:</p> <ul style="list-style-type: none"> • PennDOT Publication 16M; DM-5, Utility Relocation (DM-5), and supplemented by the URMS User Guide; • PennDOT Publication 10C; DM-1C, Transportation Engineering Procedures; • PennDOT Publication 13M;DM-2, Highway Design; • PennDOT Publication 14M; DM-3, Plans Presentation; • PennDOT Publication 15M; DM-4, Structures; and • PennDOT Publication 2, Project Office Manual (POM).
Geotechnical	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to geotechnical:</p> <ul style="list-style-type: none"> • PennDOT Publication 15M; DM-4, Structures; • PennDOT Publication 72M, Roadway Construction Standards; • PennDOT Publication 218M, Bridge Design Standards BD-600M Series; • PennDOT Publication 219M. Bridge Construction Standards BC-700M Series; • PennDOT Publication 242, Pavement Policy Manual; • PennDOT Publication 293, Geotechnical Engineering Manual; • PennDOT Publication 222, Geotechnical Investigation Manual; • PennDOT Publication 213, Temporary Traffic Control Guidelines; • PennDOT Publication 408 Specifications, Foundation & Geotechnical elements; • FHWA, Geotechnical Engineering Circular (GEC) No. 4 - Ground Anchors and Anchored Systems; • FHWA, Geotechnical Engineering Circular (GEC) No. 7 - Soil Nail Walls; • AASHTO T 85, “Standard Method of Test for Specific Gravity and Absorption of Coarse Aggregate” (for particles larger than 4.75 mm (No. 4 sieve)); • AASHTO T-88, Standard Method of Test for Particle Size Analysis of Soils; • AASHTO T-89, Standard Method of Test for Determining the Liquid Limit of Soils; • AASHTO T-90, Standard Method of Test for Determining the Plastic Limit and Plasticity Index of Soils; • AASHTO T-99, Standard Method of Test for Moisture-Density Relations of Soils Using a 2.5-kg (5.5 lb) Rammer and 305mm (12 in.) Drop; • PTM 106, The Moisture-Density Relations of Soils (Using a 5.5-lb. Rammer and a 12” Drop); • AASHTO T-100, Standard Method of Test for Specific Gravity of Soils (For maximum particle size 4.75mm); • AASHTO T-176 Standard Method of Test for Plastic Fines in Graded Aggregates and Soils by Use of the Sand Equivalent Test; • AASHTO T-180, Standard Method of Test for Moisture-Density Relations of Soils Using a 3.54 kg (10 lb.) Rammer and 457mm (18 in) Drop; • AASHTO T-193, Standard Method of Test for The California Bearing Ratio; • AASHTO T-208 Standard Method of Test for Unconfined Compressive Strength of Cohesive Soil;

	<ul style="list-style-type: none"> • AASHTO T-216, Standard Method of Test for One-Dimensional Consolidation Properties of Soils; • AASHTO T-236, Standard Method of Test for Direct Shear Test of Soils under Consolidated Drained Conditions; • AASHTO T-265, Standard Method of Test for Laboratory Determination of Moisture Content of Soils; • AASHTO T-297, Standard Method of Test for Consolidated, Undrained Triaxial Compression Test on Cohesive Soils; • AASHTO T-288, Standard Method of Test for Determining Minimum Laboratory Soil Resistivity; • AASHTO T-289, Standard Method of Test for Determining pH of Soil for Use in Corrosion Testing; • AASHTO T-290, Standard Method of Test for Determining Water-Soluble Sulfate Ion Content in Soil; • AASHTO T-291, Standard Method of Test for Determining Water-Soluble Chloride Ion Content in Soil; • AASHTO T 307, Standard Method of Test for Determining the Resilient Modulus of Soils and Aggregate Materials; • AASHTO M145, Standard Specification for Classification of Soils and Soil-Aggregate Mixtures for Highway Construction Purposes; • ASTM D 7012, Standard Method of Test for Compressive Strength and Elastic Moduli of Intact Rock Core Specimens under Varying States of Stress and Temperatures; • ASTM D 7263, Standard Test Method for Laboratory Determination of Density and Unit Weight of Soil Specimens; • ASTM D 5731, Standard Test Method for Determination of the Point Load Strength Index of Rock and Application to Rock Strength Classifications; • ASTM D 1125, Standard Test Methods for Electrical Conductivity and Resistivity of Water; • ASTM D 1293, Standard Test Methods for pH of Water; • ASTM D 516, Standard Test Method for Sulfate Ion in Water; and • ASTM D 512, Standard Test Methods for Chloride Ion in Water.
Land Surveying	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to land surveying:</p> <ul style="list-style-type: none"> • PennDOT Publication 122M, Surveying and Mapping Manual; and • PennDOT Publication 213, Temporary Traffic Control Guidelines.
Roadways and Pavements	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and PennDOT Publications when performing the PDA Work as it relates to roadways and pavements:</p> <ul style="list-style-type: none"> • PennDOT Publication 10, 10A, 10B, 10C, 10X (DM-1 Series); DB-1, Transportation Program Development and Project Delivery Process and its parts 1A, 1B, 1C and 1X; • PennDOT Publication 13/13M; DM-2, Highway Design/Contextual Roadway Design; • PennDOT Publication 14M; DM-3, Plans Presentation; • PennDOT Publication 27, Specifications – Special Bituminous Mixtures (Bulletin 27);

	<ul style="list-style-type: none"> • PennDOT Publication 34, Approved Aggregate Producers (Bulletin 14); • PennDOT Publication 35, Qualified Products List for Construction; • PennDOT Publication 37, Specifications for Bituminous Materials (Bulletin 25); • PennDOT Publication 41, Producers of Bituminous Mixtures; • PennDOT Publication 42, Producers of Ready-Mix Concrete; • PennDOT Publication 72M, Roadway Construction Standards; • PennDOT Publication 242, Pavement Policy Manual; • PennDOT Publication 293, Geotechnical Engineering Manual; • PennDOT Publication 408, Highway Construction Specifications; • PennDOT Publication 584, Drainage Manual; • PennDOT Publication 638A, The Pennsylvania Safety Predictive Analysis Methods Manual; • Transportation Research Board, Highway Capacity Manual; • AASHTO A Policy on Design Standards - Interstate System (May 2016); • AASHTO A Policy on Geometric Design of Highways and Streets (2011); • AASHTO Roadside Design Guide; and • Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD) Bicycle and Pedestrian Facilities.
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Bicycle and Pedestrian Facilities

Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to bicycle and pedestrian facilities:</p> <ul style="list-style-type: none"> • PennDOT Publication 10; DM-1, Transportation Program Development and Project Delivery Process and its parts 1A, 1B, 1C and 1X; • PennDOT Publication 13; DM-2, Contextual Roadway Design; • PennDOT Publication 13M; DM-2, Highway Design; and • PennDOT Publication 14M; DM-3, Plans Presentation (Dual Unit).
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Hydrology and Hydraulics

Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to Hydrology and Hydraulics:</p> <ul style="list-style-type: none"> • PennDOT Publication 13M; DM-2, Highway Design; • PennDOT Publication 15M; DM-4, Structures; • FHWA Bridge Scour and Stream Instability Countermeasures: Experience, Selection, and Design Guidance, Hydraulic Engineering Circular No. 23 (HEC-23); • FHWA Evaluating Scour at Bridges, Fifth Edition: FHWA PennDOT Publication FHWA-HIF-12-003 (HEC-18); • FHWA-TechBrief - Hydraulic Consideration for Shallow Abutment Foundations - FHWA-HIF-19-007; • FHWA-TechBrief - Scour Considerations within AASHTO LRFD Design Specifications - FHWA-HIF-19-060; • PennDOT Publication 72M, Roadway Construction Standards; • PennDOT Publication 584, Drainage Manual; • PA Code Title 25, Chapter 105 and Chapter 106 and USACE Clean Water Act Section 401/404. A PA Code Title 25, Chapter 105 Water Obstruction and Encroachment; • Chapter 102, Title 25 (Pennsylvania Clean Streams Law);
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	<ul style="list-style-type: none"> • Pennsylvania's Storm Water Management Act (P.L. 864, No. 167); • PADEP'S 'Pennsylvania Stormwater Best Management Practices Manual' Document Number 363-0300-002; and • PADEP's 'Erosion and Sediment Pollution Control Program Manual' Document Number 363-2134-008.
Structures	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to structures:</p> <ul style="list-style-type: none"> • PennDOT Publication 15M; DM-4, Structures; • PennDOT Publication 218M, Bridge Design Standards BD-600M Series; • PennDOT Publication 219M. Bridge Construction Standards BC-700M Series; • PennDOT Publication 72M, Roadway Construction Standards; • PennDOT Publication 238, Bridge Safety Inspection Manual; • PennDOT Publication 100A, Bridge Management System 2 (BMS2) Coding Guide; • PennDOT Publication 135, Inspection of Fabricated Structural Steel; • PennDOT Publication 145, Inspection of Prestressed/Precast Concrete Products & Reinforced Concrete Pipe; and • PennDOT Publication 280, Manufacturing Specifications for Reinforced Concrete Pipe.
Railroad Coordination	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to railroad coordination:</p> <ul style="list-style-type: none"> • PennDOT Publication 371, Grade Crossing Manual; and • AREMA Manual for Railway Engineering
Design Aesthetics and Landscaping	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to design aesthetics and landscaping:</p> <ul style="list-style-type: none"> • PennDOT Publication 408/2020 Specifications 801 Stockpiling Topsoil or Topsoil Mixture; • PennDOT Publication 408/2020 Specifications 802 Topsoil Furnished and Placed; • PennDOT Publication 408/2020 Specifications 803 Placing Stockpiled Topsoil or Topsoil Mixture; • PennDOT Publication 408/2020 Specifications 804 Seeding and Soil Supplements; • PennDOT Publication 408/2020 Specifications 805 Mulching; • PennDOT Publication 408/2020 Specifications 806 Rolled Erosion Control Products; • PennDOT Publication 408/2020 Specifications 808 Plants, Planting, and Transplanting; • PennDOT Publication 408/2020 Specifications 809 Sodding; • PennDOT Publication 408/2020 Specifications 810 Tree Trimming and Selective Tree Removal; • PennDOT Publication 408/2020 Specifications 811 Temporary Protective Fence;

	<ul style="list-style-type: none"> • AASHTO A Guide for Transportation Landscape and Environmental Design,1991; • AASHTO Bridge Aesthetics Sourcebook: Practical Ideas for Short- and Medium Span Bridges; • AASHTO Roadside Design Guide Chapters 4, 5, 6 & 10; • ANSI Z60.1 American Standard for Nursery Stock; • ANSI A300 (Part 1) Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices; • ANSI A300 (Part 2) Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices - Part 2 – Fertilization; • ANSI A300 (Part 3) Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices - Part 3 - Tree Support Systems; • ANSI Z133.1, Safety Requirements for Pruning Trimming, Repair, Maintaining and Removing Trees and for Cutting Brush; • Hortus Third: A Concise Dictionary of Plants Cultivated in the United States and Canada (L.H. Bailey Hortorium 1976); • USDA The PLANTS Database (http://plants.usda.gov); and • Pennsylvania USDA Plant Hardiness Planting Zone.
Signing, Delineation, Pavement Marking, Signalization, ITS, and Lighting	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to signing, delineation, pavement marking, signalization, ITS, and lighting:</p> <ul style="list-style-type: none"> • PennDOT Publication 10; DM-1, Transportation Program Development and Project Delivery Process and its parts 1A, 1B, 1C and 1X; • PennDOT Publication 13M; DM-2, Highway Design; • PennDOT Publication 14M; DM-3, Plans Presentation (Dual Unit); • PennDOT Publication 35, Qualified Products List for Construction, (Bulletin 15); • PennDOT Publication 46, Traffic Engineering Manual; • PennDOT Publication 72M, Roadway Construction Standards; • PennDOT Publication 111, Traffic Control-Pavement Marking and Signing Standards TC-8600 and TC-8700 Series; • PennDOT Publication 148; Traffic Standards – Signals (TC-8800 Series); • PennDOT Publication 149; Traffic Signal Design Handbook; • PennDOT Publication 191; Traffic Signal Maintenance Manual; • PennDOT Publication 200; Changeable Message Sign (CMS) Operating Standards; • PennDOT Publication 212, Official Traffic Control Devices; • PennDOT Publication 213, Temporary Traffic Control Guidelines; • PennDOT Publication 646; Intelligent Transportation Systems Design Guide; and • PennDOT Publication 647, Civil and Structural Standards for Intelligent Transportation Systems ITS-1200M Series.
Maintenance and Protection of Traffic	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to maintenance and protection of traffic:</p> <ul style="list-style-type: none"> • PennDOT Publication 213, Temporary Traffic Control Guidelines; • PennDOT Publication 46, Traffic Engineering Manual;

	<ul style="list-style-type: none"> • PennDOT Publication 72M; Roadway Construction Standards; • PennDOT Publication 111, Traffic Control-Pavement Marking and Signing Standards TC-8600 and TC-8700 Series; • PennDOT Publication 148; Traffic Standards (TC-8800 Series) Signals; • PennDOT Publication 149; Traffic Signal Design Handbook; • PennDOT Publication 212, Official Traffic Control Devices; • PennDOT Publication 236, Handbook of Approved Signs; • PennDOT Publication 13M; DM-2, Highway Design; • PennDOT Publication 14M; DM-3, Plans Presentation (Dual Unit); • PennDOT Publication 200; Changeable Message Sign (CMS) Operating Standards; • PennDOT Publication 212, Official Traffic Control Devices; • PennDOT Publication 213, Temporary Traffic Control Guidelines; • PennDOT Publication 646; Intelligent Transportation Systems Design Guide; • Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD) Bicycle and Pedestrian Facilities; and • PennDOT Publication 408/2020; Specifications Sections 627, 643 and 901.
Maintenance Work	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to Maintenance Work:</p> <ul style="list-style-type: none"> • PennDOT Publication 35, Qualified Products List for Construction; • PennDOT Publication 234, Flagging Handbook; • PennDOT Publication 336, Automated Pavement Condition Surveying Field Manual; • PennDOT Publication 238, Bridge Safety Inspection Manual; • PennDOT Publication 100A, Bridge Management System 2 (BMS2) Coding Manual; • PennDOT Publication 213, Temporary Traffic Control Guidelines; • PennDOT Publication 23, Maintenance Manual; • PennDOT Publication 55, Bridge Maintenance Manual; • PennDOT Publication 242, Pavement Policy Manual; and • FHWA Bridge Inspector's Reference Manual.
Buildings and Electrical	
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to buildings and electrical work:</p> <ul style="list-style-type: none"> • PennDOT Publication 212, Official Traffic Control Devices; • 1974 Act 287c, Underground Utility Line Protection Law; • AWS D1.1c, Structural Welding Code; • ASTM A123c, Structural Steel; • ASTM A153, Hardware; • ASTM A53, Steel Pipe; • NEMA Standard TC-2, Electrical PVC Conduit; • NEMA Standard TC-3, Electrical PVC Fittings; • ASTM F 2160, HDPE Conduit; • ASTM D 3035, PE Plastic Pipe;

	<ul style="list-style-type: none"> • ASTM D 1505, Standard Test Method for Density of Plastics by the Density-Gradient Technique; • ASTM D 1238, Meltflow Rates of Thermoplastics by Extrusion Plastometer; • ASTM D 790, Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials; • ASTM D 1693, Standard Test Method for Environmental Stress-Cracking of Ethylene Plastics; • ASTM D 638, Standard Test Method for Tensile Properties of Plastics; • ASTM D 746, Standard Test Method for Brittleness Temperature of Plastics and Elastomers by Impact; • ASTM A26, Grade 60 Steel; • ASTM D 3039, Tensile strength, elongation, and Tensile Modulus; • ASTM D 696, Coefficient of thermal expansion; • ASTM E 1142, Coefficient of thermal expansion; • ASTM D 2290, Creep; • ASTM D 2584, Void Content; • ASTM D 3171, Void Content; • ASTM D 4065, Glass Transition (T_g) temperature; • ASTM D 5240, Impact; • ASTM D 2344, Composite Interlaminar Shear Strength; • ASTM D 5028, Curing Properties; • ASTM D 2584, Fiber-resin Ratio; • ASTM D 729, Density; • ASTM D 3410, Compression Test; • ASTM D 5379, Shear Test ASTM D 3479; • Standard Drawing RC-20M; • AWPA C4, American Wood Protection Association; and • NESC, National Electric Safety Code.
	Right-of-Way
Standards, Specifications, Manuals, and Publications	<p>The PDA Entity shall follow the following standards, specifications, manuals, and publications when performing the PDA Work as it relates to ROW:</p> <ul style="list-style-type: none"> • PennDOT Publication 10C; DM-1C, Transportation Engineering Procedures; • PennDOT Publication 14M; DM-3, Plans Presentation; and • PennDOT Publication 324, Agricultural Resources Handbook - Volume 1.

ATTACHMENT 5

Draft Project Management Plan Requirements

1 DRAFT PROJECT MANAGEMENT PLAN

The PMP is an umbrella document describing the managerial approaches, strategies, and quality procedures the to-be-formed Development Entity will implement and follow to design, build, finance, and maintain the Project during the PA Term, comply with the Handback Requirements at the end of the PA Term, and achieve all PA Work requirements contained in the Project Documents. The PDA Entity shall include in the PMP, a discussion of the approach to overall management and coordination of the PA Work and discuss:

- the overall administration of the PA Work including details of the processes and systems to be used for the PA Work, including safety, quality, document management, meeting commitments for NEPA Approvals, Approvals, and permits, scheduling, reporting on the progress of the PA Work, addressing nonconforming PA Work, meetings, changes and construction closeout;
- the coordination of design disciplines, construction trades, maintainers, and related entities;
- how the to-be-formed Development Entity shall communicate with PennDOT, Governmental Entities, Utility Owners, railroads, the public and all Project stakeholders;
- the process for tracking and reporting on compliance with the DBE goal for the Project;
- the process for reporting as required under the PA;
- procedures for reporting on subcontractor performance including how subcontractors will be alerted to and address nonconforming PA Work; and
- an issue resolution process including procedures to resolve internal issues at the lowest staff level possible and escalation procedures that will be used for each phase of the PA Work.

1.0 Management and Staffing Plan

As part of the PMP, the PDA Entity shall develop a Management and Staffing Plan consistent with and expanding upon the Development Entity Roster and Organizational Chart developed as part of the PDA Work Requirements Section 2.1.2 (Project Agreement Organization). The Management and Staffing Plan shall set out clear reporting lines, responsibilities, and authority for the to-be-formed Development Entity's Project Manager and other personnel across the to-be-formed Development Entity's organization, regardless of corporate affiliation or the organization personnel may be party to. The Management and Staffing Plan shall also include details on responsibilities and how staff for the design, construction, maintenance, and handback shall be integrated; details of management structures and management systems to be used for design, construction, and maintenance; and include details of the interface protocols and systems to-be-formed Development Entity and to-be-formed Development Entity-Related Entities shall utilize for interaction among each other, with PennDOT, third parties, and the public.

The Management and Staffing Plan shall include a roster and organizational chart of staff assigned to the PA including their name, role, employer, e-mail address and cell phone number. The Management and Staffing Plan shall also include a plan for providing emergency contact information for personnel whom shall be available at all times after Commercial Close until the end of the PA Term.

1.1 Document and Data Management

1.1.1 Electronic Document Management System

As part of the PMP, the PDA Entity shall develop an Electronic Document Management System (EDMS) for the to-be-formed Development Entity to store, catalog, maintain, control, access, search, and retrieve all PA records in an electronic format using a system identified by PennDOT or otherwise as agreed by the Parties. All Project records in the EDMS shall be electronically searchable and legible. The to-be-formed Development Entity shall incorporate into the to-be-formed Development Entity's EDMS, PennDOT's data management system, if required by PennDOT. PennDOT will conduct training for the to-be-formed Development Entity personnel for the use of PennDOT's data management system. The to-be-formed Development Entity's EDMS shall be used by the to-be-formed Development Entity and all the to-be-formed Development Entity-Related Entities. The to-be-formed Development Entity shall provide PennDOT full, real-time access to to-be-formed Development Entity's EDMS.

The to-be-formed Development Entity's EDMS shall:

- follow PennDOT's EDMS plan sheet file naming convention;
- use data systems, standards and procedures compatible with those employed by PennDOT and implement any new operating practices required as a result of PennDOT's amendments to any such systems, standards and procedures;
- use the applicable Bridge Key (BRKEY) number, Multi-modal Project Management System (MPMS) number and structural number (S-Number) when making reference to each Bridge;
- provide for the secure access of data by PennDOT and transfer of data to PennDOT;
- provide for secure document and data storage, so only authorized personnel have access and documents and data are protected from loss, theft, damage, unauthorized access, or malicious use;
- include a retrieval system to allow for prompt, convenient retrieval of any Project records in a user-friendly format;
- employ appropriate standards and procedures, and train to-be-formed Development Entity personnel to operate any PennDOT data management system which PennDOT may require in connection with the Project;
- provide for electronic storage and electronic transfer of data in native format as may be required by PennDOT along with the associated searchable portable document format (PDF) images for uploading by PennDOT; and
- provide PennDOT with training, procedures and software for accessing the to-be-formed Development Entity's EDMS and all Project records

The to-be-formed Development Entity's EDMS shall also encompass the Maintenance Management Information System (MMIS) per Section 1.1.1.1 (Maintenance Management Information System).

1.1.1.1 Maintenance Management Information System

The MMIS shall provide for control of records and control of documents procedures in accordance with ISO 9001. There shall be only one MMIS for all to-be-formed Development-Entity Related Entities.

The MMIS shall, at a minimum, accurately:

- record and organize information in manner consistent, logical, user-friendly, and searchable by individual Bridge, element, attribute, time, location, or nature of Work performed, or any other relevant field of information pertinent to the identification of the PA assets, Maintenance Work, and their performance;

- incorporate a Geographical Information System (GIS), fully integrated with the MMIS;
- include the delineation of the final Maintenance Limits;
- inventory and provide clear description of each Bridge within a PA using the applicable BRKEY number, MPMS number, and S-Number for each Bridge;
- inventory and provide clear description of each element of the PA contained within the Maintenance Limits with its proper location and with a unique Performance Requirement Identification;
- record, as part of the inventory, all relevant information respecting each element, including material and fabrication certifications, vendor, supplier or contractor certifications or quality records, date of installation, date and type of Maintenance Work, maintenance personnel identifier, and date of replacement;
- record spare parts inventory;
- record information related to each Bridge within a PA consistent with the NBIS and include in particular the National Bridge Inspection (NBI) sheets;
- record and track occurrence, time, location (including identifying the respective element), and nature of all Noncompliance Events, degradation, damages to, and failures of elements, response to site following identification of Noncompliance Events, and cure of such Noncompliance Events and associated time to cure;
- record and track accruals of all Noncompliance Points;
- keep all records, including time, location, and nature of the to-be-formed Development Entity's Maintenance Work in respect to each element including inspections and inspection results (including NBIS inspections), Maintenance Work to address issues identified during inspections, preventative, planned Maintenance and unplanned Maintenance Work, repairs (including repair codes), Rehabilitation Work, replacements, and closures;
- calculate and record statistical data on mean time between failure and mean time to repair; and
- record time, location, and nature of emergencies, incidents, and release of hazardous materials and consequential damages to the elements and consequential actions taken by the to-be-formed Development Entity.

All locations shall be identified following the Pennsylvania Location Reference System per Publication 336, Automated Pavement Condition Surveying Field Manual. The physical element locations shall be accurate to within one foot in 100 feet.

When a physical Element is constructed, installed, maintained, inspected, modified, renewed, replaced, or removed, the MMIS shall be updated within two (2) Business Days of completion of such Work. The to-be-formed Development Entity shall record in the MMIS any Noncompliance Event no later than forty-eight (48) hours after obtaining knowledge of or receiving notification from PennDOT of such Noncompliance Event. All other ongoing MMIS recording requirements shall be fulfilled within two (2) Business Days of completion or occurrence of the relevant activity.

The to-be-formed Development Entity shall use the MMIS functionalities to provide clear reporting to PennDOT (including as part of the Maintenance Monthly Reports, Maintenance Annual Reports, Renewal Work Reports, and Handback Work Plan) demonstrating the to-be-formed Development Entity's compliance with the obligations under the Project Documents.

The to-be-formed Development Entity shall provide PennDOT with real-time, high-speed, remote unrestricted access to all the functionalities of the MMIS and all Project records contained in the MMIS and the ability to download any information contained in the MMIS, at all times from the first

PA Substantial Completion Date until the end of the Term. Such Project records in the MMIS shall be made available to PennDOT in an electronic format compatible with PennDOT's maintenance management systems for uploading. The to-be-formed Development Entity shall provide PennDOT with access to the same data and have the ability to run the same reports and analyses on the MMIS data as the to-be-formed Development Entity.

For bridge Elements, the to-be-formed Development Entity shall input inspection and performance data directly into PennDOT's Bridge Management System 2 (BMS2) in accordance with Publication 100A, Bridge Management System 2 (BMS2) Coding Manual. The MMIS shall reflect the same information as contained in the BMS2 for all bridges.

All records entered into the MMIS shall be maintained and preserved during the entire Term. The to-be-formed Development Entity shall handover all PA records contained in the MMIS in electronic format compatible with PennDOT's maintenance management system at the end of the Term.

The structure of the MMIS shall fully support the to-be-formed Development Entity's obligations under the PA. The structure of the MMIS (including without limitation the data fields, information type, functionalities, and architecture) shall be subject to PennDOT's approval, which approval will not be unreasonably withheld. The MMIS shall be fully functional and populated with information respecting the PA and meet all the requirements as a condition precedent to each PA Final Acceptance. The MMIS shall be updated with the latest available information and shall remain functional and accessible by PennDOT for the duration of the Term.

1.1.2 Document and Data Management Plan

As part of the PMP, the PDA Entity shall develop a Document and Data Management Plan (DDMP). The DDMP shall present how the to-be-formed Development Entity's EDMS is used for storing, maintaining, cataloging, searching, controlling, accessing securing and promptly and conveniently retrieving all Project records in an electronic format. The to-be-formed Development Entity shall update and resubmit the DDMP when there are changes in the Work necessitating an update or as directed by PennDOT but at least on an annual basis.

In the DDMP, the to-be-formed Development Entity shall describe:

- systems, software, procedures and formats to be used for document and data management;
- methods by which all Project records shall be uniquely identified, stored, accessed in real-time as may be necessary and/or retrieved;
- the process followed for routing, filing, control, access, and retrieval methods for all documents;
- how the to-be-formed Development Entity will transfer data to PennDOT and how the accuracy of data will be verified;
- security systems to be used to safeguard all Project records;
- version control procedures to be employed to ensure current and accurate documents are used for construction and maintenance activities;
- methods to facilitate fast and convenient sharing of data including procedures and software for accessing all Project records; and
- training for users, including PennDOT.

1.2 Risk Management Plan

As part of the PMP, the PDA Entity shall develop a Risk Management Plan for the to-be-formed Development Entity in accordance with the PDA Work Requirements Section 2.4 (Risk Mitigation).

1.3 PennDOT-To-Be-Formed Development Entity Communication Plan

As part of the PMP, the PDA Entity shall develop a PennDOT–To-Be-Formed Development Entity Communication Plan to describe the communication protocol to be used between the to-be-formed Development Entity and PennDOT. The PennDOT–To-Be-Formed – Development Entity Communication Plan shall at a minimum:

- describe the procedures for communication of Project information between the to-be-formed Development Entity’s organization and PennDOT;
- discuss protocols for distribution of Project records, Submittals, formal communication or any other information;
- detail the use of PennDOT systems for any recordkeeping;
- describe the Submittal process as agreed to by the to-be-formed Development Entity and PennDOT; and
- describe how the to-be-formed Development Entity’s organization shall respond to unexpected requests for information, communicate changes or revisions to the to-be-formed Development Entity’s design, construction methods, personnel or other aspects of the PA Work.

1.4 Public Information and Communication Plan

As part of the PMP, the PDA Entity shall develop a Public Information and Communication Plan (PICP) for the to-be-formed Development Entity in accordance with the PDA Work Requirements Section 2.10.2 (Project Agreement Public Outreach and Engagement).

1.5 ROW Acquisition Plan

As part of the PMP, the PDA Entity shall submit a ROW Acquisition Plan in accordance with the PDA Work Requirements Section 5 (Right-of-Way).

1.6 Utility Work Plan

As part of the PMP, the PDA Entity shall develop a Utility Work Plan to establish the procedures and processes for identifying and adjusting Utilities, coordinating with Utility Owners and administering all Utility Adjustment Work. The Utility Work Plan shall include at a minimum:

- the most recent version of the Utility Adjustment Matrix for the Bridges within the PA in accordance with Section 6.1 (Identifying Utility Work) of the PDA Work Requirements;
- procedures and process for communicating between Utility Owners, PennDOT, and any entities impacted by the Utility Work;
- a plan to identify, designate, and locate all existing Utilities in areas affected by the Work;
- a plan to address utility betterments which might be requested by the Utility Owners;
- a plan to coordinate activities with each Utility Owner and activities between two Utility Owners or among several Utility Owners;
- the approach to coordinating activities with the Utility Owners for previously undiscovered Utilities;
- procedures and process for tracking Utilities, determining Utility impacts and conflicts and extent of impacts and adjustments;
- the approach to collaborating with PennDOT and Utility Owners to minimize Utility conflicts to greatest extent practical, and when Utility conflicts are unavoidable the approach to Utility Work;

- the process to assess costs and assignment of costs for Utility Work;
- procedures to be used for amending accepted Utility designs;
- procedures to be used for ensuring Utility relocations are performed per accepted Utility designs;
- procedures to be used for billing and payment for Utility Work where the Utility Owner is entitled to compensation for self-performing Utility Work;
- procedures to be used for ensuring Utility Owners or any party impacted by Utility Work are provided plans and are given the opportunity to review all plans that could have an impact on their utilities before Work on those plans is performed;
- procedures and processes for reporting any incidents or damage to Utilities;
- procedures and process for Utility completion and acceptance from Utility Owners;
- format and content of monthly Utility status reports;
- procedures and processes for submitting plans to Utility Owners and impacted parties, in conformance with Utility Owner requirements; and
- any specific requirements of an individual Utility Owner.

1.7 Waste Management Plan

As part of the PMP, the PDA Entity shall develop a Waste Management Plan (WMP) for safe handling, storage, treatment and/or disposal of Hazardous Materials, non-hazardous waste, contaminated soil and clean fill whether encountered or brought onto the Project Site by a third-party, or otherwise, during the PA Term to ensure safe working conditions for personnel and visitors. The PDA Entity shall use PennDOT's Publication 281, Waste Site Evaluation Procedures Handbook for guidance on the development of the WMP.

The WMP shall include procedures compliant with all Applicable Law and include, at a minimum:

- the process to keep and maintain material safety data sheets, per OSHA requirements for all chemicals to be used on the PA;
- the names and contact information for all designated individuals responsible for implementation of the WMP;
- procedures for identifying and documenting potential contaminated sites which might impact the PA Work;
- procedures for mitigation of known contaminated sites anticipated to impact construction;
- procedures for mitigation of unanticipated contaminated sites encountered during construction;
- procedures for mitigation of contamination during the Maintenance Period;
- incorporation of a spill response plan;
- process for training personnel for responding to and mitigating Incidents involving contamination or waste; and
- provisions for appropriate storage and disposal of all waste encountered on the Sites for the PA Term.

The WMP shall include provisions for making all workers aware of and able to recognize the potential hazardous materials to which they may be exposed, limiting contractors and other Bridge Site workers' exposure to hazardous materials and providing all necessary personal protection equipment to protect workers from exposure. The WMP shall require the to-be-formed Development Entity to provide any non-Development Entity personnel who visit the Project with the appropriate personal protection equipment.

The WMP shall require all personnel of the to-be-formed Development Entity-Related Entities handling hazardous materials be trained and certified at least to the minimum requirements established under the current guidelines of OSHA 29 CFR 1910.120.

The WMP shall include procedures for ensuring all applicable certifications, licenses, authorizations and Governmental Approvals for the to-be-formed Development Entity-Related Entity personnel handling hazardous materials are current and valid for the PA Term.

1.8 Comprehensive Environmental Protection Plan

As part of the PMP, the PDA Entity shall develop a Comprehensive Environmental Protection Plan (CEPP), applicable throughout the PA Term to establish the to-be-formed Development Entity's approach, requirements and procedures to be employed to protect the environment. All component parts shall reflect in order of priority: impact avoidance, minimization and as last resort mitigation. The CEPP shall satisfy applicable FHWA, PennDOT, and resource agency requirements, including those detailed as commitments in any NEPA Approvals and associated permits.

The CEPP shall provide a means to track the reviews and results. At a minimum, the CEPP shall require documents in the following list to be on file at the Project Site and available at any time for PennDOT review:

- CEPP component parts;
- weekly environmental monitoring reports;
- investigative Work plans, SIRs, and remedial action plans as necessary for hazardous material discovery/remediation;
- Wetlands Delineations and appropriate Section 404 Permit Application if changes to the design or temporary construction impacts are necessary;
- mitigation or resource monitoring reports, as required by resource-specific mitigation plans
- designs for wetland and floodplain mitigation;
- PADEP 105 Permit and Section 401 Water Quality Certification Approvals with date of approval and expiration date, if applicable;
- USACOE 404 Approvals with date of approval; and
- completed permit applications and permits as issued.

The PDA Entity shall develop standard operating procedures for the to-be-formed Development Entity's following activities and include them in the CEPP:

- controlling dust during construction;
- mitigating noise and vibration during construction; and
- complying with jurisdictional waters and wetlands permits.

1.9 Quality Management Plan

As part of the PMP, the PDA Entity shall develop a Quality Management Plan (QMP) for the to-be-formed Development Entity.

As part of the PMP, the to-be-formed Development Entity shall develop and implement a comprehensive QMP to ensure compliance with the Project Documents and the quality of all aspects of the PA and the PA Work using a single quality management system, which covers all the activities of the to-be-formed Development Entity and the to-be-formed Development Entity-Related Entities. Exceptions to the need for a single quality system may be granted at PennDOT's sole discretion for fabricators, suppliers or other to-

be-formed Development Entity-Related Entities if a suitable quality program is in place. The to-be-formed Development Entity's quality management system shall include quality control procedures to be utilized to verify, check, and review the quality of all Work (including the quality and accuracy of Project Data) and quality assurance procedures for the Design Work to confirm the quality control procedures are being followed. Quality control personnel shall report directly to the QAM.

Construction quality control and assurance activities shall be directed and performed by personnel independent of any aspect of the production of the Work. The to-be-formed Development Entity shall submit all quality control reports to PennDOT.

The to-be-formed Development Entity shall delegate to PennDOT unfettered rights for inspection, sampling and testing of the Work as required by PennDOT in their sole determination.

The quality management system shall include procedures for the to-be-formed Development Entity to report and monitor the status of, and close out of, all Nonconforming Work and Noncompliance Events throughout the Term. The to-be-formed Development Entity's quality management system shall include procedures for investigations and surveys undertaken by the to-be-formed Development Entity.

The quality management system shall be consistent with the requirements of ISO 9001 and shall include a corrective and preventative action process. For avoidance of doubt, the to-be-formed Development Entity may elect to obtain formal ISO 9001 certification but is not required to do so. The to-be-formed Development Entity's quality management system shall include processes to reflect environmental management compliant with ISO 14001 requirements.

There shall be only one quality management system for the PA covering the to-be-formed Development Entity and to-be-formed Development Entity-Related Entities. Individual quality systems for different Development Entity Related Entities will not be permitted.

The to-be-formed Development Entity's Quality Manager and quality control staff shall have no development responsibilities in the production of the PA Work. The to-be-formed Development Entity's and to-be-formed Development Entity-Related Entities' personnel assigned to perform inspection, testing or monitoring shall not be those personnel performing or directly supervising the Work being inspected tested or monitored. Design quality control staff shall remain independent of the design quality assurance staff.

The to-be-formed Development Entity's Quality Manager, DQM, CQCM and MQM shall have the authority to stop Work for quality-related issues.

Unless defined or modified elsewhere in the Project Documents, the quality terminology shall have the meaning defined in ISO 9001. Terms used in ISO 9001 shall have the meanings defined below:

- "Organization" as used in ISO 9001 shall mean the to-be-formed Development Entity and to-be-formed Development Entity Related Entities;
- "Customers" as used in ISO 9001 shall mean the Patrons, PennDOT, FHWA and the Pennsylvania PennDOT of Environmental Protection (PADEP); and
- "Product" as used in ISO 9001 shall mean the PA Work.

The QMP shall contain a complete description of the quality policies and objectives the to-be-formed Development Entity shall implement throughout its organization and in the execution of the Work. The policy shall demonstrate to-be-formed Development Entity senior management's commitment to implement and continually improve the quality management system for the Work.

The QMP shall be consistent with the draft QMP submitted with the Package Proposal and expand on the quality control procedures to verify, check, and review the quality of all Work and quality assurance procedures for design to confirm the quality control procedures are being followed. The QMP is subject to

PennDOT's approval at PennDOT's sole discretion; shall be compliant with Applicable Law, manuals and publications; and shall be a part of the PMP.

The QMP shall contain detailed procedures for the to-be-formed Development Entity's quality control and quality assurance activities for the Project in accordance with the Project Documents. The to-be-formed Development Entity's quality process shall ensure each PA shall achieve the required level of quality throughout the Term and incorporate planned and systematic verifications and audits. The to-be-formed Development Entity shall conduct all quality control, quality assurance and performance verification in accordance with the QMP and the requirements of the Project Documents. The QMP shall be consistent with ISO 9001 and ISO 14001 standards for quality and environmental management systems.

The to-be-formed Development Entity shall establish procedures and schedules in the QMP for the performance of audits of the quality control procedures, audits of the firms involved in the Work; and audits of the individuals responsible for conducting the Work. Auditing requirements shall identify how audit findings are addressed and documented and the dissemination of audit results to PennDOT.

The QMP shall, at a minimum:

- clearly outline the roles, rights, and responsibilities of PennDOT and the to-be-formed Development Entity;
- include procedures to report, the status of, and the closeout of, all Nonconforming Work and Noncompliance Events throughout the PA Term;
- include procedures for investigations to be undertaken by the to-be-formed Development Entity as part of the monitoring to prevent the occurrence of Nonconforming Work or Noncompliance Events; and
- encompass the PA Work performed by the to-be-formed Development Entity, to-be-formed Development Entity-Related Entities, Contractors and suppliers of all tiers.

1.9.1.1 Design Quality Management Plan

The QMP shall include a DQMP addressing the Design Work. The PDA Entity shall prepare a DQMP describing the to-be-formed Development Entity policies, procedures, and staffing to manage the quality of Design Work.

The DQMP shall describe and include at a minimum the following general requirements:

- general quality control and quality assurance procedures to be used for all Design Work;
- quality control and quality review procedures specific to each design discipline (such as structural, civil, utilities) as applicable;
- procedures shall specify measures to ensure appropriate quality requirements are specified and included in the Design Documents and to control deviations from such requirements;
- specific quality control and quality review procedures, including all required forms and checklists, shall be specified for preparing, verifying and checking all Design Documents to ensure they are independently checked and back-checked in accordance with generally accepted engineering practices and the requirements of the Project Documents, showing:
 - the designer and checker clearly identified on the face of all Final Design Documents;
 - specific procedures for verifying any computer programs being used for the Design Work; and
 - when Design Documents need to be sealed, signed and dated by the Professional Engineer in responsible charge of that item, element, or phase of the Work;
- procedures for coordinating Design Work performed by different individuals, disciplines, or firms working in the same area, in adjacent areas, or on related tasks to ensure conflicts,

omissions or misalignments do not occur between drawings or between the drawings and the specifications including the coordination of the review, approval, release, distribution and revision of documents involving such parties;

- the process to be used by the to-be-formed Development Entity to track review comments received from any entity including the approach to and schedule for resolving and addressing all review comments; and
- procedures for checking revisions to the design made after RFC.

The to-be-formed Development Entity shall establish procedures for meeting documentation requirements; the organization of design inputs such as design criteria, background reports, field notes, calculations, plans, specifications, schematics and supporting materials needed during the final design. Procedures shall address the specific personnel and roles responsible for the implementation and verification of the procedures. The to-be-formed Development Entity shall maintain, organize and index all Design Documents of the to-be-formed Development Entity as part of the EDMS and copies made available to PennDOT upon request.

In addition, the general procedures defined in the DQMP shall:

- ensure to-be-formed Development Entity personnel are familiar with all the provisions of the Project Documents concerning their respective responsibilities;
- provide for the education, training and certification, as appropriate, of personnel performing activities affecting or assessing the quality of the Work to ensure such personnel achieve and maintain reasonable proficiency; and
- ensure the Work is performed according to the DQMP, generally accepted engineering practices and the Project documents.

1.9.1.2 Construction Quality Management Plan

The QMP shall include a CQMP addressing the construction Work. The PDA Entity shall prepare a CQMP describing the to-be-formed Development Entity policies, procedures, and staffing to manage the quality of construction Work.

- methods and procedures that clearly define the distinction/authority/responsibility for the administration of to-be-formed Development Entity's CQMP;
- a methodology for performing daily field inspections of construction Work and preparing a daily QC report to document the inspection performed;
- methods and procedures to be utilized by to-be-formed Development Entity to obtain active participation of their personnel in quality control and assurance operations to achieve a quality PA;
- approach to adherence to material quality specifications indicating the targeted mean for material quality.
- reporting forms to be used by the responsible quality control personnel;
- a construction quality control organization and staffing plan, showing:
 - the period of time the quality control staff member shall be present on the site;
 - resumes of supervisory personnel; and
 - the experience/knowledge/skill levels of the quality control support staff;
- procedures for inspecting, checking, and documenting the construction Work;
- procedures to ensure all activities affecting the quality of the construction Work are accomplished using equipment appropriate for the task being performed;

- procedures to ensure the education, training, and certification of personnel performing CQMP activities are achieved and maintained;
- procedures to ensure critical portions of the construction Work are not started or continued without inspection and testing by the quality acceptance personnel on site;
- a description of any specific procedures to ensure all construction Work conforms to the requirements of the Project documents, Governmental Approvals and Applicable Law, and the Design Documents, as well as procedures to ensure all materials, equipment, and constructed portions of the Work will perform satisfactorily for the purpose intended;
- measures to ensure purchased materials comply with the Project Documents, and Governmental Approvals, Applicable Law, rules, and the Design Documents which shall:
 - include provisions for source evaluation and selection;
 - include objective evidence of quality furnished by Contractors and suppliers;
 - present documentation of inspection at the manufacture or vendor source; and
 - records of examination of products upon delivery;
- Procedures for identification and control of materials, equipment or elements which shall:
 - ensure identification of the element is maintained by appropriate means, on the element, whenever possible; and
 - be included as part of the to-be-formed Development Entity's EDMS to ensure the identification is part of the Project records traceable to the material, equipment, or element, as necessary, throughout fabrication (onsite and offsite), erection, installation and use of the material, equipment, or element
- procedures to ensure materials, equipment or constructed portions of the Work not conforming to requirements of the Project Documents, the Governmental Approvals, Applicable Law or the Design Documents are not used or installed which shall include identification, documentation, segregation, disposition and notification to PennDOT and, if appropriate, Governmental Entities and other affected third parties, as well as procedures for PennDOT to review Nonconforming Work and procedures to prevent reoccurrence of Nonconforming Work;
- procedures for processing requests for information (RFIs) to resolve discrepancies and/or questions in the Design Documents so all changes are recorded and approved by to-be-formed Development Entity's design engineers with concurrence by PennDOT;
- procedures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the construction Work;
- a program for inspection for each operation of the Work to include examinations, measurements and tests of materials or constructed portions of the Work to assure quality;
- a program for coordination of all inspection and testing with the inspections and tests of third-parties including Governmental Entities and Utility Owners;
- a program to ensure performance of all testing required to demonstrate all materials, equipment and constructed portions of the Work will perform satisfactorily for the purpose intended and meet the standards specified in the Project Documents including:
 - specific written test procedures which include provision for ensuring all prerequisites for the given test have been met and adequate test instrumentation is available and used;
 - requirements for the test results to be documented and evaluated to ensure test requirements have been satisfied; and

- the process to demonstrate how testing frequencies are tracked to ensure compliance with the Project Documents;
- procedures for reviewing and approving acceptance test results, categorizing test results in a manner acceptable to PennDOT, transmitting acceptance test results to PennDOT using eCAMMS for use in fulfilling its statistical validation requirements, and working collaboratively with PennDOT to resolve statistical non-validation between the to-be-formed Development Entity's and PennDOT test results;
- detailed descriptions of the inspection and test plans, including the timing, quantities represented and frequency of testing, the to-be-formed Development Entity shall use to meet quality control requirements of the construction Work;
- measures to ensure tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly maintained, controlled, handled, stored, shipped, calibrated, certified and adjusted at specified periods to maintain accuracy within industry standards;
- procedures to control the handling, storage, shipping, cleaning and preservation of materials and equipment to prevent damage or deterioration;
- procedures to ensure conditions adverse to quality, such as failures, malfunctions, deficiencies, defective material and equipment, deviations and other Nonconforming Work are promptly identified and corrected, including but not limited to:
 - the procedure to ensure the cause of the condition is determined;
 - corrective action taken to preclude repetition; and
 - documentation and reporting requirements;
- measures to control the receipt and issuance of controlled documents, such as instructions, procedures, training manuals and drawings, including changes thereto, which prescribe activities affecting quality to ensure:
 - approved documents, including authorized changes thereto, are reviewed for adequacy and approved for release by authorized personnel of the to-be-formed Development Entity;
 - approved documents are distributed to and used at the location where the prescribed activity is performed; and
 - changes to documents are reviewed and approved by the same organizations performing the original review and approval unless PennDOT consents, in writing, to another responsible organization;
- procedures and personnel to be used to assure specified instrumentation is installed and monitored in accordance with applicable specification;
- the form and distribution of certificates of compliance;
- procedures for quality acceptance in the CQMP with respect to checking and verifying the accuracy and adequacy of stakes, lines, and grades established by the to-be-formed Development Entity; and
- procedures for achieving Substantial Completion and Final Acceptance for each PA, including procedures to certify to PennDOT all construction Work meets all acceptance criteria.

1.9.1.3 Maintenance Quality Management Plan

The QMP shall include a MQMP addressing the Maintenance Work. The to-be-formed Development Entity shall be responsible for all aspects of quality control and assurance related to the Maintenance Work. The

to-be-formed Development Entity shall provide quality control staff who are independent from the Maintenance Work being verified. The MQMP shall describe how quality control is to be conducted; which elements, procedures or portions of the Work are to be verified; and the qualifications for quality control staff.

The primary function of the MQMP is to monitor the performance of the Maintenance Work. The MQMP shall present the process for:

- review and evaluation of maintenance records and compliance with the procedures identified in the Maintenance Manual;
- how the to-be-formed Development Entity intends to document the O&M noncompliance points during the Term;
- the means for monitoring and evaluating all aspects of the performance with respect to the minimum maintenance performance requirements during the PA Term; and
- training to all staff emphasizing the importance of the maintenance quality management system.

1.9.2 Quality Management Organization

The to-be-formed Development Entity shall regularly maintain the QMP to contain current versions of the following information:

- the organizational chart identifying all quality management roles, authorities and line reporting relationships;
- description of the roles and responsibilities of all quality management personnel and those who have the authority to stop Work;
- identification of testing agencies, including information on each agency's capability to provide the specific services required for the Work, certifications held, equipment and location of laboratories for products produced both on and off the Project Site; and
- resumes for all quality management personnel.

1.9.2.1 Design Work Organization

The quality management system shall present the organization of the design staff and personnel responsible for:

- preparing and checking Design Documents including procedures to verify their qualifications and to ensure checkers are not directly involved with the original development of the Design Work;
- verifying Design Documents comply with the Project Documents, Governmental Approvals, Applicable Law, design standards, and design criteria;
- resolving and tracking resolution of PennDOT comments;
- stopping Design Work or elevating an issue; and
- audits.

1.9.2.2 Construction Work Organization

The quality management system shall present the organization of the construction staff and personnel responsible for:

- performing quality control checks on the construction Work;
- verifying the construction Work complies with the Design Documents; Project Documents, Governmental Approvals, and Applicable Law;

- preparing, checking and tracking construction Submittals;
- reconciling discrepancies between the to-be-formed Development Entity's quality control and any PennDOT inspection findings; and
- stopping construction Work or elevating an issue.

Construction quality control staff are not required to be direct employees of the to-be-formed Development Entity but cannot be employees of the Lead Contractor or Lead Designer and shall not be involved with scheduling or design activities. Construction quality control staff shall follow the direction of the CQCM.

1.9.2.3 Maintenance Work Organization

The quality management system shall present the organization of the maintenance staff and personnel responsible for:

- performing quality control checks on the Maintenance Work;
- verifying the Maintenance Work complies with the Rehabilitation Work Design Documents; Project Documents, Governmental Approvals, and Applicable Law;
- preparing, checking and tracking maintenance records;
- reconciling discrepancies between the to-be-formed Development Entity's quality control and any PennDOT inspection findings; and
- stopping Maintenance Work or elevating an issue.

1.10 Maintenance Management Plan

As part of the PMP, the PDA Entity shall use the Plan for Maintenance Work and Handback Work developed during the PDA Term as a basis to develop a Maintenance Management Plan (MMP) clearly identifying the approach, methods, staffing, schedule, inspections, reporting frequencies, systems and procedures necessary for the to-be-formed Development Entity to perform Maintenance Work and ensure each element continuously meets or exceeds the requirements of the Project documents and the Maintenance Performance Requirements during the Maintenance Period.

The to-be-formed Development Entity shall implement the MMP and shall manage and perform Maintenance Work in accordance with the MMP. There shall be only one MMP for the to-be-formed Development Entity and all the Development Entity-Related Entities performing Maintenance Work.

The MMP shall include, at a minimum, the following components:

- MMIS;
- schedule of Planned Maintenance and Routine Maintenance;
- Maintenance Manual;
- Rehabilitation Work Plan, including Rehabilitation Work Schedule;
- Maintenance Safety and Security Plan, and
- Transition and Coordination Plan.

The MMP and subsequent updates shall describe the to-be-formed Development Entity's approach to inspections, Routine Maintenance, Planned Maintenance, preventative Maintenance Work, Rehabilitation Work, replacements, and other maintenance activities performed by the to-be-formed Development Entity, and include, at a minimum, the following:

- plan drawings showing the Maintenance Limits for each Bridge;

- inventory and clear description of each element of the Project contained within the Maintenance Limits with its proper location and with a unique Performance Requirement Identification;
- description of any Maintenance Work during the Construction Period for each Project Site (in a standalone, separate section of the MMP), as may be applicable before Final Acceptance;
- acceptable criteria for Maintenance Work;
- schedule of Planned Maintenance and preventative Routine Maintenance (including bridge washing) and associated Closures along with an explanation of required frequencies of such;
- Work and procedures for executing such Work, for each element category and for each Bridge;
- plans and procedures for maintenance and protection of traffic during Maintenance Work (for Planned Maintenance and unplanned Maintenance Work);
- description of the to-be-formed Development Entity's approach to minimize delay and inconvenience to patrons and to users of related transportation facilities;
- description of the to-be-formed Development Entity's approach to minimize the risk of harm to the general public and minimize the risk of damage, disturbance, or destruction of PennDOT property and third-party property;
- description of the to-be-formed Development Entity's approach to coordinate with PennDOT and third parties;
- the status of any permits in force and a listing of any new permits or approvals required;
- description of the to-be-formed Development Entity's quality system and approach to quality management, quality assurance, and quality control (including the to-be-formed Development Entity's quality assurance and quality control of its self-monitoring and self-reporting program), processes and procedures for achieving the requirements and the obligations of the Project Documents;
- the to-be-formed Development Entity's approach and procedures for monitoring and inspecting the condition of the Project and self-monitoring and self-reporting processes and procedures for identifying, classifying, tracking, notifying PennDOT of and reporting Noncompliance Events, response time and cure, times and procedures to permanently cure Noncompliance Events;
- procedures for tracking, calculating, and reporting Noncompliance Points accurately;
- corrective and preventative actions to eliminate or minimize future occurrences of Noncompliance Events;
- performance target metrics, measurement procedures and threshold values at which Maintenance Work is required, inspection procedures and frequencies and subsequent Maintenance Work to address deficiencies noted in such inspections, for each element of the PA;
- the to-be-formed Development Entity's self-monitoring processes and procedures for identifying and notifying PennDOT of lane closures;
- procedures to assess damages, required Maintenance Work, and coordination with PennDOT and third parties, the to-be-formed Development Entity following emergencies, Incidents, and extreme weather events;

- description of the to-be-formed Development Entity's approach for fully utilizing the MMIS including procedures for managing records of inspection and Maintenance Work, including appropriate measures for control of records and control of documents;
- description of the to-be-formed Development Entity's approach to obtaining all Governmental Approvals required for the Maintenance Work including any revision, modification, amendment, supplement, Rehabilitation or extension thereof and coordination with PennDOT and third parties;
- the to-be-formed Development Entity's plan and procedures for responding to hazardous material releases including monitoring and evaluation and clean-up procedures of any hazardous materials;
- the to-be-formed Development Entity's approach to controlling vegetation;
- details of Contractors employed to undertake Maintenance Work;
- list of the to-be-formed Development Entity's and Maintenance Contractor's maintenance personnel, staff organization chart and staffing plan including geographical and functional responsibilities, positions, personnel identification numbers, qualifications, training and certification processes, Work locations, Work hours, and contact details;
- a list with addresses and phone numbers for all the facilities to be used by the to-be-formed Development Entity, including any off-site storage or maintenance facilities;
- a list and inventory of vehicles, tools, spare parts and other major equipment furnished by the to-be-formed Development Entity to support the Maintenance Work;
- the Maintenance Work activities and schedule planned for next twelve (12) months, updated on a monthly basis; and
- guidelines and procedures for the efficient, coordinated, and consistent implementation of the Maintenance Manual, Maintenance Safety and Security Plan, Transition and Coordination Plan, Rehabilitation Work Plan, and any other plan required for the performance of the Maintenance Work.

1.10.1 Planned Maintenance Activities

As part of the MMP, the PDA Entity shall prepare a schedule of planned Maintenance Work (including routine Maintenance and Rehabilitation Work).

The schedule of Planned Maintenance shall describe all of the Planned Maintenance for the given period and shall include at a minimum the expected dates, assets included, times, durations of each Planned Maintenance Work activity, and the anticipated impact on traffic. The schedule of planned Maintenance, and any changes thereof, shall be developed in cooperation with PennDOT and other Government Entities or third parties impacted by such activities to minimize the impact on traffic and avoid the scheduling during local events.

1.10.2 Maintenance Manual

The PDA Entity shall develop and submit as part of the MMP, a detailed Maintenance Manual based on the Maintenance Work. This Maintenance Manual shall include the complete set of information detailing the specific maintenance procedures for the execution of Maintenance Work, consistent with the MMP. The Maintenance Manual shall be used by the to-be-formed Development Entity's maintenance staff in the performance of Maintenance Work. The Maintenance Manual for all the to-be-formed Development Entity's Maintenance Work shall rely on, and fully utilize the MMIS. The to-be-formed Development Entity shall update the Maintenance Manual annually within thirty (30) Days prior to the beginning of each Calendar Year (as part of the annual update to the MMP) and as the to-be-formed Development Entity or PennDOT determine is necessary to comply with the requirements of the Project Documents. The

Maintenance Manual shall be based on the specific Maintenance Work program of the to-be-formed Development Entity and include, at a minimum, the following:

- identify the locations of each element subject to Maintenance Work per the MMIS;
- list of Planned Maintenance and preventative Routine Maintenance procedures and required frequencies for each element;
- diagnostic procedures for elements, equipment and systems;
- procedures and forms used for inspections including scheduling, programming, reporting and inspections systems, including inspection procedures necessary to the establishment of the NBIS score;
- procedures for routine monitoring, detection and evaluation of Noncompliance Events including patrolling; procedures for responding, assessing and remediating events related to Hazardous Materials or fuel spills;
- procedures for responding, assessing, and remediating emergencies, Incidents and extreme weather events, and in particular procedures for monitoring weather events and preparing to respond to such weather-related events;
- procedures for systematic coordination with PennDOT and relevant third parties;
- procedures for public information and communication of upcoming Maintenance Work
- procedures for maintenance and protection of traffic
- copies of all As-Built Drawings detailing the components of the Maintenance Work and Rehabilitation Work to be provided by the to-be-formed Development Entity, including logic block diagrams, assembly and disassembly drawings clearly identifying the components;
- manufacturers' instruction manuals and service manuals as appropriate, including systems, software and equipment manufacturer's maintenance manuals;
- copies of all forms, checklists, certificates, etc. to be used by the to-be-formed Development Entity's personnel in the execution of Maintenance Work; and
- user manuals including the user manual for the MMIS.

Standard service manuals for commercially available equipment and products shall be acceptable as part of the Maintenance Manual only if the equipment provided is standard off-the-shelf equipment without any custom features or functions. Custom equipment and systems shall have custom Maintenance Manuals providing detailed information addressing the custom features of the equipment provided and including drawings.

1.10.3 Rehabilitation Work Plan

The PDA Entity shall develop and submit, as part of the MMP, a detailed Rehabilitation Work Plan for the PA Work.

The Rehabilitation Work Plan shall provide an overview of the overarching approach to Rehabilitation Work during the entire Maintenance Period, identify the planned Rehabilitation Work cycles (including replacement cycles) for each element, and describe the to-be-formed Development Entity's approach, assumptions, means and methods for the Rehabilitation Work (including Useful Life and Residual Life assumptions) during the entire Maintenance Period.

The Rehabilitation Work Plan shall identify and detail the program, approach, procedures, records, type and schedule of Rehabilitation Work the to-be-formed Development Entity shall perform to ensure each element continuously meets or exceeds the requirements of the Project documents.

The Rehabilitation Work Plan for all the to-be-formed Development Entity's Rehabilitation Work shall rely on and fully utilize the MMIS.

The Rehabilitation Work Plan shall identify the Rehabilitation Work per element and shall include, at a minimum, the following:

- identify the Useful Life and Residual Life for all elements of each Bridge and identify the planned Rehabilitation Work cycles (including replacement) for each element for the entire Maintenance Period;
- description of the type of Rehabilitation Work for both the to-be-formed Development Entity and PennDOT anticipated to be performed at the end of the element's Residual Life;
- description of any Rehabilitation Work anticipated to be performed or has been performed before the end of the element's Useful Life and Residual Life, including reasons why this Work is anticipated or has been performed at the proposed time;
- description of the nature of Rehabilitation Work and Rehabilitation Work Schedule to be conducted
- plans and procedures for public information and communication of upcoming Rehabilitation Work
- plans and procedures for maintenance and protection of traffic during Rehabilitation Work, including without limitations site-specific traffic control plans on which Rehabilitation Work is scheduled;
- plans and procedures for the coordination with PennDOT and affected third parties in the planning and execution of Rehabilitation Work;
- quality system for all Rehabilitation Work;
- results of most recently completed inspections (including any PennDOT independent inspections or audits) and how such results are incorporated into the Rehabilitation Work; and
- details of alterations or replacements to any structural elements.

1.10.3.1 Rehabilitation Work Schedule

The to-be-formed Development Entity shall submit to PennDOT, PennDOT a Rehabilitation Work Schedule as part of the Rehabilitation Work Plan. The Rehabilitation Work Schedule shall be planned and developed in cooperation with PennDOT and other Government Entities or third parties impacted by such proposed Closures to minimize the impact on traffic and avoid the scheduling of proposed Closures during local events.

The Rehabilitation Work schedule shall identify the Rehabilitation Work for each Bridge and each element and provide a detailed schedule of Rehabilitation Work to be conducted over the following five (5) Calendar Years with a daily resolution for the next twenty-four (24) months, and monthly resolution for the thirty-six (36) months thereafter. The Rehabilitation Work Schedule shall include explanation, anticipated start and end dates and duration of each planned Rehabilitation Work, and anticipated start and end dates and duration of lane closures along with a description of proposed lane closures and mitigating measures to avoid any Unavailability Event or negative impact on traffic.

Annual updates to the Rehabilitation Work Schedule shall show the revisions, if any, to the prior Rehabilitation Work Schedule and include an explanation of the reasons for such revisions.

1.10.4 Maintenance Safety and Security Plan

As part of the MMP, the PDA Entity shall develop the to-be-formed Development Entity Maintenance Safety and Security Plan addressing staff training, safety procedures, protocols, and specialized equipment associated with the to-be-formed Development Entity's Maintenance Work.

The Maintenance Safety and Security Plan shall address the to-be-formed Development Entity's approach to meeting all the safety objectives set forth in the Project documents and, without limitation, shall require that the to-be-formed Development Entity follow the practices set forth below:

- provide safety equipment and procedures for the protection of employees, patrons, and the general public in the execution of Maintenance Work;
- all equipment used shall be maintained in a safe and efficient manner in accordance with Applicable Law, safety standards, safety organizations, regulations and guidelines pertaining to providing the required services;
- follow all safety requirements outlined in the National Electric Safety Code, OSHA and any standards or practices for safe installation or maintenance of required equipment per the Project documents; and
- notify PennDOT immediately after any injury incurred by Person(s) working on the Project or involving members of the general public.

1.10.5 Transition and Coordination Plan

The to-be-formed Development Entity shall coordinate with PennDOT to achieve a smooth transition of Maintenance Work between PennDOT and the to-be-formed Development Entity at the various PA milestones.

As part of the MMP, the PDA Entity shall develop and implement a PA Transition and Coordination Plan. The Transition and Coordination Plan shall detail how the to-be-formed Development Entity plans to Work with PennDOT to ensure a seamless transfer of maintenance responsibilities at the end of the PA Term. The Transition and Coordination Plan shall also detail how the to-be-formed Development Entity plans to coordinate with PennDOT for PennDOT Maintenance Work within the Maintenance Limits during the Maintenance Period.

1.11 Affected Third-Parties Plan

As part of the PMP submitted with the Package Proposal, the PDA Entity shall include the most recent version of the Affected Third-Parties Plan in accordance with Section 2.7.1.3 (Approvals, Permits, and Reviews Tracking) of the PDA Work Requirements.

1.12 Safety and Security Plan

As part of the PMP submitted with the Package Proposal, the PDA Entity shall include Safety and Security Plan in accordance with Section 2.9.2 (Project Agreement Term Safety Management) of the PDA Work Requirements.

1.13 Emergency Management and Disaster Recovery Plan

As part of the PMP, the PDA Entity shall include an Emergency Management and Disaster Recovery Plan (EMFRP). The EMDRP shall outline the procedures for emergencies, Incidents and similar events with the potential to disrupt the PA Work or to damage the Project including:

- severe weather Incidents such as tornados, hailstorms, snow storms and flooding;
- power failures affecting traffic signals and lighting;
- vehicular accidents damaging facilities or interfere with traffic flow; and

- hazardous Materials spills including flammable liquids.

The EMDRP shall set out the to-be-formed Development Entity's systems and procedures for limiting disruption to the PA Work and the operation of the Project and protecting documents and data in case of disaster, and promptly resume PA Work and restore the Project post-disaster.

The EMDRP shall:

- identify relevant systems and their importance to the PA Work and the continuing operation of the Project;
- identify the relevant personnel responsible for implementation of the EMDRP;
- provide contact information for the to-be-formed Development Entity personnel responsible for implementation of the EMDRP;
- establish the procedure for response to emergencies and Incidents on at all times of the PA Term;
- categorize the different types of events, data, systems, and operations according to their importance and the impact caused by a disruption;
- identify the levels of redundancy, security, verification and any other precautions required to protect and restore critical systems and data;
- identify the Project and the to-be-formed Development Entity's action plan and procedures in response to each potential disaster or major hazard to restore Project operation after such event;
- describe how the to-be-formed Development Entity shall coordinate with PennDOT, local law enforcement agencies, first responders, and affected third parties in response to emergencies and Incidents; and
- describe how the to-be-formed Development Entity shall notify the public about the emergencies and Incidents.

1.14 Transportation Management Plan

As part of the PMP, the PDA Entity shall include a Traffic Management Plan (TMP).

The TMP shall include the following items for the construction Work and for the Maintenance Work:

- TMP shall include traffic control plans, transportation operations plans, public involvement plans, and Incident Management Plans; incident management plans;
- descriptions of the qualifications and duties of the traffic engineering manager, traffic control coordinator, and other personnel with traffic control responsibilities;
- procedures for the development of TCPs;
- procedures to maintain access for first responders;
- procedures to minimize traffic impacts;
- procedures to comply with all local ordinances. This includes, but is not limited to, local noise ordinances;
- procedures to maintain and control pedestrian, bicycle and other non-vehicular traffic;
- procedures to coordinate the TMP with other PennDOT, local Governmental Entity and private projects which are or will be under construction;
- procedures to research, identify and include special events, including fairs, expositions, shows, and other community events for inclusion in each TCP;

- procedures to identify and incorporate the needs of stakeholders affected by the Project and surrounding affected areas;
- procedures for notifying applicable Governmental Entities of detours, road and lane Closures and other traffic pattern modifications, and implementing and maintaining those modifications;
- procedures for signing transitions during construction from one stage to the next and from temporary signing to permanent signing;
- procedures for maintenance and replacement of traffic control devices, including pavement markings and traffic barriers, if used;
- procedures to incorporate the accommodation of snow plowing and other PennDOT operations and maintenance procedures into the TCPs, including, but not limited to, provisions for equipment turn-around and temporary lane widths allowing the passage of PennDOT's equipment;
- procedures to verify twice daily that all construction is in accordance with the approved TCP;
- procedures to regularly evaluate and recommend modifications to, if necessary, traffic signal timings, and the procedures for the development, PennDOT approval, implementation, testing, and maintenance of all affected signals;
- procedures to adjust the TCP if it results in unsafe conditions relative to railroad grade crossings;
- procedures to coordinate with the appropriate Governmental Entities operating signals affected by the Project or detour routes to ensure temporary system compatibility, establish responsibilities for temporary signal installation, maintenance, operation and removal, and coordinate traffic signal timing with local signals;
- procedures and processes for the safe ingress and egress of construction vehicles in the Work zone;
- provisions to provide continuous access to established truck routes and hazardous material routes, and to provide suitable detour routes, including obtaining any approvals required by the appropriate governmental entities for these uses;
- procedures to modify plans as needed to adapt to the work to unanticipated changes in traffic including a contingency plan to alleviate PA Work zone congestion which can be implemented immediately;
- procedures to communicate TMP information to the to-be-formed Development Entity's public information personnel and notify the public of maintenance of traffic issues;
- descriptions of contact methods, personnel available, and response times for any defects or emergency conditions requiring attention during off-hours;
- procedures for night PA Work to incorporate requirements from Publication 213, Temporary Traffic Control Guidelines and to include a PA Work zone light system design in accordance with NCHRP Report 498 Illumination Guidelines for Nighttime Highway Work; and
- procedures for work on interstate roadways shall incorporate Publication 213 requirements for Pennsylvania State Police protection.

EXHIBIT 7

PACKAGE PROPOSAL REQUIREMENTS

1. PACKAGE PROPOSAL REQUIREMENTS

1.1 Each Package Proposal shall consist of a Package Financial Proposal, a Package Technical Proposal, a Package Administrative Proposal and any additional items required and/or requested under paragraph (d) and paragraph (e), each as set forth below:

- (a) a Package Financial Proposal that meets the requirements set forth in Attachment M and includes:
 - (i) commitment letters from the Lenders, Lead Underwriter and/or Placement Agent with respect to Bank Debt Financing and/or Bond Financing, as applicable, in accordance with Section 1.2 (Financial Institutions Providing Debt Financing);
 - (ii) commitment letters and other supporting information from the Package Equity Members with respect to Committed Investment in accordance with Section 1.3 (Details of Equity Source and Equity Member Letters);
 - (iii) financial strength information in accordance with Section 1.4 (Financial Strength Information) in the form of Attachment B;
 - (iv) commitment letters from an Eligible Security Issuer in accordance with Section 1.4(b) (Surety Letter);
 - (v) evidence of insurability in accordance with Section 1.4(c) (Insurance Letter);
 - (vi) financial advisor letter in accordance with Section 1.5 (Financial Advisor Letter);
 - (vii) Initial Base Case Financial Model in accordance with Section 1.6 (Initial Base Case Financial Model);
 - (viii) financial model audit report in accordance with Section 1.7 (Financial Model Audit);
 - (ix) indicative investment grade ratings for the Project Debt to the extent required by Section 1.8 (Investment Grade Ratings);
 - (x) lenders technical advisor's report in accordance with Section 1.9 (Lenders Technical Advisor's Report);
 - (xi) draft TIFIA loan agreement term sheet (if applicable);
 - (xii) amount of incurred and outstanding PDA Entity Allowed Costs related to the Bridges included in the Package Proposal in accordance with Section 1.10 (Reimbursement of Allowed Costs), which amount shall be subject to the Pre-Development Cost Cap under the Pre-Development Agreement;
 - (xiii) amount of costs to be incurred by the Development Entity from execution of the Project Agreement up to and including the applicable Financial Close Date; and

- (xiv) Package Proposal Equity IRR in accordance with Section 1.11 (Package Proposal Equity IRR);
- (b) a Package Technical Proposal in accordance with EXHIBIT 6 (PDA Work Requirements), including:
 - (i) a Project Management Plan; and
 - (ii) nomination of any additional personnel not identified in the SOQ, including but not limited to a Lead Maintenance Contractor and Lead Construction Contractor who the PDA Entity proposes to serve as additional DBFM Key Personnel under the Project Agreement;
- (c) a Package Administrative Proposal that includes:
 - (i) a Package Proposal Letter from the PDA Entity and Development Entity in the form of Attachment A, attaching a conformed copy of the Project Agreement (including all exhibits to the Project Agreement within the PDA Entity's scope of PDA Work under this Agreement);
 - (ii) a Buy America certification from the Development Entity in the form of Attachment C;
 - (iii) a proposal affidavit from the PDA Entity and Development Entity, each Key Contractor, and guarantors (if any) in the form of Attachment D;
 - (iv) non-collusion affidavit from the Development Entity, each Package Equity Member, each Key Contractor, and guarantors (if any) in the form of Attachment E;
 - (v) a certification regarding the use of contract funds for lobbying from the Development Entity, each Key Contractor, each Lead Construction Contractor Member, and each Package Equity Member in the form of Attachment F;
 - (vi) a certification regarding no conflict of interest from the Development Entity in the form of Attachment G;
 - (vii) a debarment certification from the Development Entity in the form of Attachment H;
 - (viii) an equal employment opportunity certification from the Development Entity in the form of Attachment I;
 - (ix) the DBE documentation from the Development Entity in accordance with Section 1.12 (DBE Documentation); and
 - (x) an executed signature page of the Project Agreement by the applicable Development Entity to be held in escrow by PennDOT;
- (d) any other items under Exhibit 6 (PDA Work Requirements) that are to be included in the Package Proposal; and

- (e) any other items requested by PennDOT, including any items identified in the Request for Package Proposal from PennDOT.

1.2 **Financial Institutions Providing Debt Financing**

- (a) This Section 1.2 (*Financial Institutions Providing Debt Financing*) provides the requirements for commitment letters with respect to a bank financing (“**Bank Debt Financing**”) and capital markets financing (“**Bond Financing**”) that are included in the PDA Entity’s Financing Plan.
- (b) With respect to a Bond Financing (except Bond Financing involving a private placement under Regulation D), a letter from a Lead Underwriter agreeing to purchase 100 percent of the volume of bonds to be issued at market prices. If the Development Entity has more than one Lead Underwriter, the aggregate volume commitments of the Lead Underwriters must equal 100 percent of the volume of bonds.
- (c) For each Bank Debt Financing and each Bond Financing included in the approved Financing Plan, the PDA Entity shall provide a letter of commitment with a commitment period expiring no earlier than the commitment period of the Package Proposal from each Lender, each Lead Underwriter, or each Placement Agent, as applicable. The letter of commitment must include the following:
 - (i) with respect to a letter of commitment from each Lender, confirmation that:
 - (A) certain due diligence has been completed (including financial, legal, insurance, and technical);
 - (B) the Project Agreement is acceptable in the form attached to the Package Proposal; and
 - (C) final credit approval has been received, subject only to the completion of final credit documents and the satisfaction of customary conditions precedent;
 - (ii) with respect to a letter of commitment from each Lead Underwriter, confirmation that:
 - (A) certain due diligence has been performed (including financial, legal, insurance, and technical);
 - (B) the Project Agreement is acceptable in the form attached to the Package Proposal; and
 - (C) final credit approval has been received, subject only to the completion of final documentation and satisfaction of customary conditions precedent;
 - (iii) with respect to a letter of commitment from a Placement Agent:
 - (A) confirmation that certain due diligence has been performed (including financial, legal, insurance, and technical);

- (B) confirmation that the Project Agreement is acceptable in the form attached to the Package Proposal;
 - (C) confirmation that final credit approval has been received subject only to the completion of final documentation and satisfaction of customary conditions precedent;
 - (D) evidence that the Placement Agent has served as the lead arranger in the past five years on over \$1 billion of infrastructure project debt (which may be privately owned or delivered under a public-private partnership framework and may cover transportation, social/accommodations, or other asset types);
 - (E) a copy of a report from BrokerCheck (<http://brokercheck.finra.org/>) for the Placement Agent, if applicable, evidencing the Placement Agent's proper registration and licensing to act in such capacity;
 - (F) confirmation that the private placement is exempt under Section 4(a) of the Securities Act of 1933, as amended, and indicate which exemption is being relied upon; and
 - (G) a list of the purchasers of the private placement and each of their commitments;
- (iv) a detailed term sheet that at a minimum includes the following terms and conditions:
- (A) type and purpose the of facility;
 - (B) amount of the facility and currency in which facility is denominated;
 - (C) interest rates (fixed or floating, base rate, margins or spreads);
 - (D) commitment fees, arrangement fees, and any other applicable fees (e.g., ticking fee, alternative transaction fee, etc.);
 - (E) conditions precedent to Financial Close;
 - (F) representations and warranties;
 - (G) principal covenants (affirmative and negative);
 - (H) financing security (including guarantees);
 - (I) events of default;
 - (J) structural features;
 - (K) coverage ratios; (minimum for debt sizing, restricted payment tests, financial covenants);

- (L) required reserve accounts including the timing of funding and other requirements with respect to such reserve accounts;
 - (M) redemption/prepayment features (e.g., call features, make-whole, etc.);
 - (N) drawdown schedule (e.g., upfront, delayed drawdowns, etc.);
 - (O) repayment schedule (including the source of funds for repayment), legal maturity date and expected final repayment date (if different), and weighted average life;
 - (P) flow of funds (cash flow waterfall);
 - (Q) hedging facilities, including terms and pricing details associated with such hedging facilities; and;
 - (R) any other relevant terms and conditions;
- (v) a detailed timetable setting out the expected period to reach Financial Close on the facilities;
 - (vi) a description of all fees payable to the Lender(s), Lead Underwriter(s), and Placement Agent(s); and
 - (vii) any other material information that would be relevant to the specific forms of debt financing that are proposed.

1.3 **Details of Equity Source and Equity Member Letters**

- (a) For each Package Equity Member, the Package Proposal must include an Equity Member Letter, signed by the Package Equity Member's chief executive officer, chief financial officer, chief investment officer, or equivalent officer.
- (b) The Equity Member Letter must include:
 - (i) the legal name of the Package Equity Member and in cases where equity is contributed by a fund, the Equity Member Letter must identify the fund managers, the general characteristics of the fund investors, and the percentage of participation;
 - (ii) the amount of funds the Package Equity Member is to commit, the source, and type of the funds (e.g. shareholder capital and shareholder loans), the timing of the subscription, and any potential risks due to other equity commitments;
 - (iii) the terms and conditions of the subscription, including dividend rights attaching to shares or membership interests, the extent to which funds are committed, and the length of time funds will remain in the project vehicle; and
 - (iv) evidence of the signatory's authority to sign the Equity Member Letter.
- (c) Each Package Proposal shall include sufficient documentation to provide assurance that (i) the Committed Investment will be secured and in place prior to Financial Close and (ii)

that any unfunded amounts of such Committed Investment will remain secured by acceptable letter(s) at all times.

- (d) Each Package Proposal must include certified copies of the board minutes or other written evidence of approval of the contents of the Package Proposal by each Package Equity Member, together with appropriate evidence of the authorization of the person or body giving the approval.

1.4 **Financial Strength Information**

Each Package Proposal must include the following components.

- (a) **Financial Officer's Certificate**

A Financial Officer's Certificate from each of the PDA Entity, Package Equity Members, Lead Construction Contractor, Lead Maintenance Contractor and guarantors (as applicable) certifying that the financial strength information provided as part of the PDA Proposal is current and no additional updates are needed to such information. If such information is no longer current, the Financial Officer's Certificate shall explicitly state so and provide PennDOT with the specific information PennDOT requests to verify the continued financial strength of the relevant entity.

- (b) **Surety Letter**

A letter from an Eligible Security Issuer for each of the Development Entity, Package Equity Members, Lead Construction Contractor, Lead Maintenance Contractor and guarantors (as applicable) indicating that such entity has been underwritten and approved for any performance security it is required to provide under the Project Agreement.

- (c) **Insurance Letter**

A letter from an Eligible Insurance Provider for each of the Development Entity, Package Equity Members, Lead Construction Contractor, Lead Maintenance Contractor and guarantors (as applicable) providing evidence of insurability consistent with such entity's insurance coverage requirements under the Project Agreement.

1.5 **Financial Advisor Letter**

Each Package Proposal must include an opinion letter from the Development Entity's financial advisor (or if one has not been appointed as of the date the Package Proposal is submitted, by the Development Entity's chief financial officer or treasurer, or if such position has not yet been filled as of the date the Package Proposal is submitted, then the PDA Entity's chief financial officer or treasurer) indicating that the Financing Plan for the Package is achievable and sufficient to fulfill the Development Entity's commitments as set out in the Package Proposal.

1.6 **Initial Base Case Financial Model**

Each Package Proposal shall include an Initial Base Case Financial Model. The format of the Initial Base Case Financial Model is at the discretion of the PDA Entity, but it must comply with the requirements set out in this Section 1.6 (Initial Base Case Financial Model), and must be in the

same form as previously reviewed and approved by PennDOT as part of the Financing Plan for the Package under EXHIBIT 6 (PDA Work Requirements).

(a) **Initial Base Case Financial Model Format Requirements**

- (i) The Initial Base Case Financial Model shall be compatible with Microsoft Excel 2003, 2007 or 2010 for Windows XP or later operating system. The file name of the Initial Base Case Financial Model must clearly identify the Initial Base Case Financial Model version updated to reflect each successive version of the Initial Base Case Financial Model issued by the PDA Entity to PennDOT as part of a Package Proposal process (if any). Where additional Initial Base Case Financial Models based on the same version are issued (for example where the additional Initial Base Case Financial Model is generated by changing input cells only) the file name must reflect that the same version is being used.
- (ii) The Initial Base Case Financial Model must contain, at a minimum, the following on a title page in a separate worksheet:
 - (A) model name;
 - (B) Development Entity's name;
 - (C) Package scope (i.e., the Bridges included in the Package Proposal);
 - (D) model author;
 - (E) version;
 - (F) date (Initial Base Case Financial Model date and run date);
 - (G) key to formats (color coding for inputs, links between worksheets, etc.); and
 - (H) key to sheet names (for example "Inp" for input sheets, "Calc" for calculation sheets).
- (iii) Each output sheet of each Initial Base Case Financial Model must identify the Initial Base Case Financial Model version and the date of issue.
- (iv) No password protections may be included in the Initial Base Case Financial Model (including password protected macros, or hidden rows, columns, cells, or sheets).
- (v) Each Initial Base Case Financial Model must be formatted to facilitate printing.

(b) **Initial Base Case Financial Model Consistency**

The Initial Base Case Financial Model must have time periods across the columns and calculations down the rows. This must be consistent in all sheets of the Initial Base Case Financial Model. There are two areas where consistency is most important:

- (i) Columns: a column must be used for the same period in each of its occurrence in model worksheets, with the exception of any additional summary worksheets that

the PDA Entity elects to include, must be color coded and may only be used for the consolidation of outputs. Any non-summary worksheets that perform calculations must use the same periodicities for each column throughout the Initial Base Case Financial Model; and

- (ii) Rows: a row must contain only one formula copied across all columns. Exceptions may only be made when appropriate according to modeling best practices, in which case such cells should be marked in a manner noting them as unique formulae.

(c) **Initial Base Case Financial Model Integrity**

All calculations must be coded to provide exactly what they represent (no balancing figures). The use of a macro is acceptable provided it is appropriately documented in the Initial Base Case Financial Model and the Assumptions Book. For the purposes of clarity, the Initial Base Case Financial Model must present all formulas, not simply “pasted values”.

(d) **Initial Base Case Financial Model Linearity**

The Initial Base Case Financial Model must calculate in one pass (no circular references).

(e) **Elements of the Initial Base Case Financial Model**

The Initial Base Case Financial Model must have three distinct elements:

- (i) inputs: which must include data and assumptions but no calculations;
- (ii) calculations: individual calculations that support each line of all outputs and reports. There must be no duplication of calculations and input cells must not be hard-coded in calculations sheets; and
- (iii) outputs: no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

(f) **Initial Base Case Financial Model Inputs and Specifications**

The Initial Base Case Financial Model must be developed with reference to the following key inputs and assumptions:

- (i) all milestone dates in the Project Agreement must be met;
- (ii) the Initial Base Case Financial Model must be constructed using, at minimum:
 - (A) monthly periods from Financial Close until Substantial Completion; and
 - (B) quarterly or semi-annual periods from Substantial Completion until two years after the term of the Project Agreement;
- (iii) all cost assumptions must be clearly stated in the Initial Base Case Financial Model with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book must be sufficient to enable independent verification of individual cost assumptions. The costs must match the values

provided in corresponding submissions to PennDOT, and must be in real Dollar values, with the exception of the D&C contract. Where aggregate costs are used as an input within the Initial Base Case Financial Model, a detailed breakdown must be supplied as an annex to the Assumptions Book;

- (iv) the Allowed Costs included in the Initial Base Case Financial Model must be consistent with the amounts in Section 1.10 (Reimbursement of Allowed Costs);
- (v) the Initial Base Case Financial Model must make clear where contingencies and profit margins have been included;
- (vi) all macroeconomic assumptions used in the Initial Base Case Financial Model must be clearly stated in the Assumptions Book;
- (vii) if inflation indices other than CPI-U are used in the model, then these must be clearly stated as separate inputs;
- (viii) the Initial Base Case Financial Model must be compliant with U.S. GAAP; and
- (ix) the Initial Base Case Financial Model must clearly show the tax assumptions, which must be clearly stated in the Assumptions Book.

(g) **Initial Base Case Financial Model Outputs**

The Initial Base Case Financial Model must include:

- (i) outputs of the Initial Base Case Financial Model that identifies the Initial Base Case Financial Model version and the date of issue;
- (ii) a summary sheet which includes:
 - (A) summary of sources and uses of funds for both construction period and maintenance period;
 - (B) Equity IRR (which will equal the Package Proposal Equity IRR);
 - (C) debt facilities with key terms for each (facility size, interest rate, all fees, ratio-based financial covenants and restricted payment tests);
 - (D) debt coverage ratios (e.g., DSCR, LLCR, PLCR) over term of Project Agreement, including minimum, maximum, and average values for each and how these values compare to required coverage ratios under the financing agreements;
 - (E) capital structure and gearing (debt as percentage of Project Debt plus Committed Investment); and
 - (F) summary of all reserve accounts and minimum required balances (e.g., DSRA equal to next six-months debt service, etc.);
- (iii) separate sources and uses of funds for construction period and maintenance period presented on an annual basis;

- (iv) financial statements (cash flow, sources and uses of funds, balance sheet, and profit and loss) presented on an annual basis;
- (v) a schedule outlining the calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;
- (vi) cash cascade in order of seniority (consistent with the financing agreements);
- (vii) Package Proposal Equity IRR in addition to other return metrics such as pre-tax and post-tax equity IRR (on committed and cash-on-cash basis) and project IRR;
- (viii) the ratio of (x) Project Debt to (y) Committed Investment plus Project Debt for all periods over the term of the Project Agreement;
- (ix) weighted average cost of capital over the term of the Project Agreement;
- (x) the net present value of all Project payments (availability payments and milestone payments), all construction costs, and all operating costs (O&M, major maintenance, etc.), reserve account movements and Distributions using a five percent discount rate, discounted back to the Package Proposal submission date);
- (xi) the impact of all claims for tax allowances made by the Development Entity; and
- (xii) a change log documenting all changes made across the various versions of the Initial Base Case Financial Model including an explanation and impact of each (at a minimum, how the change impacted Project payments in timing and amount).

(h) **Initial Base Case Financial Model Functionality and Sensitivity Analysis**

- (i) The Initial Base Case Financial Model must provide the ability to run sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:
 - (A) inflation rates;
 - (B) interest rates;
 - (C) D&C Work costs;
 - (D) Maintenance Work costs and any other operating costs; and
 - (E) schedule.
- (ii) Running a sensitivity analysis must only require a change to a single model input. The Initial Base Case Financial Model must be developed so that when an input variable is changed, the effect will flow through the model to all relevant outputs (subject to re-optimization of the Initial Base Case Financial Model through the use of a macro, if applicable). Major variable cost items must dynamically adjust when running sensitivities.

(i) **Initial Base Case Financial Model Scenarios**

- (i) Scenario 1 in the Initial Base Case Financial Model shall reflect the base case which will be the basis of the Package Proposal.
- (ii) The Initial Base Case Financial Model shall include additional scenarios as a sensitivity analysis to the base case. These additional scenarios should be solved to the Package Proposal Equity IRR and should be structured to satisfy any minimum ratios, gearing constraints and other terms and conditions required under the financing agreements in addition to achieving metrics consistent with the indicative credit ratings (if applicable):
 - (A) D&C Work costs +/- 10%;
 - (B) Maintenance Work costs +/- 10%;
 - (C) debt interest rates +/- 0.5% and 1%; and
 - (D) a one-year delay to the scheduled substantial completion assumed to be caused by the contractor, reflecting liquidated damages payable and demonstrating that performance security is sized to cover the amount of projected liquidated damages.

(j) **Initial Base Case Financial Model Assumptions Book**

- (i) The PDA Entity shall submit an Assumptions Book that describes in full all of the assumptions underlying the financial projections in the Initial Base Case Financial Model. The Assumptions Book must include, at a minimum, the following:
 - (A) dates as listed in [●];¹
 - (B) assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs for each year; and
 - (C) all financing assumptions, including drawdowns, capital repayment moratoria, repayment schedules and maturity, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).
- (ii) Any third-party reports developed to support inputs and assumptions used in developing the financial offer comprised in the Package Proposal must be appended to the Assumptions Book.

¹ Dates will be submitted consistent with milestones previously agreed with PennDOT and identified in the Package Proposal.

(k) **Initial Base Case Financial Model Instructions Guide**

- (i) The PDA Entity shall provide details of how the Initial Base Case Financial Model operates. Such details must include identifying all worksheets and describing their respective functions.
- (ii) The instructions must include step by step instructions on the procedure to run and optimize the Initial Base Case Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions must also explain how to print the model.

(l) **Detailed Cost and Pricing Data**

- (i) All cost and pricing data included in the Initial Base Case Financial Model must be consistent with that provided to PennDOT in the Package Proposal.
- (ii) The Assumptions Book must explicitly identify any cost or pricing data that has not been agreed in writing by PennDOT or is explicitly required as part of the terms of this Agreement or the Project Agreement.

1.7 **Financial Model Audit**

- (a) The Initial Base Case Financial Model must be audited by a model audit firm (the “**Financial Model Auditor**”) at the PDA Entity’s sole cost.
- (b) The Package Proposal must include a copy of the audit report for the Initial Base Case Financial Model (the “**Proposal Model Audit Report**”).
- (c) The Financial Model Auditor engaged by the PDA Entity:
 - (i) must not be affiliated with the PDA Entity, any PDA-Related Entity, or the Development Entity;
 - (ii) must be otherwise free of any conflict of interest;
 - (iii) must have a national reputation for similar scope of work; and
 - (iv) must be approved by PennDOT, with such approval being based on information to be submitted in Section 1.7(d). Such approval shall not be unreasonably withheld.
- (d) Prior to engaging the Financial Model Auditor, the PDA Entity shall provide PennDOT with the following information:
 - (i) the name and address of the proposed Financial Model Auditor;
 - (ii) confirmation that the Financial Model Auditor is not affiliated with the PDA Entity, any PDA-Related Entity, or the Development Entity;
 - (iii) confirmation that no conflicts of interest exist and disclosure of any perceived conflicts of interests that may exist;

- (iv) the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must be at least \$2,000,000 and cover claims by PennDOT arising from any errors or omissions by the Financial Model Auditor in connection with the model audit);
- (v) a list of North America P3 projects, for which the proposed Financial Model Auditor has provided model auditing services;
- (vi) a list of the Financial Model Auditor team members; and
- (vii) a resume for each Financial Model Auditor team member.

PennDOT will use reasonable efforts to provide notice to the PDA Entity of approval or rejection of the Financial Model Auditor within five (5) Business Days of receipt of the above information. If the submission is rejected, the PDA Entity shall submit a different Financial Model Auditor for approval and PennDOT will use reasonable efforts to provide notice of approval or rejection within five (5) Business Days. It is the PDA Entity's sole responsibility to ensure that it has obtained approval for the Financial Model Auditor prior to submission of the Package Proposal.

- (e) The audit of the Initial Base Case Financial Model for the purposes of the Package Proposal may consist of the same independent audit of the model required by the Lenders.
- (f) The Proposal Model Audit Report must include a statement that the Initial Base Case Financial Model is:
 - (i) free of mechanical errors;
 - (ii) suitable for use in connection with the calculations of termination compensation pursuant to the Project Agreement; and
 - (iii) suitable for use in connection with determining compensation for compensation events under the Project Agreement.
- (g) The PDA Entity and Development Entity will assume the risk of all errors, omissions, defects, and deficiencies in the Initial Base Case Financial Model.
- (h) The Financial Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with U.S. GAAP.
- (i) If any errors, omissions, defects, or deficiencies in an Initial Base Case Financial Model are identified prior to PennDOT's approval of the Package Proposal, PennDOT may require that the Package Proposal be withdrawn and resubmitted to PennDOT.

1.8 Investment Grade Ratings

Each Package Proposal must include a letter from one or more Rating Agencies providing indicative investment grade ratings for the Project Debt (a) if such letter(s) are required to secure the Project Debt or (b) if reasonably requested by PennDOT where necessary to evidence that the Package is investment grade (such requests by PennDOT shall be limited to a letter from one Rating

Agency). Each letter must include information on the assumptions used in establishing the rating that are consistent with those included in the Initial Base Case Financial Model.

1.9 **Lenders Technical Advisor's Report**

Each Package Proposal must include a copy of the Lenders technical advisor's report.

1.10 **Reimbursement of Allowed Costs**

Each Package Proposal must specify the amount of the PDA Entity's Allowed Costs up to the Pre-Development Cost Cap for the Package that it proposes will be reimbursed by the Development Entity on Financial Close of the Project Agreement, in accordance with the Agreement. These amounts shall be specified in the Initial Base Case Financial Model as detailed cost inputs for each payment of Allowed Costs to be reimbursed on Financial Close.

1.11 **Package Proposal Equity IRR**

Each Package Proposal must specify the Package Proposal Equity IRR and confirm that it is no greater than the PDA Proposal Equity IRR.

1.12 **DBE Documentation**

- (a) Once PennDOT has notified the PDA Entity of the applicable DBE contract goal and OJT requirements, the PDA Entity shall electronically submit the applicable DBE Submittal Forms in accordance with paragraph (c) below as part of the PDA Entity's Package Proposal. PennDOT BEO will review the DBE Submittal Forms contained in the Package Proposal to verify that the PDA Entity has met the DBE goal established for the Package Work or, where the DBE goal has not been met that the PDA has demonstrated and documented Good Faith Efforts. Such review shall occur in parallel with PennDOT's review period with respect to the PDA Entity's submission of a Package Proposal.
 - (i) When the DBE goal established by PennDOT is met or exceeded, the PDA Entity shall electronically submit evidence of such commitments with the Package Proposal. DBE Submittal Forms must include the applicable NAICS code(s) for each proposed DBE and type of work that it will perform and dollar amount, on the contract. DBE Submittal Forms indicating commitments to certified DBEs will become part of the project file. Failure to submit DBE Submittal Forms, including all GFE documentation for consideration as part of the Package Proposal, may result in rejection of the Package Proposal.
 - (ii) When the DBE goal established by PennDOT is not met (PennDOT will not round up), the PDA Entity must demonstrate a Good Faith Effort (GFE) to meet the established DBE goal. The PDA Entity shall demonstrate that the efforts made were those that an entity seeking to meet the DBE goal established by PennDOT would make, given all relevant circumstances. The demonstration of GFEs is accomplished by seeking out DBE participation in the project given all relevant circumstances.
- (b) By submitting each Package Proposal, the PDA Entity agrees that it shall cause the Development Entity for such Package to utilize Good Faith Efforts to meet the DBE participation goal for each Package. For all approved DBE participation listed on the

approved DBE Submittal Forms for the Package Work, the Contractors must obtain approval before substituting a DBE or making any change to approved DBE participation. The Development Entity shall not perform any of the DBE work included in the substitution request without prior approval from PennDOT. The PDA Entity and Development Entity shall follow all of the DBE Substitution procedures outlined in Part I of EXHIBIT 13 (Federal and State Requirements).

- (c) For all DBE participation listed on the approved EO-380 Forms for the Package Work, the PDA Entity must submit all contracts with DBE participation (identifying any notice to proceed dates, contract start and end dates, and renewal dates thereunder) and Form EO-402 for each contract to PennDOT at penndotdbegoal@pa.gov and RA-PDP3MAJORBRIDGES@pa.gov to track DBE utilization. The PDA Entity shall follow the DBE records and reports procedures in Appendix 5 to Part I of EXHIBIT 13 (Federal and State Requirements), including submitting the DBE Uniform Report form to PennDOT every six months for the reporting period October 1 - March 30 and April 1 - September 30, for all DBE participation in the reporting period for the life of this Agreement.

1.13 **Reserved**

1.14 **On the Job Training Documentation**

- (a) The OJT goal for the Package Work under each Project Agreement will be determined by PennDOT based on the PDA Entity's submitted Package Proposal. When the Proposer submits its Package Proposal, it shall include the On the Job Training Worksheet that lists: estimated dollar of the construction phase; duration of construction phase (calendar days); and type of approved meaningful trainee work, as outlined in EXHIBIT 13 (Federal and State Requirements).
- (b) PennDOT BEO will review and approve the submitted On the Job Training Worksheet for the Package Work prior to execution of the Project Agreement.
- (c) For all approved OJT participation for the Package Work the Development Entity must submit completed EO-363 Forms with supporting documentation (training plan), EO-364 Forms (trainee identification) and EO-365 Forms (Monthly trainee reports) for each trainee to PennDOT at ra-pdbeo-ojt@pa.gov and RA-PDP3MAJORBRIDGES@pa.gov.

1.15 **Consistency with PDA Proposal**

Each Package Proposal submitted by the PDA Entity must be consistent, in all material respects, with EXHIBIT 9 (PDA Proposal Commitments), unless otherwise agreed in writing by PennDOT.

Attachment A

PACKAGE PROPOSAL LETTER

Date: [●]

[●] (the “**PDA Entity**”) and [●] (the “**Development Entity**”) proposed to perform the Project Agreement work) submit this Package Proposal in accordance with the terms of the Amended and Restated Public-Private Transportation Partnership Agreement (Amended and Restated Pre-Development Agreement) (the “**Pre-Development Agreement**”).

Capitalized terms not otherwise defined in this letter shall have the meaning given to that term in the Pre-Development Agreement.

Subject to the terms below, in consideration for PennDOT agreeing to examine and consider this Package Proposal, the undersigned undertakes jointly and severally to keep this Package Proposal open for acceptance for 180 days after the date of this Package Proposal, without:

- (a) unilaterally varying or amending its terms; or
- (b) any member of the PDA Entity or the Development Entity withdrawing, or any other change being made in the composition of the [partnership/ joint venture/ limited liability company/ consortium] on whose behalf this Package Proposal is submitted,

without first obtaining the prior written consent of PennDOT.

If this Package Proposal is accepted by PennDOT, the PDA Entity, and the Development Entity shall:

- (a) if requested by PennDOT, enter into Good Faith discussions with PennDOT regarding the terms of the Project Agreement, in accordance with the requirements of the Pre-Development Agreement; and
- (b) enter, or cause the Development Entity to enter, into the Project Agreement in the form attached as Appendix 1, without varying or amending its terms (except for any modifications agreed in writing by PennDOT).

By submitting this Package Proposal to PennDOT, the PDA Entity certifies, subject to the terms and conditions of the Pre-Development Agreement, that the remaining Bridges which are not subject to such Package Proposal or Project Agreement are viable for inclusion in a future Package Proposal and Project Agreement. The PDA Entity further certifies that it shall implement any approved Package Proposal under the negotiated final form of Project Agreement and that the PDA Entity’s failure to successfully execute a Project Agreement for any Bridge subject to an approved Package Proposal shall be considered a PDA Entity Default, except in the case of a termination under Section 21.4 of the Pre-Development Agreement.

The PDA Entity and the Development Entity each certify that:

- (a) the Package Proposal is submitted without reservation, qualification, assumptions, or conditions;

- (b) it is satisfied that the Project Agreement provides sufficient detail regarding the obligations that are to be performed by the Development Entity and that it does not contain internal inconsistencies, errors, or omissions;
- (c) it has carefully checked all the words, figures, and statements in this Package Proposal;
- (d) the PDA Entity and Development Entity each intend to be legally bound by the commitments made in the Package Proposal;
- (e) all PDA Work necessary prior to the Package Proposal as required by Exhibit 6 (PDA Work Requirements), the PDA Entity's Proposal, or as otherwise agreed between the Parties has been completed; and
- (f) it has notified PennDOT in writing of:
 - (i) any deficiencies or errors in, or omissions from the Project Agreement or other documents provided by PennDOT; and
 - (ii) any unusual site conditions observed prior to the date the Package Proposal is submitted.

The PDA Entity and the Development Entity each represent that the Package Proposal remains valid and binding, and that all representations and certifications in the Package Proposal are true, correct, and accurate, as of the date of the Package Proposal.

The PDA Entity and the Development Entity understand that PennDOT is not bound to enter into the Project Agreement with the Development Entity.

Except to the extent expressly set out in the Pre-Development Agreement or the Project Agreement, the PDA Entity and the Development Entity understand that all costs and expenses incurred by them in preparing this Package Proposal will be borne by the PDA Entity and the Development Entity, and will not be the responsibility of PennDOT.

Subject to the PDA Entity's and the Development Entity's rights under Law, the PDA Entity and the Development Entity consent to PennDOT's disclosure of the Package Proposal to any Persons after the award of the Project Agreement and once the Project Agreement has become effective.

The PDA Entity and the Development Entity agree that PennDOT will not be responsible for any errors, omissions, inaccuracies, inconsistencies, or incomplete statements in this Package Proposal.

This Package Proposal will be governed by and construed in all respects according to the laws of the Commonwealth of Pennsylvania.

The business address for the PDA Entity:

Nova Tower 1, One Allegheny Square	Suite 300	
(No.)	(Street)	(Floor or Suite)
Pittsburgh	PA	15212
(City)	(State or Province)	(ZIP or Postal Code)
		USA
		(Country)

State or Country of Incorporation/Formation/Organization: [●]²

[Signature block for PDA Entity to be inserted]

The business address for the Development Entity:

(No.)	(Street)	(Floor or Suite)	
(City)	(State or Province)	(ZIP or Postal Code)	(Country)

State or Country of Incorporation/Formation/Organization: [●]

[Signature block for Development Entity to be inserted]

The following additional information must be provided with the Package Proposal letter:

- (a) a table showing the organization of the Development Entity;
- (b) a detailed description of the legal structure of the Development Entity and each Package Equity Member that includes the following:
 - (i) if the Development Entity or a Package Equity Member is a corporation or includes a corporation as a joint venture member, partner, or member, provide the articles of incorporation and bylaws for the Development Entity or Package Equity Member certified by an appropriate individual;
 - (ii) if the Development Entity or a Package Equity Member is a partnership or includes a partnership as a joint venture member, partner, or member, provide:
 - (A) the full names and addresses of all partners and the equity ownership interest of each partner; and
 - (B) the incorporation, formation, and organizational documentation for the Development Entity or Package Equity Member (including partnership agreement and certificate of partnership) certified by an appropriate individual;
 - (iii) if the Development Entity or a Package Equity Member is a consortium, joint venture, or includes a joint venture as a joint venture member, partner, or member, provide:
 - (A) the full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity; and

² Entity information to be incorporated upon establishment prior to execution.

- (B) the incorporation, formation, and organizational documentation for the Development Entity or Package Equity Member (including the joint venture agreement) certified by an appropriate individual;
- (iv) if the Development Entity or a Package Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, provide:
 - (A) the full names and addresses of all members and the equity ownership interest of each entity; and
 - (B) the incorporation, formation, and organizational documentation for the Development Entity or Package Equity Member (including the operating agreement) certified by an appropriate individual;
- (v) if a Package Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation, and organizational documents of the fund manager must satisfy the requirements for organizational documents. The term “organizational documentation” with respect to a Package Equity Member means:
 - (A) the entity’s certificate of formation, articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; and
 - (B) the entity must provide its partnership agreement, operating agreement, bylaws, equivalent joint venture, or investment fund internal governing organizational documentation;
- (c) the following documentation to demonstrate the validity and authorization of each Person signing the Package Proposal:
 - (i) if the Person is a corporation, a resolution of its governing body certified by an appropriate officer of the corporation;
 - (ii) if the Person is a partnership, a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner;
 - (iii) if the Person is a limited liability company, a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member must provide the foregoing information; or
 - (iv) if the Person is a consortium or other form of joint venture, a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If the Development Entity or PDA Entity is a consortium, joint venture, or a partnership, the Package Proposal must be executed by all consortium or joint venture members or all general partners;
- (d) the Development Entity’s partnership agreement, limited liability company operating agreement, charter, or joint venture agreement, as applicable, must include an express

provision satisfactory to PennDOT stating that, in the event of a dispute between or among joint venture members, partners, members, or shareholders, no joint venture member, partner, member, or shareholder will be entitled to stop, hinder, or delay work on the Package. The Development Entity shall submit the applicable agreement to PennDOT and identify on a cover page where in the agreement the provision can be found.

Appendix 1

[See attached copy of the Project Agreement including the Package Technical Provisions and all other Exhibits to the Project Agreement]

Attachment B

FINANCIAL OFFICER'S CERTIFICATE

[Complete a separate Attachment B for each Package Equity Member and Key Contractor, and Guarantor (if applicable)³]

I, [Name], the [Title] of [Name of the Member] (the Member) [and the [Title] of [Name of Guarantor] (the Guarantor)], do hereby certify as of [Date]⁴ that:

(a) **General**

- (i) This certificate is being executed and delivered in connection with the Package Proposal submitted by the PDA Entity and Development Entity for the Project in accordance with the terms of the Pre-Development Agreement.
- (ii) For each of the matters set out below, I have:
 - (A) personal knowledge of this information; or
 - (B) have satisfied myself of this information by obtaining information from officers or employees of the [Member] [and the Guarantor] in whom I have confidence and whose duties require them to have personal knowledge thereof.
- (iii) I make the certifications in this Financial Officer's Certificate to PennDOT pursuant to the requirements of the Pre-Development Agreement with the intent and understanding that they will be relied upon by PennDOT as a basis for the evaluation of the Package Proposal and the understanding that these certifications are being made to the best of my knowledge.

(b) **Audited Financial Statements**

- (i) The audited financial statements provided by [the Member] [the Guarantor] in the Package Proposal for the fiscal years ended [•],[•], and [•] [and the interim financial statements for the following periods [•] and [•]] are complete and correct copies thereof.
- (ii) Where [the Member] [the Guarantor] has provided unaudited financial results, such financial results present fairly, in all material respects, the financial position and results of operations and cash flows of [the Member] [the Guarantor and its consolidated subsidiaries, including the Member,] as of such dates and for such periods. [The Member] [The Guarantor] has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.

³ Each of the Package Equity Members should provide its own separate certificate. If, however, any such firm is proposing a Guarantor, only a consolidated certificate is required for the Guarantor and its guaranteed entity. If a firm has no Guarantor, all references to "Guarantor" should be deleted from the certificate.

⁴ The date must not be earlier than seven calendar days prior to the date the Package Proposal is submitted.

(c) **Off-Balance Sheet Liabilities**

The [Member] [Guarantor] does not have any material off-balance sheet liabilities [other than as described in the financial statements referred to above] [other than the following: [•]].

(d) **Financial Information Summary**

Attached as Annex A is a complete Company Information Summary relating to the Member [or the Guarantor]. All the information provided in the attached Company Information Summary is complete and correct to the best of my knowledge.

(e) **Bankruptcy/Insolvency Proceedings**

- (i) [There has been no “Insolvency Event” (as defined in Section (e)(iii) below) relating to the Member [the Guarantor] or any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Member [Guarantor] which has occurred within the most recent three fiscal years (whether or not such proceeding was ultimately dismissed).]
- (ii) [Attached as Annex B is a detailed description of an “Insolvency Event” relating to [entity name].]⁵
- (iii) For the purposes of this certification, “**Insolvency Event**” means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up, or similar proceeding, under any Law, in any jurisdiction.

(f) **Material Changes in Financial Condition:**

- (i) [No “Material Change” (as defined in Annex C) in the financial condition of the [Member] [Guarantor] has occurred or is projected to occur:
 - (A) within the most recently completed three fiscal years that is not reflected in its audited financial statements; or
 - (B) since the date of its audited financial statements for its most recently completed fiscal year.]
- (ii) [Attached as Annex C is a detailed description of Material Changes in the financial condition of [the Member] [the Guarantor].]⁶

Capitalized terms used but not otherwise defined in this certification have the meaning given in the Pre-Development Agreement.

⁵ Delete this sentence if it is not applicable. Do not provide an Annex B if there is no Insolvency Event to disclose.

⁶ Delete this sentence if it is not applicable. Do not provide an Annex C if there is no Material Change in financial condition to disclose.

IN WITNESS WHEREOF, the undersigned is the [Chief Financial Officer, Treasurer, or equivalent officer] of the entity to which this form relates and has duly executed this certificate as of the date first written above.

Name (signature)

Name (printed)

Title

Entity

Annex A – Company Information Summary

Entity: [●] [*Package Equity Member/ Lead Construction Contractor/ Key Contractor or Guarantor*]

SHAREHOLDER⁷	INTEREST (%)
[<i>Shareholder name</i>]	
[No current shareholders, equity members, partners, or equivalent have a holding of 10% or greater]	

RATING AGENCY⁸	CURRENT RATING	PREVIOUS RATING	DATE OF CHANGE IN RATING
[<i>Rating Agency name</i>]			
[Debt of the [Member] [Guarantor] is not rated by any major credit rating agency.]			
[[Member][Guarantor] has no debt]			

⁷ List current shareholders, equity members partners or equivalent holding a 15% or greater interest in the company (indicate their percentage interest), as well as those having the right to appoint one or more board director(s). If such interest is held by a holding company, a shell corporation, or other form of intermediary, also identify the ultimate or parent entity.

⁸ If applicable, list all credit ratings available for the company and provide a copy of the most recent credit report.

Annex B – Insolvency Event

[Member/ Guarantor to provide details]⁹

⁹ This Annex B will be deleted if there are no Insolvency Events to disclose to PennDOT.

Annex C – Material Change in Financial Condition

- (a) The [Member] [Guarantor] must provide the following details regarding “Material Changes” (defined in paragraph (d) below) in the Member [or Guarantor’s] financial condition:
- (i) a description of each Material Change, actual and projected, and any related changes or disruptions in executive management;
 - (ii) the actual and projected impacts on the affected entity’s organizational and financial capacity, and its ability to remain engaged in this solicitation and submit a responsive proposal; and
 - (iii) a detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead, including the likelihood that the circumstances of the change or impacts thereof will continue during the term of the Project.
- (b) Estimates of the impact on revenues, expenses, and the change in equity must be provided separately for each Material Change. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of Material Changes. Where a Material Change will have a negative financial impact, the affected entity must describe the measures that would be undertaken to insulate the Project from any recent Material Changes and those currently in progress or reasonably anticipated in the future. If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a Material Change), the affected entity must describe the measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.
- (c) Package Proposal that fails to disclose a prior or pending Material Change in financial condition will not be considered a compliant Package Proposal for the purposes of the Agreement.
- (d) A “**Material Change**” shall include the following:
- (i) a change in the tangible net worth of 10 percent (10%) or more of net assets;
 - (ii) a sale, merger, or acquisition exceeding 10 percent (10%) of the value of net assets prior to the sale, merger, or acquisition which in any way involve the affected entity, its parent company, or guarantor;
 - (iii) a change in credit rating or outlook for the affected entity, its parent company, or guarantor;
 - (iv) the inability to meet material conditions of loan or debt covenants by the affected entity, its parent company, or guarantor that has required or will require a waiver or modification of agreed financial ratios, coverage factors, or other loan stipulations, or additional credit support from shareholders or other third parties;

- (v) in the current and three most recent completed fiscal years, the affected entity, its parent company, or guarantor:
 - (A) incurred a net operating loss;
 - (B) sustained charges exceeding five percent (5%) of the then net assets due to claims, changes in accounting, write-offs, or business restructuring; or
 - (C) implemented a restructuring/reduction in labor force exceeding five percent (5%) of employees or involved the disposition of assets exceeding 10 percent (10%) of the then-net assets; and
- (vi) any other events known to the affected entity that may reasonably be perceived to be a material change in financial condition over the past three (3) years, or which may be pending for the next reporting period.

Attachment C

BUY AMERICA CERTIFICATE

Development Entity shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 C.F.R. § 635.410 and all relevant provisions of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52 which permits FHWA participation in the Project Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Development Entity shall comply with Buy America requirements in the Infrastructure Investment and Jobs Act (P.L. 117-58) expanded to include nonferrous metals, such as copper used in electric wiring; plastic- and polymer-based products; glass, including optical fiber; and certain other construction materials, such as lumber and drywall. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign materials, provided the cost of such foreign materials does not exceed 0.1% of the total contract price under the Project Agreement or \$2,500,000 whichever is greater.

Concurrently with execution, Development Entity has completed and submitted, or shall complete and submit, to PennDOT a Buy America Certificate, in the format below. After submittal, Development Entity is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. § 1001. Should a Project Agreement be investigated, Development Entity has the burden of proof to establish that it is in compliance.

At Development Entity's request, PennDOT 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) or any relevant provisions of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52. However, Development Entity certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by PennDOT. A request for a waiver shall be treated as a change under the Project Agreement.

BUY AMERICA CERTIFICATE
Certificate of Compliance

Development Entity hereby certifies that it will comply with all relevant provisions of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52, the requirements of 23 U.S.C. § 313, and the applicable regulations in 23 C.F.R. § 635.410.

Date: _____

Signature: _____

Development Entity Name: _____

Title: _____

Or

Certificate for Noncompliance

Development Entity hereby certifies that it cannot comply with all relevant provisions of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52 and the requirements of 23 U.S.C. § 313, but may qualify for a waiver to the subject requirement of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52, 23 U.S.C. § 313, and regulations in 23 C.F.R. § 635.410.

Date: _____

Signature: _____

Development Entity Name: _____

Title: _____

Attachment D

PACKAGE PROPOSAL AFFIDAVIT

[To be signed by the PDA Entity, Development Entity, each Key Contractor, and any Guarantors]

1. AUTHORITY

I HEREBY AFFIRM THAT:

[●], possesses the legal authority to make this Affidavit.

2. CERTIFICATION REGARDING COMMERCIAL NON-DISCRIMINATION

(a) [●] hereby certify and agree that in preparing the Package Proposal, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* have considered all proposals submitted from qualified, potential subcontractors and suppliers, and have not engaged in “discrimination” as defined in Part G of Exhibit 13 (Federal and State Requirements).

(b) “Discrimination” includes any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”.

(c) Without limiting any other provision of the Package Proposal, it is understood that, if this certification is false, such false certification constitutes grounds for PennDOT to reject the Package Proposal.

(d) Attached to this affidavit, the PDA Entity and Development Entity submit a list of all instances within the past four years where there has been a final adjudicated determination in a legal or administrative proceeding in the state where the PDA Entity or Development Entity discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken.

(e) The PDA Entity and Development Entity agree to comply in all respects with all state nondiscrimination laws and regulations.

3. AFFIRMATION REGARDING BRIBERY CONVICTIONS I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]*, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities including obtaining or performing contracts with public bodies. has been convicted of, or has had probation before judgment imposed, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Commonwealth law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court,

official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

[•].

4. **AFFIRMATION REGARDING OTHER CONVICTIONS I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]*, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (a) been convicted under state or federal statute of:
 - (i) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (ii) fraud, embezzlement, theft, forgery, falsification, or destruction of records, or receiving stolen property;
- (b) been convicted of any criminal violation of a state or federal antitrust statute;
- (c) been convicted under the provisions of the Racketeer Influenced and Corrupt Organization Act under 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (d) been convicted of a violation of 18 Pa. C.S. 4701-4703.
- (e) been convicted of theft or other crime involving dishonesty, including perjury;
- (f) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in Sections 4(a) to 4(e) above;
- (g) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (h) been found in a final adjudicated decision to have violated any federal or Commonwealth law with regard to a public or private contract; or
- (i) admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in Sections 2, 3 and 4(a) to 4(h) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

[•]

5. **AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]*, or any of its officers, directors, partners, controlling

stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

[•]

6. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (a) the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to state or federal laws and regulations, including the Debarment Regulations;
- (b) the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

[•]

7. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* has knowingly entered into a contract with a public body under which a person debarred or suspended under state or federal laws or regulations will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction relating to the Package.

8. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* has:

- (a) agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Package Proposal that is being submitted; or
- (b) 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 Package Proposal.

9. I FURTHER AFFIRM THAT:

Except as validly contested, the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* has paid, or has arranged for payment of, all taxes due to the Commonwealth of Pennsylvania and has filed all required returns and reports with the Comptroller of the Treasury, the Commonwealth

Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due to the Commonwealth of Pennsylvania prior to final settlement.

10. **CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Project Agreement, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Project Agreement.

11. **CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(a) The undersigned certifies that, in accordance with the Iran Contract Act of 2010 (Public Contract Code 2200-2208):

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran; and

(ii) it is not engaging in investment activities in Iran.

(b) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

12. **CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* has complied with Dodd Frank Act Section 1502 governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

13. **ACKNOWLEDGEMENT**

(a) I ACKNOWLEDGE THAT this Affidavit is being furnished to PennDOT and may be distributed to units of:

(i) the Commonwealth of Pennsylvania;

(ii) counties or other subdivisions of the Commonwealth of Pennsylvania;

(iii) other states; and

(iv) the federal government.

(b) I further acknowledge that this Affidavit is subject to applicable laws of the United States and the Commonwealth of Pennsylvania, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Package Proposal shall be construed to supersede, amend, modify, or waive, on behalf of the Commonwealth of

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

Pennsylvania, or any unit of the Commonwealth of Pennsylvania having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of the Commonwealth of Pennsylvania with respect to any misrepresentation made or any violation of the obligations, terms, and covenants undertaken by the *[PDA Entity/ Development Entity/ Key Contractor/ Guarantor]* with respect to:

- (i) this Affidavit;
- (ii) the Project Agreement; and
- (iii) other Affidavits comprising part of the Project Agreement.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: [●]

(print name of organization)

By: [●]

(print name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

Attachment E

NON-COLLUSION AFFIDAVIT

[To be signed by the Development Entity, each Package Equity Member, Key Contractor, and any Guarantor]

State of _____

County of _____

Each of the undersigned _____, being first duly sworn, deposes and says that:

1. The Package Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company, or corporation.
2. The Package Proposal is genuine and not collusive or sham.
3. The *[Development Entity / Key Contractor / Package Equity Member]* has not directly or indirectly induced or solicited any other proposer to put in a false or sham Package Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham Package Proposal or that anyone shall refrain from proposing.
4. The *[Development Entity / Key Contractor / Package Equity Member]* has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any part of the Package Proposal, or to fix any overhead, profit, or cost element (except to the extent expressly required by the Agreement), or to secure any advantage against PennDOT or anyone interested in the proposed agreement.
5. All statements contained in the Package Proposal are true.
6. The *[Development Entity / Key Contractor / Package Equity Member]* has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Package Proposal depository or any member, partner, joint venture member, or agent thereof to effectuate a collusive or sham Package Proposal.
7. The *[Development Entity / Key Contractor / Package Equity Member]* will not, directly or indirectly, divulge information or data regarding the price or other terms of its Package Proposal to any other Person, or seek to obtain information or data regarding the price or other terms of any other proposal, until after award of the Project Agreement or rejection of the Package Proposal.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

(Title) _____ (Title)

(Organization) _____ (Organization)

Subscribed and sworn to before me this _____ day of _____, 20[●].

Notary Public in and for said County and State

My commission expires: [_____]

Attachment F

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

[To be signed by the Development Entity, each Key Contractor, each Lead Construction Contractor Member, and each Package Equity Member]

The undersigned certifies, on behalf of [*Development Entity/ Key Contractor /Lead Construction Contractor Member/ Package Equity Member*], 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; and
- (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 any 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 Package Proposal.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

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: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a 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 expenditure or failure.

[•]

Name: [•]

Title: [•]

Entity Making Certification: [•]

Date: [•]

Attachment G

CONFLICT OF INTEREST

[To be signed by the Development Entity]

1. The Development Entity acknowledges its understanding of the provisions of Section 1.12 of the RFP issued on December 15, 2021 (as amended on January 6, 2022 and January 10, 2022) regarding organizational conflicts of interest. The Development Entity acknowledges and agrees that the PennDOT-determined conflicts of interest (as set forth in the RFP) shall continue to exist and apply to the Development Entity. The Development Entity shall abide by any conflict determinations issued by PennDOT during the procurement and acknowledges and agrees that the Development Entity has an ongoing obligation to disclose any potential conflicts of interest to PennDOT.

2. The Development Entity warrants that, except as disclosed in paragraph 3 below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to an actual, potential, or perceived conflict of interest.

3. The following facts or circumstances give rise or could in the future give rise to an actual, potential, or perceived conflict of interest:

(a) [●] (explain in detail—attach additional sheets if necessary).

4. The Development Entity agrees that if an actual, potential, or perceived conflict of interest arises after the date of this affidavit, the Development Entity shall immediately make a full disclosure in writing to PennDOT of all relevant facts and circumstances. This disclosure shall include a description of actions which the Development Entity has taken and proposes to take to avoid, mitigate, or neutralize the actual, potential, or perceived conflict of interest. If the Project Agreement has been awarded and performance of the Project Agreement has begun, the Development Entity shall continue performance until notified by PennDOT of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____

(Authorized Representative and Affiant) (Development Entity)

Attachment H

FEDERAL DEBARMENT CERTIFICATION

[To be signed by the Development Entity]

By signing and submitting the Package Proposal, and by executing the Project Agreement, the Development Entity and its contractors (at all tiers) shall be deemed to have signed and delivered the following certification:

1. 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 three year period preceding this proposal been convicted of or had a civil judgment rendered against it 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;
 - (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 1(b) of this certification; and
 - (d) have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where the Development Entity or a contractor is unable to certify to any of the statements in this certification, the Development Entity or contractor shall attach a certification to its proposal or bid, or shall submit it with the executed agreement, stating that it is unable to provide the certification and explaining the reasons for such inability.

Attachment I

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be signed by the Development Entity]

The undersigned certifies on behalf of _____, that:

_____ (Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).
- It will develop and will file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs). *[Note: Check this box only if the member of the proposer team is not yet formed and is subject to 41 CFR Part 60-2]*

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Development Entity, relationship to Development Entity: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR §60-1.7(b)(1)), and must be submitted by proposers only in connection with contracts which are subject to the equal opportunity section. Contracts that are exempt from the equal opportunity section are set forth in 41 CFR §60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR §60-1.7(b)(1) prevents the award of contracts and subcontracts

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unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form 1

DEVELOPMENT ENTITY'S ACKNOWLEDGEMENT OF DBE PROGRAM REQUIREMENTS

[To be signed by the Development Entity]

THIS DOCUMENT SHALL BE COMPLETED AND INCLUDED WITH THE PACKAGE PROPOSAL. IF THE PDA ENTITY FAILS TO SUBMIT THIS FORM WITH THE PACKAGE PROPOSAL AS REQUIRED, PENNDOT MAY DETERMINE THAT THE PACKAGE PROPOSAL IS NOT COMPLIANT.

The Pennsylvania Department of Transportation (“**PennDOT**” or “**Department**”) has established a DBE goal for the Project Agreement (as defined under the PDA), for the utilization of firms owned and controlled by socially and economically disadvantaged individuals certified as Disadvantaged Business Enterprises (DBEs). This DBE goal remains in effect for the life of the Project Agreement.

In conjunction with the Package Proposal, I affirm and agree to the following:

- (a) I acknowledge that PennDOT will establish a DBE participation goal to the extent required by federal law for the Package Work.
- (b) I acknowledge that PennDOT has or will set the DBE participation goal based on the actual work to be performed and the availability of DBE firms to perform the Package Work.
- (c) I commit to making a Good Faith Effort to achieve the established DBE participation goal. I acknowledge that I must either:
 - (i) meet each DBE participation goal established by PennDOT, and document my commitments to the DBE firms; or
 - (ii) document my Good Faith Efforts to meet that goal.
- (d) I understand that if the Package Proposal is accepted by PennDOT, I must submit all additional documentation as required by PennDOT within five (5) Business Days, or other time period specified by PennDOT, of being notified of the acceptance.
- (e) I hereby agree that if the Package Proposal is accepted by PennDOT, I will review all forms and documentation required to be submitted in connection with the DBE program, including all documentation of Good Faith Efforts to obtain the participation of DBE firms. I further understand that all forms completed and executed by me or the Prime Contractor regarding any established DBE goal, including commitments to the participation or specific DBE firms, will:
 - (i) become part of the Project Agreement; and
 - (ii) bind the Development Entity,

for compliance purposes as set forth in the Project Agreement. Nothing herein shall grant any rights of the Development Entity under the Project Agreement to the Prime Contractor

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or any of its subcontractors by virtue of the DBE Submittal Forms executed by the Prime Contractor being incorporated into the Project Agreement.

- (f) I acknowledge that if I fail to return each completed document within the required time as directed by PennDOT, PennDOT may determine that I am not eligible for award of the Project Agreement.
- (g) In the solicitation of quotations or offers, DBE firms shall be provided not less than the same information and amount of time to respond as are non-DBE firms.
- (h) The solicitation process shall be conducted in such a manner so as to not place DBE firms at a competitive disadvantage to non-DBE firms.

I solemnly affirm under the penalties of perjury that each of the affirmations, certifications, and acknowledgements contained herein are true to the best of my knowledge, information, and belief.

[Signature block of the Development Entity to be inserted]

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Attachment K

DBE SUBMITTAL FORMS

[Form on following page]

For the purposes of this Attachment K, the “**Prime Contractor**” means the Development Entity or Lead Construction Contractor as the context applies.

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Attachment M

PACKAGE FINANCING PLAN

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

EXHIBIT 8

PROJECT AGREEMENT TERM SHEET

[See Attached]

Design-Build-Finance-Maintain Agreement (Project Agreement) Term Sheet

PennDOT Major Bridges Project

This document (Term Sheet) provides background information and summarizes the major terms for the design, construction, financing, and maintenance of Projects prepared further to the Parties (or affiliates) exercising their respective obligations under a preceding Amended and Restated Pre-Development Agreement (PDA) under the PennDOT Major Bridges Project, to be entered into by the Pennsylvania PennDOT of Transportation (PennDOT) and a private firm (the Development Entity).

This document is intended as a general description of certain draft major contract terms. Where the ultimate, resultant Public-Private Transportation Partnership Agreement (each, a Project Agreement) finalized and executed as part of the “Package Proposal” process under the PDA will set out numerous details, exceptions and qualifications associated with the provisions described below, the PDA Entity (and the Development Entity) intend, with PennDOT as counterparty to each under separate agreements, that the following draft major contract terms shall not be negotiated or renegotiated. This notwithstanding, where major contract terms are identified as open or subject to further adjustment, the final terms for the Project Agreement will be agreed based upon the PDA Entity’s work under the PDA.

Description of Projects

Each Project consists of the accepted “Package” (as defined in the PDA) of one to eight of the nine total bridge(s) located in the Commonwealth of Pennsylvania and targeted for replacement and rehabilitation under PennDOT’s Major Bridges Project. The bridge(s) comprising the Project will be identified, with associated infrastructure and other requirements, constraints, and obligations, under each Project Agreement, consistent with the terms, and subject to the conditions, identified in this Term Sheet.

PennDOT intends for the Project Agreement to be a firm, fixed price contract (D&C Period) with scheduled Availability Payments (Maintenance Period) obligating the Development Entity to commence and to complete the Project work (Work), including maintenance and related Work following facility completion, by the deadlines set forth in the Project Agreement and in a manner consistent therewith, within the pricing constraints, subject only to certain specified limited exceptions and express bases for relief.

General Interpretive Guidance

Select Project Agreement definitions hereto (in some cases abbreviated) are set forth in Exhibit A. Definitions listed in the table at the end of Exhibit A to this Term Sheet and used herein may, but will not necessarily, be included in the Project Agreement, and if so included may not be the same as the definitions given in this Term Sheet. Defined terms (Exhibit A) and listed definitions (table within Exhibit A) are not necessarily the same as those set forth in the PDA (see, e.g., “Project”).

PROJECT AGREEMENT OVERVIEW	
Scope of Work and Term of the Project Agreement	Project scope components include the further design, construction, financing, and maintenance (including lifecycle maintenance and handback condition efforts) of the Project, commencing upon the Effective Date through [35] ¹² years after the earlier of the Final Acceptance Deadline and the Final Acceptance Date (<u>PA Term</u>).
Notices to Proceed	<ul style="list-style-type: none"> • PennDOT anticipates issuing iterative notices to proceed (NTP1, NTP2, and NTP3) for the Project upon satisfaction of conditions precedent to be set forth under the Project Agreement. • NTP1 authorizes certain pre-construction activities³ (including necessary NEPA re-evaluation, Utility Coordination and Investigation Work, updating the Baseline Project Schedule, and financial close preparations). • NTP2 authorizes further Work necessary to achieve conditions to commencement of substantive Design Work, and when completed, to perform Design Work, obtain certain government approvals, and undertake certain other pre-construction activities. • NTP3 authorizes all other Work (excepting Maintenance Work, but including maintenance during design and construction Work). <p>The Project Agreement also sets forth certain requirements specific to commencement of the Design Work, construction work, Maintenance Work, and Utility Adjustment Work, notwithstanding issuance of NTP1, NTP2, or NTP3.</p> <p>PennDOT may, on a Package-specific basis, elect, in its sole discretion (and as part of the Package Proposal approvals process) to allow Bridge-specific authorizations to commence construction, which may be via Bridge-specific NTP3's or to allow conditions to commencement of construction Work to be on a Bridge-specific basis, where as to the latter case, commencement without meeting all such conditions is an independent basis for PennDOT to direct the Work (on that Bridge or for the Project) to stop until achieved, in each case, without right to, or right to claim, relief, additional time, or compensation. If so elected, the Development Entity shall provide PennDOT with an expected date for commencement of construction Work as to each Bridge that is part of the Package Proposal, and the Project Agreement will require that the Development Entity provide PennDOT with no less than 20 business days'</p>

¹ PennDOT may consider longer or shorter terms for PennDOT and the Development Entity flexibility.

² Bracketed items throughout are subject to change.

³ Pending Package Proposal timing and contents, some NEPA re-evaluation work, Utility Coordination and Investigation work may occur under the PDA. Generally speaking, however, NTP1 will authorize pre-design and pre-construction, largely administrative works, most conspicuously as it relates to closing on a project financing, but nevertheless on a Package-specific basis, and other Package-specific items (e.g., railroad coordination).

	prior notice of the expected date for commencement of construction Work for each such Bridge, whereupon the Development Entity’s obligation to perform maintenance during design and construction Work would commence.
Escrow Documents	Certain escrowed documents (e.g., portions of the Package Proposal, sub/contractor bid documents, intellectual property, etc.) must be kept at a third-party escrow agent’s facility in the Commonwealth. Such documents to be available for mutual review by Parties for dispute resolution in accordance with the dispute resolution procedures set forth in the Project Agreement (and detailed below). The Development Entity is responsible for any escrow agent fees. ⁴
PRICE, SECURITY & PAYMENTS	
Price	<p>The Project Agreement is a firm, fixed price contract (D&C Period) with scheduled Availability Payments (Maintenance Period) obligating the Development Entity to commence and to complete the Work (subject to certain adjustments set forth thereunder). The only changes to price are via approved change order (including as a result of Compensation Events finally determined), directive letter, modifications to the financial model (made in accordance with the Project Agreement and otherwise by writing between the Parties), changes and deviations to the Work submitted by the Development Entity and agreed to by PennDOT, or amendments to the Project Agreement.</p> <p>For the avoidance of doubt, Extra Work Costs or Delay Costs to which the Development Entity is determined to be entitled as a result of Compensation Events will not constitute an adjustment of the Project Agreement’s D&C Period firm, fixed price.</p> <p>Extra Work Costs or Delay Costs to which the Development Entity is determined to be entitled as a result of Compensation Events will be made via lump sum payment, as periodic payments over the Term, progress payments invoiced as Work, or through adjustments to the Availability Payment(s).</p>
Bonds: Performance, Payment	<ul style="list-style-type: none"> • Payment and performance surety bonds each in the amount equal to 25% of the D&C Amount to be in place as a condition for issuance of NTP2. • The performance surety bond will be released upon expiry of the Warranty Period. • The payment surety bond will be released at the later of (a) two years following Final Acceptance and (b) satisfaction/discharge/expiration of liens/claims filed against the Payment Bond.
Payment for PDA Work	The Project Agreement will provide for payment for PDA expenses relating to PDA Work (as permitted under the PDA) for all bridges included in the Project

⁴ As a general proposition, any contract requiring signature of PennDOT requires approximately 6 weeks (or longer) for review and approval.

	and PDA expenses applicable to the subject bridges out of the financing proceeds raised at financial close.
<p>Payment Obligations, D&C Period Payment Limitations, & Availability Payments</p>	<p>The payment mechanism and performance-based deduction regime will be fully described in the Project Agreement and will be in line with market precedent for similar types of projects. Below is a summary of key terms:</p> <ul style="list-style-type: none"> • PennDOT to make Availability Payments to the Development Entity during the Maintenance Period. Availability Payments will start after the Final Acceptance Date and will continue through the remainder of the PA Term. • Availability Payments will be subject to deductions for Noncompliance Events, to be identified in a table within the Contract Documents (see Noncompliance Events; Noncompliance Points below). Deductions for Noncompliance Events incurred during the D&C Period will be assessed and accumulated for assessment against the first year’s Availability Payments until satisfied. • Availability Payments will be comprised of two components: (i) fixed capital portion (fixed nominal dollar amount, not indexed) and (ii) indexed portion (adjusted annually for changes in CPI). The fixed capital portion of the Base Maximum Availability Payment (or Base MAP) must be no less than [80]% (i.e., up to [20]% of the Base MAP may be indexed at CPI). [Deductions to Availability Payments will only be assessed against the indexed portion of the Availability Payments.]⁵ • Availability Payments will be invoiced by the Development Entity on a monthly basis to PennDOT, which shall be paid by PennDOT to the Development Entity within 45 days after receipt of a proper, complete invoice. • PennDOT may, but currently does not anticipate making milestone payments during the D&C Period.
<p>Noncompliance Events; Noncompliance Points</p>	<ul style="list-style-type: none"> • During the D&C Period and Maintenance Period, <u>Noncompliance Points</u> to be assessed for certain of the Development Entity’s failures to meet its obligations under the Project Agreement, largely with respect to performance-based circumstances (including schedule hold points) or certain availability events (<u>Noncompliance Events</u> or <u>NCEs</u>), to be more fully set forth in the Technical Provisions. • Accumulation above certain thresholds shall be a default under the Project Agreement, may trigger the requirement of a remedial action plan, allow for termination of the Project Agreement by PennDOT, and

⁵ Subject to continuing PennDOT review and comment.

	<p>result in deductions to [the indexed portion of the]⁶ Availability Payments on a set dollars per point basis.</p>
<p>Noncompliance Points Assessment Process, Resolution of Disagreements</p>	<ul style="list-style-type: none"> • PennDOT shall be able to assess Noncompliance Points, via the independent quality firm(s) (IQF(s))⁷, and in the absence of compliance by the IQF, itself. • The Development Entity’s⁸ independent quality assurance (construction quality assurance) firm (or CQAF) will enter the NCE into a reporting database, provided by the Development Entity as part of the Design Work. If the NCE is not entered within 48 hours of occurrence, PennDOT will enter the NCE. • Disagreements with respect to NCE assessment will be subject to an “issue resolution” administrative process and not dispute resolution, to be established by the Development Entity as part of its management planning submittals. • The Development Entity shall continue to perform the Work pending resolution of the disagreement with respect to NCE assessments. • Noncompliance Points will not be assessed if fully cured by the Developer prior to expiry of the corresponding NCE’s cure period. • Assessment of Noncompliance Points and commensurate deductions to [the indexed portion of the]⁹ Availability Payments will be PennDOT’s sole monetary remedy with respect to the NCEs giving rise to the Noncompliance Points, excepting the accounting of Noncompliance Points with respect to Development Entity defaults and PennDOT’s remedies as a result thereof. Notwithstanding the foregoing, the mere assessment of Noncompliance Points (and commensurate deductions) shall not be a defense against assessment of liquidated damages for delayed completion occurrences nor as relates to Key Personnel, as detailed under the row “Liquidated Damages” below.
<p>Limited Payment Obligations</p>	<p>PennDOT’s obligation to pay amounts due under the Project Agreement (including Availability Payments) is a contractual commitment of the Commonwealth, agencies or instrumentalities or political subdivisions thereof, and does not constitute a debt, pledge of the faith, credit, or taxing power, or any other pledge of the Commonwealth or any political subdivision thereof within the meaning or application of any constitutional provision or limitation.</p>

⁶ Subject to continuing PennDOT review and comment.

⁷ Please see row “Independent Quality Assurance” below.

⁸ Privity impositions or permissions under continuing PennDOT review and comment (including specifically whether the CQAF may be contracted to the design-build contractor).

⁹ Subject to continuing PennDOT review and comment.

	<p>PennDOT agrees to seek appropriation approval of funds sufficient to pay any amounts due and owing under the Project Agreement, which agreement shall survive any failure to appropriate sufficient amounts and any expiration or termination of the Project Agreement.</p> <p>PennDOT has no taxing power.</p> <p>The Development Entity has no taxing power, nor any other right to have taxes levied or to compel appropriations by the General Assembly of the Commonwealth (beyond that in the P3 Law) for any payment of any amounts due and owing or scheduled to become due and owing from PennDOT to the Development Entity.</p>
<p>COMPLETION DEADLINES, SCHEDULE AND DELAY</p>	
<p>Milestone Deadlines</p>	<p>The Project Agreement will set out at least the following milestones (subject to adjustment via the Relief Events process):</p> <ul style="list-style-type: none"> • <u>Baseline Substantial Completion Date</u>, relating generally to substantive completion of the Project facility and related infrastructure. This date will be agreed under the PDA Work. • <u>Long Stop Date</u>, which generally is a date later than the Baseline Substantial Completion Date at which point the Development Entity will be in default. This date will be a fixed date of 365 days after the Baseline Substantial Completion Date. • <u>Final Acceptance Deadline</u>, relating generally to completion of remaining Work (e.g., punch list items) and to achievement of conditions to commencement of Maintenance Period Work. This date will be a fixed date of [] days after the Substantial Completion Date (i.e., date upon which Substantial Completion is actually achieved). This date will be agreed under the PDA Work. [NTD: placeholders for days following SCD that will constitute the FAD] • <u>NTP2 Conditions Deadline</u>, 60 days after NTP1, by which deadline the Development Entity must achieve the conditions to NTP2. • <u>NTP3 Conditions Deadline</u>, [] [NTD: placeholder for days following NTP2 that will constitute the NTP3]¹⁰ days after NTP2, by which deadline the Development Entity must achieve the conditions to NTP3.
<p>Schedule</p>	<ul style="list-style-type: none"> • Work to be performed in accordance with an approved comprehensive Baseline Project Schedule and corresponding schedule of values (SOV) approved under the final Package Proposal.

	<ul style="list-style-type: none"> • The Development Entity to refine such Baseline Project Schedule and SOV within 60 days after the effective date of NTP1, to be finalized/accepted by PennDOT as a condition to NTP2. • The Development Entity to revise Baseline Project Schedule following each change order or directive letter. • Then-current Baseline Project Schedule, stasured for completed Work until the start of any asserted delay, shall be used to measure the duration of delays for purposes of calculating Relief Events¹¹ (standard Project schedule updates may also be relevant to determining whether delays were mitigated and whether a portion of the Work identified on the Baseline Project Schedule was completed).
Float	<ul style="list-style-type: none"> • Float in the Baseline Project Schedule to be a jointly shared and owned resource as among the Parties. • Notwithstanding, and provided that the Development Entity has complied with its obligations to use commercially reasonable efforts to mitigate delays, PennDOT may not use float for PennDOT-Caused Delays.
CONTRACT RIGHTS & RESPONSIBILITIES	
Right-of-Way (ROW)	<p>PennDOT will provide the required right of way, temporary construction easements, and other real property rights (<u>Parcels</u>) by the dates identified in the Package Proposal.</p> <p>Except where expressly stated otherwise in the Project Agreement, the Development Entity will bear the costs for acquisition of Parcels not identified in the Package Proposal and necessary or desirable for the Project, and the Development Entity shall not be entitled to additional time, or forgiveness for performance due to, acquisition of such additional Parcels.</p>
Design and Construction	The Development Entity is responsible for design and construction of the Project in accordance with the Contract Documents.
Design Liability	The Development Entity to carry full design risk, including correction of any errors or instances in which the Design Work is not in line with the requirements set forth in the first point of D&C Work Standards (below).
Independent Quality Assurance	<ul style="list-style-type: none"> • Independent quality (IQ) assurance of D&C Work to be provided through the IQF(s) identified in the PDA Entity – as Respondent and Proposer – procurement responses. • Such IQF(s) must not be affiliated or otherwise engaged by the Development Entity for D&C Work.

¹¹ Please see section listing “Relief Events” for the Project Agreement.

	<ul style="list-style-type: none"> The aggregate of the price for IQ design and IQ administrative services under the IQF contracts is at least 2% of the D&C Amount. The aggregate of the price for IQ construction services under the IQF contracts is at least 5% of the D&C Amount.
Design and Construction Oversight	PennDOT to have right to at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations of the Project with the Development Entity's cooperation.
Records and Documentation	Project records and documentation shall be maintained in a manner which meets or exceeds PennDOT's and federal requirements for record retention.
D&C Work Standards	<ul style="list-style-type: none"> Project to be designed in compliance with the requirements set forth in the Technical Provisions, Project Standards, and in accordance with Good Industry Practice in such a manner that the Project is constructible as designed. Project to be constructed in accordance with the PennDOT-approved Design Documents, the construction Work is free from Defects, and both Design Work and construction Work is performed in accordance with Good Industry Practice and the Contract Documents.
Warranties	The Development Entity to provide PennDOT with industry standard warranties through the Warranty Period for work outside the Maintenance Limits (if applicable), and work performed by third parties/Utility Owners under applicable agreements, it being understood that portions of the work – in particular those portions performed for third parties – may have longer warranty periods as may be agreed under applicable agreements or other arrangements entered into by PennDOT or the Development Entity (or both) and third party/ies in connection with the PDA Work giving rise to the Package Proposal for the Project.
General Obligations	<p>The Development Entity shall:</p> <ul style="list-style-type: none"> Expediently and diligently progress performance of the work; Provide Key Personnel and Required Personnel; Ensure labor harmony; Comply with and require contractor/subcontractor/supplier compliance with applicable laws and governmental approvals; Observe, and require contractor/subcontractors to observe, Good Industry Practice; Cooperate with PennDOT and other governmental entities with jurisdiction; Use commercially reasonable efforts to mitigate delays, damages; and

	<ul style="list-style-type: none"> Otherwise perform the Work so as to ensure that the Project satisfies each of the purposes, objectives, functions, uses, and requirements set forth in the Contract Documents.
ENVIRONMENTAL & GOVERNMENTAL APPROVALS	
Permits & Approvals	PennDOT will obtain only those permits and governmental approvals identified in the approved Package Proposal. The Development Entity will be responsible for obtaining all other permits and government approvals required to complete the Work and to deliver the Project. PennDOT will reasonably assist and cooperate with respect to Development Entity’s obtaining of permits and governmental approvals, subject to Development Entity reimbursement of PennDOT’s expenses incurred in connection therewith.
Environmental Compliance	<p>The Development Entity to be responsible for performance of all environmental mitigation measures and compliance with all environmental approvals/permits, subject to:</p> <ul style="list-style-type: none"> PennDOT’s right in its sole discretion to perform any hazardous materials management work; and Certain Development Entity reimbursement rights described in row “Hazardous Materials” below
Hazardous Materials	<ul style="list-style-type: none"> The Development Entity to have hazardous materials management responsibility for full PA Term. PennDOT to reimburse for remediation of hazardous materials on the Project only where such hazardous materials both existed prior to the Setting Date (or for any portions of the Project right of way acquired thereafter, on the date on which the Development Entity was granted access) and were not discoverable via Reasonable Investigation, or where such hazardous materials were released by PennDOT after the Setting Date. The Parties acknowledge and agree that hazardous materials discovered or encountered by or on behalf of the PDA Entity during its performance of the PDA Work will be addressed under the PDA.
CONTRACT CHANGES & COSTS OUTSIDE OF CONTRACT	
Change Orders and Directive Letters	<p>PennDOT Changes:</p> <ul style="list-style-type: none"> PennDOT may at any time require changes in the Work pursuant to a change order or directive letter, subject to restrictions as to directive letters under applicable law (e.g., cardinal changes precluded). Without limiting recourse to the dispute resolution procedures where applicable, <ul style="list-style-type: none"> where the Parties disagree on the terms of any resulting change order, and after the Parties have negotiated in good faith,

	<p>PennDOT may issue a directive letter whereupon the Development Entity shall perform the Work in question.</p> <ul style="list-style-type: none">• PennDOT shall be obligated to pay the amount on the basis for determining compensation described therein, pending execution of a change order, when the subject work is complete and compliant (unless the directive letter asserts the subject Work was in the Development Entity’s original scope of the Work).• PennDOT may, but shall not be required, to make interim payment(s) of such value, subject to subsequent adjustment via the dispute resolution procedures.• If a PennDOT change order results in a net decrease in the cost of any of the Work, PennDOT to take the benefit of 50% of the net savings, and 100% of the effect on then-current, stated Baseline Project Schedule. <p>Development Entity Changes:</p> <ul style="list-style-type: none">• The Development Entity may request PennDOT approve modifications to the Technical Provisions.• Such changes to be subject to PennDOT’s sole discretion, and may be conditioned upon modified compensation for PennDOT; provided, however, that proposed changes that do not increase costs, increase/delay the Project schedule/deadlines, and do not compromise quality of the Work shall be subject to PennDOT’s reasonable discretion; provided, further, however, that any proposed changes that increase PennDOT costs shall be subject to PennDOT’s sole discretion.• If a Development Entity change order results in a net decrease in the cost of any of the Work, PennDOT shall take the benefit of 50% of such net decrease or such net savings, and 100% of the net effect on the Project schedule and deadlines (if the change also results in earlier completion). The Development Entity shall be solely responsible for any losses, delay, or risks stemming from such change. <p>Changes Due to Events</p> <ul style="list-style-type: none">• The Development Entity may seek a change order following certain Compensation/Relief Events and other circumstances set forth under the Project Agreement addressing Extra Work Costs and Delay Costs as may be applicable.• Subject to supplement in the Project Agreement, eligible costs/expenses and the method of calculation of Extra Work Costs and Delay Costs is set forth in Exhibit B.
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<p>Site Conditions Risk</p>	<p>Subject to express exceptions set forth under the Project Agreement (including specifically the Compensation/Relief Events), the Development Entity to bear the risk of:</p> <ul style="list-style-type: none"> • Incorrect or incomplete review investigation by or on behalf of the Development Entity of the Project site and surrounding locations; and • All site conditions occurring on, under or at the Project.
<p>CONTRACT IMPLEMENTATION</p>	
<p>Submittals</p>	<ul style="list-style-type: none"> • The Development Entity submittals to PennDOT shall fall into three categories: <ul style="list-style-type: none"> ○ Type 1 Submittal (for which the Development Entity to use commercially reasonable efforts to accommodate PennDOT comments where if no material increase to time or cost; the Development Entity may at its own risk proceed prior to PennDOT response); ○ Type 2 Submittal (subject to acceptance by PennDOT, any disputes as to PennDOT’s rejection being subject to the dispute resolution procedures; the Development Entity may not commence work without PennDOT approval or resolution of the dispute, as applicable); and ○ Type 3 Submittal (subject to PennDOT’s acceptance in its sole discretion; the Development Entity may not commence work without PennDOT approval). • PennDOT shall have 15 business days or such other review time period as may be set forth under the Project Agreement to review submittals. • Submittals requirements are set forth in a “Submittal Requirements Database”, as more particularly described in the Technical Provisions.
<p>Design Deviations</p>	<p>The Development Entity may only deviate from the PennDOT-approved and compliant Project design, as developed under the Package Proposal process and thereafter further developed under the Project Agreement, with prior, written approval by PennDOT (and in certain circumstances, FHWA); provided such deviation is documented.</p>
<p>Nonconforming Work</p>	<p>If requested by the Development Entity, PennDOT may, but is not obligated to, accept any nonconforming work without requiring it to be fully corrected, in which case the D&C costs (evidenced in the SOV, as stated with the Baseline Project Schedule) under the Project Agreement will be decreased as may be negotiated, or under such other terms (e.g., reduced Availability Payments) as PennDOT may agree. PennDOT may require nonconforming work to be remedied or removed/replaced at no additional cost to PennDOT.</p>

<p>Utilities</p>	<p>PennDOT will enter into such agreements, and arrange and pay for Utility Adjustments (first Utility Adjustment only) in the Project’s ROW as identified in the Package Proposal and Unidentified Utility Facilities, including payment to the Development Entity to perform such Utility Adjustments via change order (costs) without adjustment to the Baseline Project Schedule, except where the Development Entity is entitled to claim a Relief Event or Compensation Event. All secondary and subsequent Utility Adjustments (including with respect to Unidentified Utility Facilities) are the responsibility of the Development Entity, except where the Development Entity is entitled to claim a Relief Event or Compensation Event</p> <p>The Development Entity shall perform all Utility Coordination and Investigation, including with respect to Unidentified Utility Facilities, without entitlement to additional costs and expenses, nor additional time or forgiveness from performance.</p> <p>Except where expressly stated otherwise in the Project Agreement¹², the Development Entity will bear the all costs and expenses associated with Unidentified Utility Facilities, excepting specifically costs for Utility Adjustment Work with respect to such Unidentified Utility Facilities necessary for the Project, and the Development Entity shall not be entitled to additional time as a result of discovery or encounter of, or forgiveness for performance due to, Unidentified Utility Facilities.</p>
<p>Related Transportation Facilities</p>	<p>If applicable to a Package, the Development Entity will at its expense locate, configure, design, and construct the Project ensuring compatibility and integration with Related Transportation Facilities identified by PennDOT to the Development Entity as of the Setting Date¹³.</p>
<p>Railroad</p>	<p>If applicable to a Package, and except and to the extent the Project Agreement provides specifically for cost, schedule, or other relief, the Development Entity shall bear the cost and responsibility for all necessary coordination (including design approvals and other submittals, access to railroad ROW, railroad engineering costs, and flagging services) with any affected railroad, Project compliance with applicable railroad manuals and agreements, and any Pennsylvania Public Utility Commission consents or approvals, as may be required.</p>
<p>Site Security</p>	<p>Commencing upon NTP2, the Development Entity to be responsible for the security of the Project site and the workers/public thereon during the performance of the work (during the Maintenance Period, such obligations to be narrowed to Maintenance Work performed on the Maintenance Limits).</p>
<p style="text-align: center;">BASES FOR RELIEF</p>	

¹² Please see Unidentified Utility Facility in Compensation Event and Relief Event rows (first Package only).

¹³ For those Related Transportation Facilities that are not then-existing highways, streets and roads, then constraints with respect to “future” highways, streets, and roads, including upgrades and expansions thereof, shall be determined as part of the PDA Work and included within the Package Proposal.

<p>Compensation Events</p>	<p>Subject to any limitations, claims submissions requirements, and other conditions set forth in the Project Agreement, occurring from NTP2 until the end of the Term, and that (i) is beyond the reasonable control of Development Entity; (ii) increases Development Entity’s costs or expenses, and demonstrably, materially and adversely affects performance of Development Entity’s obligations (other than payment obligations) in accordance with the Contract Documents; and (iii) is not caused by the negligence, reckless or willful misconduct, act or omission or breach or violation of applicable law, governmental approval, or contract (including any Contract Document) by a Development Entity-Related Entity, the Development Entity may assert a <u>Compensation Event</u> (or <u>CE</u>’s) (and corresponding monetary compensation) following the occurrence of the following:</p> <ul style="list-style-type: none"> • Change in law applicable to the Development Entity after the Setting Date, excluding changes to the Buy America Act and changes to tax laws; • Change in Project Standards applicable to the Project after the Setting Date required as a result of a change in law after the Setting Date and applicable to the Development Entity only to the extent directed by PennDOT to implement (or as is required, notwithstanding, under applicable law); • Actual, documented costs, without markup, incurred by the Development Entity, to uncover (and recover) Work following direction to do so by PennDOT, where the uncovered Work conformed to the requirements of the Contract Documents; • PennDOT-Caused Delays; • PennDOT-directed change order or directive letter; • Discovery of pre-existing hazardous materials on or after the Project Setting Date excluding those pre-existing hazardous materials that should have been uncovered by Reasonable Investigation (reimbursement rights – see row “Hazardous Materials” above); • Third-party releases of hazardous materials that (i) occur after the Setting Date, (ii) occur on Project ROW prior to NTP3 (or earlier with respect to any portions of the Project subject to a limited NTP), (iii) are required to be reported to a governmental entity, and (iv) render use of the roadway or construction area unsafe absent remediation work; • Performance of work within the Project ROW by contractors employed by PennDOT or other governmental entities for non-Work matters that disrupts the Work or results in documented delays to critical path; • Issuance by a court in a legal proceeding of any injunction or temporary restraining order that prohibits any material portion of the work, except if arising out of the conduct of any Development Entity-Related Entity;
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	<ul style="list-style-type: none">• Lack of good/sufficient title or entitlement to use to any Parcel identified in the Package Proposal by the date agreed therein, to the extent it materially interferes with or materially and adversely affects performance of the Work;• The existence of any title reservation, condition, easement, or encumbrance on any permanent Parcel (but not temporary Parcel) in the Package Proposal as of the date agreed for acquisition therein, of record or not of record, to the extent it materially interferes with or materially and adversely affects performance of the Work, excepting title reservations, conditions, easements, or encumbrances concerning Utilities or caused, permitted, or suffered by a Development Entity-Related Entity;• Any necessary change to the basic configuration that is identified in the Package Proposal requiring additional permanent Parcel(s);¹⁴• Any erroneously-excluded Parcel under the Package Proposal that is necessary to comply with the Technical Provisions and all Governmental Approvals;¹⁵• Additional insurance premium costs under certain conditions (generally, PennDOT direction to place more, additional coverages);• Discovery at, near or on the Project ROW, during the Construction Period, of any unexpected endangered species, excluding any such presence of species known to the Development Entity prior to the Setting Date (and not knowable via Reasonable Investigation);• Any change in design concept 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 such change had already been incorporated into the PDA Proposal (i.e., that which was submitted by the equity members of the Development Entity and PDA Entity further to the solicitation) or results from the Development Entity’s design or performance of the Work;• Suspension or termination of NEPA approval, except to the extent resulting from failure by the Development Entity or any other Development Entity-Related Entity to locate or design the Project or perform Work in accordance with NEPA approval or other governmental approvals;
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¹⁴ Cost sharing 50/50. “Necessary” means where, despite mutual negotiation and agreement, compliance with the requirements in the Technical Provisions necessitates a NEPA re-evaluation, amendment, or supplement.

¹⁵ Cost sharing 50/50, unless PennDOT waives or amends the Technical Provision, to the extent it is empowered to do so, giving rise to the need for the additional parcel. “Necessary” means where, despite mutual negotiation and agreement, compliance with the requirements in the Technical Provisions necessitates a NEPA re-evaluation, amendment, or supplement.

	<ul style="list-style-type: none"> • Unreasonable and unjustified delay by a Utility Owner with whom the Developer Entity has been unable to enter into a utility agreement in connection with a Utility Adjustment, a Utility Owner failing to perform its obligations under a utility agreement, 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 the Development Entity has asked for PennDOT’s assistance; • [Permanent and unplanned power network change in voltage by a Utility Owner supplying electricity to the Project that has a material adverse effect on the Project or the Work;] • (First Package only) additional and necessary Utility Adjustment Work directly resulting from discovery or encounter with an Unidentified Utility Facility within 120 days after issuance of NTP2 (Delay Costs, Extra Work Costs, and Changes in Cost only)¹⁶; • Suspensions of the Work ordered by PennDOT that do not arise out of acts or omissions of the Development Entity or other Development Entity-Related Entity, unless (a) such suspensions or (b) any such acts or omissions, or both, are expressly permitted under the Contract Documents; • enforcement of any inapplicable local law by a local governmental entity, where PennDOT, following notice, directs or allows such enforcement; • Type I and Type II differing site conditions (in each case, mining and karst areas only); • [(First Package only) Unreasonable and unjustified delay by a railroad owner or operator on the Project site in connection with the Development Entity’s performance of the railroad coordination plan within the PennDOT-approved Package Proposal and that causes a material adverse effect on the Development Entity’s performance of the Work, on a shared-costs basis]¹⁷; • latent defects discovered in the Existing Improvements 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 permanent
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¹⁶ Please see row “Utilities” (PennDOT to bear the costs for Utility Adjustment Work itself); the compensation available pertains to the direct (not consequential) effects of the Utility Adjustment Work, shared evenly with the Development Entity.

¹⁷ Package-specific railroad coordination and PDA Work will shape the extent of this basis for relief (e.g., hours of flaggers, submittal review durations/delays, etc., and will be negotiated on a Package-specific basis as part of the Package Proposal process under the PDA. Cost relief will be similarly negotiated on a Package-specific basis under the PDA.

	<p>Parcels identified in the Package Proposal (and not additional Parcels), in any case, excluding the Girard Point Bridge;</p> <ul style="list-style-type: none"> • a PennDOT material failure to timely observe or perform or cause to be observed or performed a material covenant, agreement, obligation, term or condition required to be observed or performed by PennDOT under the Contract Documents that causes impossibility of Development Entity performance for a continuous period of 60 days or more; • any material PennDOT breach not cured within any prescribed cure period, if any; and • (i) Discriminatory Maintenance Changes; and (ii) Non-Discriminatory Maintenance Changes (limited to capital costs of required new improvements and major repairs). <p>The Development Entity and PennDOT may, but PennDOT shall not be required to, include additional Package-specific Compensation Events in the Project Agreement as part of the negotiation and approval of the Package Proposal.</p> <p>The Development Entity shall provide PennDOT with notice within 5 business days after the date of occurrence (or date the Development Entity should have known of the occurrence) (with time of the essence) upon becoming aware of any existing or imminent Compensation Event, with minimal but sufficient and verifiable information relating to the occurrence, and following such notice, thereafter prepare and deliver a proposed compensation package within 20 business days to PennDOT. PennDOT shall review and respond with its determination as to compensation. Following agreement on compensation, if any, the Parties to execute a change order affecting such increase in compensation. Disputes to be subject to the Project Agreement’s dispute resolution procedures.</p>
<p>Relief Events</p>	<p>Subject to limitations, claims submissions requirements, and other conditions set forth in the Project Agreement, occurring from NTP2 until the end of the Term, and that (i) is beyond the reasonable control of Development Entity; (ii) directly delays the critical path; (iii) otherwise demonstrably, materially and adversely affects performance of Development Entity’s obligations (other than payment obligations) in accordance with the Contract Documents; and (iv) is not caused by the negligence, reckless or willful misconduct, act or omission or breach or violation of applicable law, governmental approval, or contract (including any Contract Document) by a Development Entity-Related Entity, the Development Entity may assert a <u>Relief Event</u> (or <u>RE</u>) (and corresponding time compensation) resulting from the following:</p> <ul style="list-style-type: none"> • Force Majeure Event¹⁸ occurring on or after NTP2;

¹⁸ Please see section listing “Force Majeure Events” for the Project Agreement.

	<ul style="list-style-type: none">• Change in law applicable to the Development Entity after the Setting Date, excluding changes to the Buy America Act and changes to tax laws;• Change in Project Standards applicable to the Project after the Setting Date required as a result of a change in law after the Setting Date and applicable to the Development Entity only to the extent directed by PennDOT to implement (or as is required, notwithstanding, under applicable law);• Delay suffered by the Development Entity, where following direction to uncover Work, the uncovered Work conformed to the requirements of the Contract Documents;• PennDOT-directed change order or directive letter;• PennDOT-Caused Delays;• performance of work within the Project ROW by contractors employed by PennDOT or other governmental entities for non-Work matters that disrupts the Work or results in documented delays to critical path;• discovery on or near the Project ROW after the Effective Date of (i) pre-existing hazardous materials or hazardous materials for which the Development Entity is not responsible for the release of (unless identified in the reference information documents (RIDs)), or (ii) archaeological, paleontological or cultural resources not known to the Development Entity prior to the Setting Date (and not knowable via Reasonable Investigation);• discovery at, near or on the Project of any unexpected endangered species, excluding presence known to the Development Entity prior to the Setting Date (and not knowable via Reasonable Investigation);• third-party releases of hazardous materials that (i) occur after the Setting Date, (ii) occur on Project ROW prior to NTP3 (or earlier with respect to any portions of the Project subject to a limited NTP), (iii) are required to be reported to a governmental entity, and (iv) render use of the roadway or construction area unsafe absent remediation work;• issuance by a court in a legal proceeding of any injunction or temporary restraining order that prohibits any material portion of the Work, except if arising out of the conduct of any Development Entity-Related Entity;• unreasonable and unjustified delay by a Utility Owner with whom the Developer Entity has been unable to enter into a utility agreement in connection with a Utility Adjustment, a Utility Owner failing to perform its obligations under a utility agreement, 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
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	<p>expired since the Development Entity has asked for PennDOT's assistance;</p> <ul style="list-style-type: none">• (First Package only) any documented delay to the critical path directly resulting from any additional and necessary Utility Adjustment Work for an Unidentified Utility Facility discovered or encountered within 120 days after issuance of NTP2;• suspension or termination of NEPA approval, except to the extent resulting from failure by the Development Entity or any other Development Entity-Related Entity to locate or design the Project or perform Work in accordance with NEPA approval or other governmental approvals;• suspensions of the Work ordered by PennDOT that do not arise out of acts or omissions of the Development Entity or other Development Entity-Related Entity, unless (a) such suspensions or (b) any such acts or omissions, or both, are expressly permitted under the Contract Documents;• any change in the design concept of the Project 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 such change had already been incorporated into the PDA Proposal (as defined above) or results from the Development Entity's design or performance of the Work;• failure to obtain, or unreasonable and unjustified delay in obtaining or maintaining, a governmental approval, unless such failure or delay results from the Development Entity's failure to design the Project or perform Work in accordance with the NEPA approval or other governmental approval;• a PennDOT material failure to timely observe or perform or cause to be observed or performed a material covenant, agreement, obligation, term or condition required to be observed or performed by PennDOT under the Contract Documents that causes impossibility of Development Entity performance for a continuous period of 60 days or more;• lack of good/sufficient title or entitlement to use to any Parcel identified in the Package Proposal by the date agreed therein, to the extent it materially interferes with or materially and adversely affects performance of the Work;• the existence of any title reservation, condition, easement, or encumbrance on any permanent Parcel (but not temporary Parcel) in the Package Proposal as of the date agreed for acquisition therein, of record or not of record, to the extent it materially interferes with or materially and adversely affects performance of the Work, excepting title reservations, conditions, easements, or encumbrances concerning
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	<p>Utilities or caused, permitted, or suffered by a Development Entity-Related Entity;</p> <ul style="list-style-type: none"> • any necessary change to the basic configuration that is identified in the Package Proposal requiring additional Parcel(s);¹⁹ • any erroneously-excluded Parcel under the Package Proposal that is necessary to comply with the Technical Provisions and all Governmental Approvals;²⁰ • Enforcement of any inapplicable local law by a local governmental entity; • Type I and Type II differing site conditions (mining and karst areas only); • Damage to the Project caused by third-party work on a project or other work adjacent to the Project site; • (First Package only) unreasonable and unjustified delay by a railroad owner or operator on the Project site in connection with the Development Entity’s performance of the railroad coordination plan within the PennDOT-approved Package Proposal and that causes a material adverse effect on the Development Entity’s performance of the Work;²¹ • latent defects discovered in the Existing Improvements 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 permanent Parcels identified in the Package Proposal (and not additional Parcels), in any case, excluding the Girard Point Bridge; • any material PennDOT breach is not cured within any prescribed cure period, if any; and • (i) Discriminatory Maintenance Changes; and (ii) Non-Discriminatory Maintenance Changes (limited to capital costs of required new improvements and major repairs).
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¹⁹ Delay sharing 1 day for every 2 days. “Necessary” means where, despite mutual negotiation and agreement, compliance with the requirements in the Technical Provisions necessitates a NEPA re-evaluation, amendment, or supplement.

²⁰ Delay sharing 1 day for every 2 days, unless PennDOT waives or amends the Technical Provision, to the extent it is empowered to do so, giving rise to the need for the additional permanent real property right. “Necessary” means where, despite mutual negotiation and agreement, compliance with the requirements in the Technical Provisions necessitates a NEPA re-evaluation, amendment, or supplement.

²¹ Package-specific railroad coordination and PDA Work will shape the extent of this basis for relief (e.g., hours of flaggers, submittal review durations/delays, etc., and will be negotiated on a Package-specific basis as part of the Package Proposal process under the PDA.

	<p>The Development Entity and PennDOT may, but PennDOT shall not be required to, include additional Package-specific Relief Events in the Project Agreement as part of the negotiation and approval of the Package Proposal.</p> <p>The Development Entity shall provide PennDOT with notice within 10 business days after the date of occurrence (or date the Development Entity should have known of the occurrence) (with time of the essence) upon becoming aware of any existing or imminent Relief Event, with minimal but sufficient and verifiable information relating to the occurrence, and following such notice, thereafter prepare and deliver a proposed relief package within 20 business days to PennDOT. PennDOT shall review and respond with its determination as to time relief. Following agreement on relief, if any, the Parties to execute a change order providing for the applicable time extensions. Disputes to be subject to the Project Agreement’s dispute resolution procedures.</p> <p>In the event commencement of Availability Payments is delayed due to a Relief Event, the Project Agreement will include a calculation such that the Development Entity to be compensated for the delay, generally as relates to debt service (subject to certain exceptions and deductions (e.g., for insurance proceeds/offsets)).</p>
<p><u>Force Majeure Events</u> (Definition)</p>	<p>The Development Entity may be provided additional time (but not compensation by or on behalf of PennDOT as a matter of contract) for the following events:</p> <ul style="list-style-type: none"> • war, invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, occurring in Pennsylvania; • any act of terrorism or sabotage that causes direct physical damage to the Project; • nuclear explosion or contamination that causes direct physical damage to the Project; • riot and civil commotion on or in the immediate vicinity of the Project that has a direct adverse impact on the Development Entity’s ability to perform the Work; • fire, explosion, Flood, earthquake, hurricane, windstorm, or tornado, in each case that causes direct physical damage to the Project; • national or statewide strike that has a direct adverse impact on the Development Entity’s ability to obtain materials, equipment or labor for the Project and, in each case not specific any Development Entity-Related Entity or that cannot be resolved by the affected Development Entity-Related Entity; • [supply chain disruption that has a direct, material, and adverse impact on the Development Entity’s ability to obtain materials or equipment for the Project, in each case not specific to any Development Entity-

	<p>Related Entity or that cannot be resolved by the affected Development Entity-Related Entity;]</p> <ul style="list-style-type: none"> • [Labor shortage that has a direct, material, and adverse impact on the Development Entity’s ability to staff the Work to the minimum requirements of the Technical Provisions and the Development Entity’s express obligations of the Project Agreement, in each case not specific to any Development Entity-Related Entity or that cannot be resolved by the affected Development Entity-Related Entity;] or • a pandemic event (to be defined, but generally as relates to the response of a governmental entity thereto), <p>provided that such events:</p> <ul style="list-style-type: none"> ○ are beyond the Development Entity’s reasonable control; ○ delay the critical path reflected in the then-current Baseline Project Schedule (stated to the date of the Force Majeure Event); ○ actually, demonstrably, materially and adversely affects performance of the Development Entity’s obligations (other than payment obligations); ○ are not attributable to the negligence, reckless or willful misconduct, act or omission or breach or violation of applicable law or contract by the Development Entity-Related Entity; and ○ are not caused, and could not have been avoided by exercise of caution, due diligence, or reasonable efforts by the Development Entity. <p>PennDOT may, but shall not be required, to include additional Force Majeure Events, on a Project-specific basis with the intent that the perils, or results therefrom, are insurable (e.g., cyber attack)</p>
<p><u>Concurrent Delay</u></p>	<p>Where (a) a PennDOT-Caused Delay or other Relief Event for which PennDOT is responsible and (b) a delay for which the Development Entity would otherwise not have recourse for excuse under a Relief Event, then to the extent of the concurrent delay, PennDOT will not assess, and the Development Entity shall not be liable to PennDOT for, any delay liquidated damages, and the Development Entity shall be entitled to the equivalent of one additional day for each two days of delays to the critical path for the duration of the concurrent delay but no other relief from its obligations during such concurrent delay.</p>
<p>FINANCING</p>	
<p>Project Debt Financing</p>	<p>General:</p>

	<ul style="list-style-type: none"> • The Development Entity is responsible for obtaining and repaying all financing necessary to develop, design, construct, and maintain the Project at its own cost and risk and without recourse to PennDOT. • The Development Entity shall keep PennDOT apprised of, and afford PennDOT the opportunity to be involved in, meetings and informed of any issues throughout the financial close process. • If PennDOT has obtained a private activity bonds (PABs) allocation, PennDOT will assist the Development Entity’s efforts to obtain necessary federal approvals for PABs, including modification of the PABs allocation obtained by PennDOT for the Project to increase the principal amount thereof, as well as coordination with conduit issuer/Pennsylvania Economic Development Financing Authority (PEDFA). • PennDOT will assist Development Entity’s efforts to secure a TIFIA financing allocation for the Project, if applicable. <p>Security:</p> <p>The Development Entity may only secure Project Debt with the entirety of interest of the Development Entity in Contract Documents, and may not extend the lenders’ security interest to PennDOT’s interest in the Project, the Project ROW, or PennDOT’s rights or interests under the Contract Documents.</p>
<p>Financial Close</p>	<p>Financial Close Security and Rating Letters:</p> <p>Prior to execution of the Project Agreement, the Development Entity shall furnish PennDOT with final rating letters from at least two rating agencies (identified in the Project Agreement as eligible and qualified rating agencies) indicating that each Project Debt obligation has been rated investment grade (e.g., at least BBB-, Baa3).</p> <p>The Parties acknowledge that security for financial closing is held by the PDA Entity, and the Development Entities failure to achieve the financial close for the Project constitutes a basis to draw upon the financial close security.</p> <p>Financial Close Mechanics:</p> <ul style="list-style-type: none"> • The Development Entity shall give PennDOT 45 days’ notice of the date scheduled for financial close, which date shall not be later than the deadline set forth under the Project Agreement. • The deadline for financial closing shall be either the date scheduled for financial close as set forth in (<u>Financial Closing Deadline</u>): <ul style="list-style-type: none"> ○ the notice from the Development Entity to PennDOT, or ○ the notice from PennDOT to the Development Entity extending the date for financial close.

	<ul style="list-style-type: none">• PennDOT will perform those obligations customary to financial closings, within the constraints of applicable laws;• Financial close occurs when conditions precedent under the Project Agreement have been accepted or waived by PennDOT.• If Financial Closing Deadline is missed, PennDOT shall have the right to terminate the Project Agreement and shall be entitled to the Financial Closing Security (excepting for certain circumstances whereby financial close is delayed beyond the Financial Close Deadline due to a PennDOT-Caused Delay).• Financial close to be a condition precedent to NTP2. <p>Interest Rate and Financing Terms Risk Sharing:</p> <ul style="list-style-type: none">• PennDOT assumes 100% of the impact (positive or negative) on the Base MAP due to changes in the base interest rates set forth in the Development Entity’s financing plan for the period beginning on the Setting Date and ending on the earliest of (a) financial close, (b) the Financial Closing Deadline, (c) the date of execution of any interest rate hedging instrument by the Development Entity, or (d) date of the execution of a bond or note purchase agreement relating to the purchase and sale of PABs or taxable bonds.• PennDOT assumes 85% of the impact (positive or negative) on the Base MAP due to differences between the credit spreads for any PABs or publicly-issued taxable bonds set forth in the Development Entity’s financing plan compared to actual credit spreads obtained at financial close or the date of execution of the bond purchase agreement relating to the purchase and sale of PABs or publicly-issued taxable bonds.• Committed spreads will be required for debt financing in the form of bank loans, private placements or any other forms of debt for which committed credit spreads or margins are available.• Except if caused by a PennDOT or Commonwealth credit rating downgrade, PennDOT shall not bear the cost of increases in credit spreads/margins or any other financing terms as a result of the final credit ratings of such debt being lower than the indicative investment grade ratings of such debt provided in the Package Proposal.• The Development Entity shall make best efforts to secure the most competitive terms available for any TIFIA financing. Any deviations between TIFIA terms in the Package Proposal and final TIFIA terms will be subject to PennDOT good faith approval, noting that PennDOT will provide protection for adverse impacts due to changes in certain key TIFIA terms between the date of the Package Proposal and financial close related to changes in TIFIA policy or TIFIA credit underwriting standards.
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	<ul style="list-style-type: none"> Changes in financing terms between the Package Proposal and financial close (both positive and negative) shall be reviewed with PennDOT, with final terms being subject to PennDOT good faith approval. PennDOT shall be entitled to 75% of the net cost savings resulting from any improvement in the final financing terms. <p>PennDOT Caused Delay to Financial Close</p> <ul style="list-style-type: none"> If financial close is delayed by PennDOT until a date following the date of expiration of any commitments of lenders contained in the Package Proposal, the Development Entity to negotiate with lenders with any major deviations from the original commitments subject to PennDOT good faith approval. Under such circumstances, the Development Entity may pursue Availability Payment adjustments for the Development Entity’s documented, actual, reasonable, external and internal costs (without markup or profit) incurred for the work necessary to achieve financial close commencing on the date originally scheduled for financial close. <p>Failure to Reach Financial Close</p> <ul style="list-style-type: none"> The Development Entity to generally bear the risk of a failure to reach financial close by the Financial Closing Deadline. If the Financial Closing Deadline is missed and such failure is not attributable to PennDOT, PennDOT shall have the right to terminate the Project Agreement and shall be entitled to the Financial Closing Security under the PDA. The Development Entity’s obligation to achieve financial close by the Financial Closing Deadline is excused only if such failure is directly attributable to one or more specific events, consistent with market precedent.
<p>Refinancing</p>	<p>General:</p> <ul style="list-style-type: none"> The Development Entity must send written notice of proposed Refinancing 60 days before the proposed closing date, as well as all financing documents and security documents. PennDOT must approve within 21 days after its receipt of the aforementioned Refinancing documentation for the Refinancing to proceed. No PennDOT consent rights if PennDOT determines that such Refinancing (a) was fully and specifically identified and taken into account in the <u>Financial Model</u> prepared in accordance with the PDA Work Requirements and calculation of the Original Equity IRR; or (b) is a rescue refinancing (to be defined in the Project Agreement). No Refinancing is permitted prior to Final Acceptance Date, unless otherwise agreed by PennDOT. <p>Refinancing Gain and Risk:</p>

	<ul style="list-style-type: none"> • PennDOT is entitled to 50% of any Refinancing gain attributable to any Refinancing (other than certain Exempt Refinancings). For avoidance of doubt, any TIFIA or PABs refinancing contemplated in the initial “base case” Financial Model submitted with the Package Proposal will be subject to refinancing gain-sharing. [NTD: potential risk sharing mechanism related to a planned TIFIA or PABs refinancing will be negotiated with the PDA Entity as part of the PDA Work] • The Development Entity bears all risks for any Refinancing that negatively affects its Equity IRR, debt coverage ratios, or financial performance. <p>Reimbursement of PennDOT Expenses:</p> <p>The Development Entity shall reimburse such PennDOT costs incurred rendering assistance in connection with a Refinancing, by offset, payment, or other mechanism to be determined by PennDOT.</p>
<p>Lender Requirements</p>	<p>The collateral agent (or if no collateral agent is in place, any lenders) of the Project’s first lien financing shall be an Institutional Lender.</p>
<p>PennDOT-Lender Interface</p>	<p>General:</p> <p>PennDOT’s required form of direct agreement to be attached as an exhibit to the Project Agreement.</p> <p>Lender Step-in and Cure Periods:</p> <ul style="list-style-type: none"> • No requirement for PennDOT consent prior to lender exercise of collateral rights under Project loan documents; but notice requirement. • Should any Development Entity Default occur which would allow for PennDOT termination of the Project Agreement, PennDOT shall not terminate until it first delivers to the lender a notice and provides lender an opportunity to cure such default (if default has no cure period or (i.e. bankruptcy events) under certain circumstances a lender or its designee may alternatively be granted a new Project Agreement from PennDOT on the same terms of the Project Agreement). • The cure periods available to lender (for curable defaults) are: <ul style="list-style-type: none"> ○ 60 days after later of lender receipt of notice or expiration of the Development Entity's cure period; and ○ for a default that by its nature is incapable of cure without a lender party taking control of the Project, 180 days after the later of (i) lender receipt of notice, or (ii) expiration of the Development Entity's cure period; provided within the later of (A) five days after expiration of the Development Entity's cure period, and (B) 30 days after lender receipt of notice, lender pursues steps to obtain control of the Project.

	<ul style="list-style-type: none"> • Where a lender has acquired the Development Entity’s interest in the Project by foreclosure or has otherwise assumed possession and control of the Project, it may transfer ownership to its affiliates without PennDOT approval, and to a third party with PennDOT’s approval.
<p>Required Terms in Project Loan Documents</p>	<ul style="list-style-type: none"> • Security documents may only secure Project debt the proceeds of which are obligated to be used exclusively for Project purposes, and issued by (a) the Development Entity, (b) its successors and permitted assigns or (c) the PABs issuer. • Security Documents shall encumber the entirety of the Development Entity interest in the Project. • Each Project loan document shall: <ul style="list-style-type: none"> ○ (applicable to any note, bond or similar instrument) include or refer to a related document that includes a recital as to the limited payment obligations of the Commonwealth; ○ require collateral agent to furnish concurrent default or remedy notice to PennDOT; ○ (if in effect while the Handback Requirements apply) permit the Development Entity to (a) use and apply funds in the Handback Requirements Reserve Account in the manner contemplated by the Contract Documents, (b) issue additional Project debt for the purposes of funding work pursuant to Handback Requirements, and (c) otherwise comply with its obligations regarding Rehabilitation Work, the Rehabilitation Work Schedule, the Handback Requirements and the Handback Requirements Reserve Account; ○ state a lender shall not name or join PennDOT or the Commonwealth in any legal proceeding seeking collection of the Project debt or other obligations secured thereby or the foreclosure or other enforcement of such loan document; ○ state that a lender shall not seek any damages or other amounts from PennDOT or the Commonwealth except (a) damages from PennDOT only for a violation by PennDOT of its express obligations to lenders set forth in any direct agreement, and (b) amounts due from PennDOT under the Project Agreement where the lender has succeeded to the interest of the Development Entity; and ○ require a lender to respond to any request from PennDOT or the Development Entity for consent to a modification or amendment of any Contract Document within a reasonable time.
<p>Equity Requirements (Minimum)</p>	<p>From financial close through the Final Acceptance Date, the Development Entity’s equity members must maintain Committed Investment totaling not less</p>

Committed Investment)	than 8% of the sum of (a) Committed Investment, plus (b) Project Debt, less (c) any short-term Project Debt where milestone payments (if milestone payment(s) is/are included) have been pledged for its repayment.
FINANCIAL MODEL AND PERFORMANCE	
Financial Model	<p>Financial Model Formula:</p> <ul style="list-style-type: none"> • The PDA Work requires preparation and finalization of a Financial Model, which will be incorporated into the Project Agreement. • Financial Model updates to be required following: <ul style="list-style-type: none"> ○ Compensation Events; ○ Relief Events resulting in an extension of the Project Agreement term; ○ reduction in the Project Agreement amount for which PennDOT is entitled to compensation; ○ the Development Entity’s permitted Equity IRR is adjusted due to its failure at financial close to achieve the initial project debt to committed investment ratio required under the Project Agreement; or ○ amendment of any Contract Document which the Parties agree has a material effect on the Financial Model. • PennDOT may audit the Financial Model and Financial Model Updates through an independent auditor and require an auditor’s opinion. • The Parties shall bear equally the cost of such PennDOT-required audits.
MAINTENANCE PERIOD	
Maintenance Work	<ul style="list-style-type: none"> • The Development Entity shall be responsible for performance of Maintenance Work in accordance with the Contract Documents (to include specifically the accepted Project Management Plan, Incident Management Plan, and Emergency Plan) during the Maintenance Period. • Maintenance Work to be performed in accordance with Good Industry Practice, best management practices, and the PennDOT-approved “Maintenance Management Plan” (MMP). • The Development Entity may subcontract the Maintenance Work, subject to certain Key Personnel requirements and qualifications and experience of Maintenance Work sub/contractors described in the Technical Provisions.

	<ul style="list-style-type: none"> • The Project Agreement to set forth certain conditions precedent to commencement of Maintenance Work, which must be achieved as a condition to Final Acceptance itself, PennDOT acceptance of the MMP, and other customary conditions). • PennDOT to perform operations and certain retained maintenance responsibilities (<u>PennDOT-Retained O&M</u>), a list of which to be attached to the Technical Provisions.
<p>Maintenance Changes</p>	<p>General</p> <p>The Development Entity shall be obligated to accommodate Discriminatory Maintenance Changes and Non-Discriminatory Maintenance Changes.</p> <p>Discriminatory Maintenance Changes</p> <p>The Development Entity may be granted a Compensation Event or Relief Event following Discriminatory Maintenance Changes.</p> <p>Non-Discriminatory Maintenance Changes</p> <ul style="list-style-type: none"> • The Development Entity may not seek compensation for increases in costs of Maintenance Work due to a Non-Discriminatory Maintenance Change, except for certain capital costs of required major new improvements or required major repair, reconstruction, rehabilitation, restoration, renewal or replacement. • Compensation for Non-Discriminatory Maintenance Changes only available if ordered to be performed prior to the date when the Development Entity performs or is scheduled to perform rehabilitation work on the affected element or otherwise outside the ordinary course of performing the Maintenance Work. • The amount of compensation is the lesser of (a) the actual, reasonable Extra Work Costs incurred, or (b) the net present value of the cost of funds for such actual, reasonable costs from the date of funding until the next scheduled rehabilitation work for the affected element. No compensation where the Development Entity replaces the affected element during the ordinary course of performing the Maintenance Work.
<p>Rehabilitation Work</p>	<p>Basis of Rehabilitation Work Schedule:</p> <ul style="list-style-type: none"> • General and performance inspections to be performed in accordance with the Technical Provisions and the “Project Management Plan” (prepared as part of the PDA Work and further developed as part of the Work). • The Development Entity shall use the results of such inspections to develop and update a schedule (<u>Rehabilitation Work Schedule</u>) of <u>Rehabilitation Work</u> (maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Project element not normally included as an annually recurring cost in

	<p>maintenance and repair budgets for similar facilities) to maintain asset condition and service levels, and minimize the effect of maintenance Work on the public.</p> <p>Rehabilitation Work:</p> <ul style="list-style-type: none"> • Rehabilitation Work to be performed as necessary to maintain compliance with performance requirements set forth in the Technical Provisions and restore the useful life of each Project element at the end of its residual life. • Not later than 90 days after each calendar year, the Development Entity to deliver a written report of Rehabilitation Work performed in the preceding calendar year. <p>Submittal and Update of Rehabilitation Work Schedule</p> <p>Not later than 90 days before the beginning of the second full calendar year after the Substantial Completion Date, the Development Entity to submit a Rehabilitation Work Schedule. The Development Entity to update Rehabilitation Work Schedule (as and if necessary) each year thereafter.</p>
<p>Handback</p>	<p>Handback Requirements:</p> <p>On the Project Agreement’s end date, the Development Entity shall cause the Project, at no charge to PennDOT, to be in the condition and meet all of the requirements for residual life at handback specified in the Technical Provisions (<u>Handback Requirements</u>).</p> <p>Handback Requirements Reserve Account:</p> <ul style="list-style-type: none"> • Beginning five years before the end of the Project term, the Development Entity shall establish, fund, and grant PennDOT a first lien security interest in an account (<u>Handback Requirements Reserve Account</u>) exclusively available for: <ul style="list-style-type: none"> ○ Rehabilitation Work necessary to bring the Project into compliance with the Handback Requirements; and ○ costs of certain safety compliance work. • At termination of the Project Agreement, all funds in the Handback Requirements Reserve Account to be the sole property of PennDOT (the Development Entity to pay any shortfall); provided that if funds in the Handback Requirements Reserve Account at the time of termination exceed that needed to satisfy the Handback Requirements plus 10% contingency, PennDOT shall release any such excess to the Development Entity. • In lieu of establishing the Handback Requirements Reserve Account, the Development Entity may deliver one or more letters of credit acceptable to PennDOT in its sole discretion.

BUSINESS RISKS	
Insurance	<p>Required insurance coverage includes:</p> <ul style="list-style-type: none"> • During the D&C Period: <ul style="list-style-type: none"> ○ commercial general liability ○ workers' compensation & employer's liability; ○ auto liability; ○ professional liability; ○ builder's risk with delay in start-up; ○ pollution liability; ○ umbrella/excess liability; and ○ where applicable, aviation liability, marine protection & indemnity, and railroad protective liability; • During the Maintenance Period: <ul style="list-style-type: none"> ○ Property with business interruption; ○ workers' compensation & employer's liability; ○ commercial general liability; ○ auto liability; ○ umbrella/excess liability; ○ pollution liability; and ○ where applicable, aviation liability, marine protection & indemnity, and railroad protective liability. • Contractor and subcontractor insurance requirements to be specified in the Project Agreement (to include, as appropriate, workers' compensation & employer's liability, commercial general liability, auto liability, umbrella/excess liability, professional liability). • All insurances will require 30 day advance notice to PennDOT for cancellation (15²² days for non-payment of premium). • All insurances will be subject to commercially reasonable, market deductibles or similar arrangements.

²² Note to bidders: PA law requires 15 days. 40 Pa. C.S. § 3403.

	<ul style="list-style-type: none"> • PennDOT, its affiliates and Constituents, to be additional insureds on all policies (excepting professional liability and (if applicable) railroad protective liability policies) on a primary and non-contributory basis, and all such policies shall include a waiver of subrogation in favor of PennDOT, its affiliates, and Constituents. <p>[NTD: a market-current insurance benchmarking regime for the Maintenance Period will be included in the Project Agreement]</p>
<p>Development Entity Defaults</p>	<p>The Development Entity shall be in default if any of the following occurs (Development Entity Default):</p> <ul style="list-style-type: none"> (a) the Development Entity (i) fails to begin applicable Work within 30 days following issuance of NTP1; or (ii) fails to satisfy all conditions to issuance of NTP2 50 days after the NTP2 Conditions Deadline; or (iii) fails to satisfy all conditions to issuance of NTP3 by date 50 days after the NTP3 Conditions Deadline; (b) an Abandonment occurs; (c) failure to achieve Substantial Completion by the Long Stop Date, or Final Acceptance by the Final Acceptance Deadline or where such failure is reasonably certain due to the then-current Baseline Project Schedule, as stated, when compared to the remaining work items; (d) failure to make any undisputed payment due to PennDOT under the Contract Documents when due; (e) any representation or warranty in the Contract Documents made by the Development Entity, or any certificate, schedule, report, instrument or other document delivered by or on behalf of the Development Entity to PennDOT is materially false, materially misleading or materially inaccurate when made or omits material information when made; (f) failure 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 the Project Agreement for the benefit of relevant parties, or fails to comply with any requirement of the Project Agreement pertaining to the amount, terms or coverage of the same; (g) the Development Entity makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Project Agreement, the Project or the Development Entity's interest therein, or there occurs a Change of Control in violation of the Project Agreement; (h) the Development Entity 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

	<p>observed or performed by the Development Entity under the Contract Documents;</p> <ul style="list-style-type: none">(i) either (i) 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 a Pennsylvania department or agency, of the Development Entity and certain affiliates; or (ii) the Development Entity 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 Pennsylvania department or agency;(j) the Development Entity (i) fails to deliver to PennDOT any remedial action plan as may be required under the Project Agreement, or (ii) otherwise fails to fully comply with the schedule or portions, or take required actions required under, any such approved remedial action plan;(k) the Development Entity 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;(l) an involuntary case is commenced against the Development Entity seeking liquidation, reorganization, dissolution, winding up, composition or arrangement with creditors, readjustment of debts or other relief with respect to the Development Entity or the Development Entity's debts under any 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 the Development Entity or any substantial part of the Development Entity's assets; seeking the issuance of a writ of attachment or execution; or seeking like relief, and such involuntary case shall not be contested by the Development Entity in good faith or remain undismissed and unstayed for 60 days;(m) any voluntary or involuntary case or other act or event described in either of the immediately foregoing two points above shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for 60 days) with respect to (i) any affiliate of the Development Entity for whom transfer of ownership would constitute a Change of Control, (ii) the Development Entity's lead construction contractor (unless the Development Entity provides a reasonable replacement
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	<p>satisfactory to PennDOT within such 60 day period, or demonstrates to PennDOT’s satisfaction that it can continue to perform the Work), or (iii) any equity member, joint venture participant, or partner of the Development Entity’s lead construction contractor;</p> <p>(n) failure to comply with PennDOT’s written suspension of Work order issued under the Project Agreement;</p> <p>(o) a levy under execution or attachment has been made against all or any part of the Project or any interest therein as a result of any lien created or incurred by the Development Entity or any person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order within 60 days, unless such levy resulted from actions or omissions of PennDOT;</p> <p>(p) the Development Entity fails to make any undisputed payment due to contractors (including DBE contractors) when due;</p> <p>(q) Persistent Breaches of the Project Agreement which (i) continue for more than 30 consecutive days, or (ii) occur more than three times in any rolling six-month period, measured to the day, after PennDOT gave a warning notice (it being understood that NCEs are not relevant in determinations of Persistent Breach); or</p> <p>(r) an accumulation of Noncompliance Points over the thresholds set forth in the Project Agreement (see Noncompliance Events; Noncompliance Points above).</p>
<p>Cure of Development Entity Defaults</p>	<p>The Development Entity will have an opportunity to cure certain Development Entity Defaults; the cure periods with respect to each such default will differ depending on the type of default and except to the extent specifically set forth in this term sheet, shall be mutually acceptable to the Parties. No cure period shall apply with respect to “Development Entity Defaults” (i), (k), and (l) above.</p>
<p>PennDOT Remedies for Development Entity Default</p>	<p>Following an uncured the Development Entity Default, PennDOT may, in each case, subject to lender rights under a direct agreement:</p> <ul style="list-style-type: none"> • terminate; • step in to pay and perform all or any portion of the Development Entity’s obligations and the Work that are the subject of such Development Entity Default; • deduct amounts (including interest) payable to PennDOT from amounts owing to the Development Entity; • recover damages; • take immediate action in the event of emergency or danger to life and/or property;

	<ul style="list-style-type: none"> • require that the Development Entity implement a remedial action plan; • suspend work; • increase oversight; • assess certain liquidated damages (not to assess (but still be able to collect previously-accrued liquidated damage) following termination of the Project Agreement); • draw on performance security; and • pursue other remedies as provided by law or in equity.
<p>PennDOT Defaults</p>	<p>PennDOT may be found in default if any of the following occurs:</p> <ul style="list-style-type: none"> • undisputed payments under the Project Agreement not paid within 45 days after the date of notice of non-payment; • any PennDOT representation or warranty in the Project Agreement is false or materially misleading or materially inaccurate, or omits material information, when made (with no cure thereof to be regarded as complete until adverse effects of the breach are cured); • PennDOT confiscates, sequesters, condemns, or appropriates the Project or any material part of the Development Entity’s interest therein (excluding exercise of rights under the Project Agreement); or • PennDOT assignment in violation of the Project Agreement, except if such assignment is required under applicable laws; <p>provided that with respect to defaults described under all but the first two defaults above, if such default is of a nature that cure cannot be completed within such time period and PennDOT has commenced meaningful steps to cure promptly, PennDOT will have up to a maximum of 120 days, as is reasonably necessary to diligently effect cure.</p>
<p>The Development Entity’s Remedies</p>	<p>The Development Entity to have the following remedies (subject to restrictions):</p> <ul style="list-style-type: none"> • Termination; • Compensation/Relief Events; • Suspension of Work on any change order for which undisputed payment has not been made; and • Litigation (following required Commonwealth dispute resolution procedures).
<p>Suspension</p>	<p>PennDOT may order suspension of Work as it deems appropriate for:</p>

	<ul style="list-style-type: none"> • Certain of the Development Entity breaches of the Project Agreement; or • Concerns regarding safety or persons or property.
<p>Termination</p>	<p>Right to Terminate:</p> <p>The Development Entity may terminate the Project Agreement if:</p> <ul style="list-style-type: none"> • an uncured PennDOT default continues past applicable cure periods; • PennDOT orders a suspension of the Work which continues for 180 days; • if a Relief Event results in a continuous, uninterrupted delay of 180 days; • an insurance unavailability event occurs; • Financial close does not occur by the Financial Closing Deadline (subject to certain conditions set forth in the Project Agreement). <p>PennDOT may terminate the Project Agreement:</p> <ul style="list-style-type: none"> • for convenience; • for the Development Entity’s default past expiration of cure period; • if a Relief Event results in a continuous, uninterrupted delay of 180 days (and such Relief Event is not directly caused by PennDOT); • if an insurance unavailability event occurs; • if financial close does not occur by the Financial Closing Deadline (subject to certain conditions set forth in the Project Agreement); or • following a court ruling rendering performance by the Development Entity of a portion of the Project impossible. <p>[Automatic termination²³</p> <ul style="list-style-type: none"> • following a final court ruling, from a forum with personal and subject matter jurisdiction, not subject to further appeal, voiding the Project Agreement or rendering performance of the Project impossible.] <p>Effect on PDA:</p>

²³ Mechanics of this trigger to be clarified in the Project Agreement (e.g., all appeals exhausted, impossibility of performance, post-termination obligations, etc.).

	<p>PennDOT termination of the Project Agreement for a Development Entity Default or failure to reach financial close constitutes a default under the PDA, entitling, but not obligating, PennDOT to terminate the PDA.</p> <p>Effect on other project agreements (DBFM):</p> <p>PennDOT termination of the Project Agreement for a Development Entity Default or failure to reach financial close will not constitute a default under other project agreements (similar in kind to the Project Agreement and as pertains to other “Projects” born of Package Proposals).</p>						
<p>Termination Compensation</p>	<p>Termination compensation shall be calculated as follows (to be set forth in greater detail under the Project Agreement):</p> <table border="1" data-bbox="516 636 1430 1892"> <thead> <tr> <th data-bbox="516 636 971 695"><u>Termination Event</u></th> <th data-bbox="971 636 1430 695"><u>Termination Compensation</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="516 695 971 1125"> <p>PennDOT Convenience; PennDOT Default; Suspension of Work</p> </td> <td data-bbox="971 695 1430 1125"> <p>Project Debt + the net present value of equity distributions (as projected in the initial “base case” Financial Model), discounted at the Original Equity IRR – unfunded Committed Investment + redundancy payments + contractor breakage and demobilization costs – Project account balances – previously paid CE/RE amounts related to the termination event – excess insurance proceeds</p> </td> </tr> <tr> <td data-bbox="516 1125 971 1892"> <p>Development Entity Default</p> </td> <td data-bbox="971 1125 1430 1892"> <p><i>Before the Final Acceptance Date, the greater of:</i></p> <p>(a) D&C Work value – PennDOT costs to complete and Extra Work/Delay Cost amounts paid out but not yet expended; and</p> <p>(b) 80% of Project Debt – unfunded Committed Investment – Project account balances – Extra Work/Delay Cost amounts paid out but not yet expended – excess insurance proceeds.</p> <p><i>After the Final Acceptance Date:</i></p> <p>80% of Project Debt – unfunded Committed Investment – Project account balances – Extra Work/Delay Cost amounts paid out but not yet expended – excess insurance proceeds.</p> </td> </tr> </tbody> </table>	<u>Termination Event</u>	<u>Termination Compensation</u>	<p>PennDOT Convenience; PennDOT Default; Suspension of Work</p>	<p>Project Debt + the net present value of equity distributions (as projected in the initial “base case” Financial Model), discounted at the Original Equity IRR – unfunded Committed Investment + redundancy payments + contractor breakage and demobilization costs – Project account balances – previously paid CE/RE amounts related to the termination event – excess insurance proceeds</p>	<p>Development Entity Default</p>	<p><i>Before the Final Acceptance Date, the greater of:</i></p> <p>(a) D&C Work value – PennDOT costs to complete and Extra Work/Delay Cost amounts paid out but not yet expended; and</p> <p>(b) 80% of Project Debt – unfunded Committed Investment – Project account balances – Extra Work/Delay Cost amounts paid out but not yet expended – excess insurance proceeds.</p> <p><i>After the Final Acceptance Date:</i></p> <p>80% of Project Debt – unfunded Committed Investment – Project account balances – Extra Work/Delay Cost amounts paid out but not yet expended – excess insurance proceeds.</p>
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	<p>Extended Relief Event/Delayed NTP2; Court Ruling; Insurance Unavailability</p>	<p>Project Debt + cash funded Committed Investment (less any Distributions received as of the termination event) + redundancy payments + contractor breakage and demobilization costs – Project account balances – previously paid CE/RE amounts related to the termination event – excess insurance proceeds.</p>
	<p>Failure of Financial Close (no fault of the Development Entity)</p>	<p>Allowed Costs (as defined under the PDA as pertains to the Project) + the Development Entity’s documented, actual, reasonable, external and internal incurred costs (without overhead or profit) for work performed during the time period between the Effective Date and the effective date of early termination.</p>
<p>Liquidated Damages</p>	<p>The following liquidated damages may be assessed by PennDOT with no cap on damages:</p> <ul style="list-style-type: none"> • \$[]/[NTD: placeholder for substantial completion LDs], dollars per day for delay in reaching Substantial Completion by the Baseline Substantial Completion Date. • \$[]/[NTD: placeholder for final acceptance LDs] dollars per day for delay in Final Acceptance beyond the Final Acceptance Deadline with no cap on damages. • Liquidated damages for the Development Entity’s failure to furnish, make available, or replace certain Key Personnel and certain Required Personnel, including a base amount applicable to each position, and further liquidated damage in the amount of \$[] for such Key Personnel and \$[] for such Required Personnel, in each case and as applicable, will be payable for each three month period where such position is vacant or not filled in accordance with the Project Agreement. • Liquidated damages for certain Development Entity-caused Lane Closures.²⁴ 	
<p>Indemnification</p>	<p>The Development Entity to indemnify PennDOT, the Commonwealth, and their respective employees, commissioners, and officeholders for claims, losses, third-party claims, and third-party losses, claims arising out of, relating to, or resulting from its:</p>	

²⁴ Under continuing PennDOT development.

	<ul style="list-style-type: none"> • Defects and errors; • Grossly negligent; reckless, willful, or intentional misconduct; • Illegal activities; • Breach of the Project Agreement (third-party losses, claims only), breach of contract between a Development Entity-Related Entity and a third party; • Release of hazardous materials; • Failure to comply with applicable laws or governmental approvals; and • Certain other third-party claims (including claims arising out of, relating to, or resulting from the Development Entity’s reliance upon, or use of, any RIDs (or information embodied therein) that had been prepared by, on behalf of, or for PennDOT as relates to the Project, even where such use (but not reliance) was permitted by PennDOT), <p>as well as certain other events set forth under the Project Agreement, subject to the following restrictions and exclusions:</p> <ul style="list-style-type: none"> • The sole negligence; recklessness, willful, or intentional misconduct (excluding intentional Development Entity Default); illegal activities (or inaction); fraud; criminal conduct; bad faith; violation or breach of contract; or arbitrary or capricious acts on the part of the indemnified party seeking indemnification; • Such indemnified party’s violation of any applicable laws or applicable governmental approvals; • Solely with respect to third-party losses, claims only, any material defect inherent in a prescriptive design, or construction specification included in the Contract Documents that was not drafted or provided by Development Entity under the Project Agreement, but only where, prior to occurrence of the third-party loss, claim, Development Entity 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 Development Entity actually knew of the deficiency, unsuccessfully sought Department’s waiver or approval of a deviation, change, modification, alteration or exception from such specification; or • any Compensation Event or Relief Event.
<p style="text-align: center;">Consequential Damages</p>	<p>PennDOT waives the Development Entity liability for punitive damages or special, indirect or incidental, or consequential damages.</p> <p>The following are agreed to be direct damages or contractual amounts (and in any case, not damages/amounts that have been waived as punitive, special, indirect, incidental, or consequential damages):</p>

	<ul style="list-style-type: none"> • Liquidated damages; • Noncompliance Points/Events-driven adjustments to Availability Payments; • Amounts the Development Entity may be obligated to reimburse to PennDOT under the Project Agreement; • Losses, claims, and amounts (including defense costs) paid under performance security; • Indemnification obligations; • Amounts paid or payable by the Development Entity that are covered by Project insurance policies; • The Development Entity releases of hazardous materials; • Losses arising out of the Development Entity’s/any other Development Entity-Related Entity’s/s’ gross negligence, reckless/willful misconduct, violation of law and other illegal activities (or inaction), violation or breach of governmental approval or contract, criminal conduct, bad faith, intentional misconduct, arbitrary/capricious acts, or fraud; • interest, late charges, fees, transaction fees and charges, penalties and similar charges; and • credits, deductions or offsets that expressly provide to PennDOT against amounts owing the Development Entity.
<p>Title; Risk of Loss</p>	<p>Title to materials and supplies (excluding equipment and tools, except as expressly stated otherwise in the Contract Documents) delivered to the Project site to become property of PennDOT, upon the sooner of (a) incorporation into the Project, or (b) payment by PennDOT pertaining thereto. The Development Entity to retain risk of loss and sole care, custody, and control of such items and shall exercise due care with respect thereto for the PA Term.</p>
<p>OTHER CONTRACT PROVISIONS</p>	
<p>Imputation of the PDA Entity’s work to the Development Entity</p>	<p>For purposes of the Project Agreement, where assessments as to knowledge (actual or imputed) or acts or omissions pertaining to diligence (e.g., Reasonable Investigation as pertains to Utilities, hazardous materials, etc.), the acts or omissions of the PDA Entity shall be imputed to the Development Entity, except as otherwise may be expressly stated in the Contract Documents.</p>
<p>Default Interest</p>	<p>Delinquent and overpayments of Availability Payments and amounts recoverable by PennDOT under the Project Agreement shall generally be subject to the interest rate [no higher than that specified at 41 Pa. C.S. § 201]²⁵, and the Development Entity shall be obligated to pay back the overpayments</p>

²⁵ Pub408 strategy still under PennDOT consideration

	and interest, or PennDOT shall exercise offset rights, as determined by PennDOT.
Representations and Warranties	The Development Entity and PennDOT to provide customary representations and warranties at commercial close to be subject to bring down at financial close.
Dispute Resolution Procedures	Dispute resolution procedures, generally as expressed in the PDA, are applicable to the work under the Project Agreement.
Third-Party Agreements	<p>The Development Entity to perform work delegated under identified third-party agreements within the D&C Amount and as part of the Maintenance Work, and without other basis for relief, as may be applicable to a Package. The Development Entity shall be entitled to seek certain additional costs and relief for changes to any such third-party agreements agreed by PennDOT and the third party thereafter.</p> <p>For the avoidance of doubt, third-party agreements, whether prepared by PennDOT or the PDA Entity, are intended to inform the Package Proposal giving rise to the Project.</p>
DBE Provisions	<ul style="list-style-type: none"> • PennDOT’s DBE program for P3 contracts is based on PennDOT’s DBE Implementation Plan (Pub. 404), as approved by USDOT, and based upon 49 CFR Parts 23 and 26, with certain modifications to accommodate the P3 approach. • The DBE goal will be []% of the total value [of the D&C Work]²⁶. • The Development Entity’s DBE-related obligations, compliance with certain procedures, and subcontracting responsibilities will be based on 49 CFR Part 26. • DBE’s shall perform a “Commercially Useful Function” in accordance with 49 CFR Part 26. • The Development Entity shall use commercially reasonable efforts to promote the use of DBEs in performing Maintenance Work.
On-the-job training (OJT)	<ul style="list-style-type: none"> • Project OJT goal of []²⁷

²⁶ PennDOT (with its Bureau of Equal Opportunity (BEO)) will determine the DBE goal percentage per “package” based on 49 CFR Part 26.51 and 26.53 for all scopes of work determined to have a market of available, ready, willing, and able DBEs. This process is intended to take place during the PDA Entity’s preparation of the Package Proposal.

²⁷ PennDOT (with BEO) will determine number of trainees for each “package” construction Work based on 23 CFR 230.111. This determination is intended to take place during the PDA Entity’s preparation of the Package Proposal.

	<ul style="list-style-type: none"> The Development Entity’s OJT-related obligations, compliance with certain procedures, and subcontracting responsibilities will be based on 23 CFR 230.111.
Diversity Enhancements	<ul style="list-style-type: none"> <u>Transportation Education</u>. For the purposes of getting students interested in the transportation field, the Development Entity shall be required to assure educational outreach is conducted in at least one school district in surrounding counties with significant minority and low income populations as determined by Environmental Justice Equity analyses per bridge location. <u>Community, Economic and Workforce Development</u>. For the purposes of supporting local communities to enhance economic growth per bridge location, the Development Entity shall be required to engage with local community organizations, schools, unions, and CareerLinks to provide community and educational outreach on careers in the transportation field.
Prevailing Wages	The Development Entity shall require payment of prevailing wages (Davis-Bacon).
Prompt Payment; Retainage	Prompt payment obligations, generally as expressed in the PDA, are applicable to the work under the Project Agreement, including with respect to percentages/amounts and timing with respect to payment of retainages.
Separations Act	The Development Entity acknowledge and agrees that the Separations Act, 71 P.S. § 1618, is applicable to the Project.
Subcontractors	<p>Within additional constraints, the Development Entity shall subcontract at least 65% of the D&C Work for the Project.</p> <p>Also within additional constraints, the Development Entity shall perform:</p> <ul style="list-style-type: none"> either with its own organization or through the Development Entity’s identified lead construction contractor, at least 30% of the construction Work (calculated by percentage of the D&C Amount)²⁸ through the Development Entity’s identified lead construction contractor, no more than 35% of the construction Work (calculated by percentage of the construction Work portion²⁹ of the D&C Amount). <p>For avoidance of doubt, determination of compliance with these self-performance and subcontracting requirements is on a Project (i.e., “Package”) basis and not determined relative to the entirety of the Bridges described under the PDA.</p>

²⁸ Please refer to FHWA Form 1273, Sections VI(1) and (5).

²⁹ Package Proposals shall present schedules of values where this is discernible.

<p>Key Personnel and Required Personnel</p>	<ul style="list-style-type: none"> • Certain <u>Key Personnel</u> to be required under the Project Agreement: <ul style="list-style-type: none"> ○ Project Manager; ○ Design-Build Project Manager; ○ Construction Manager, ○ Quality Assurance Manager (QAM); ○ Financing Manager; ○ Lead Design Manager (was not an individual required for identification under the solicitation responses); and ○ <u>Maintenance Manager</u> (was not an individual required for identification under the solicitation responses). • Certain personnel to be additionally required under the Project Agreement (<u>Required Personnel</u>), as identified in the Technical Provisions. • Key Personnel and Required Personnel must be available when required under the Project Agreement and may not be substituted without PennDOT’s approval (excepting for retirement, death, disability, incapacity, or voluntary or involuntary termination of employment). • Liquidated damages may be assessed for unavailability of Key Personnel and Required Personnel under certain circumstances. • Replacements of Key Personnel or Required Personnel either proposed or required as a result of retirement, death, disability, incapacity, or voluntary or involuntary termination of employment must possess, at a minimum, the qualifications and experience required under the Technical Provisions and have such qualifications and experience that is equal to or better than the individual person for whom such replacement is nominated, when the individual person to be replaced assumed such position originally with respect to the Project.
<p>Key Contracts, Other Contracts</p>	<ul style="list-style-type: none"> • The Development Entity shall utilize the firms in the Proposal and those specifically listed in the PennDOT-approved project management plan to fill the following key contractor positions (<u>Key Contractors</u>): <ul style="list-style-type: none"> ○ all prime construction contracts, including the design-build contract; ○ all project or program management services, architectural design, or engineering contracts (including the contract with the lead engineering firm);

	<ul style="list-style-type: none"> ○ all maintenance contracts, including the contract with the lead maintenance contractor; and ○ all other contracts with a single contractor which total in excess of 10% of the Project Agreement amount. ● Key Contracts shall include provisions pertaining to intellectual property licensing to PennDOT no less than the scope of the license provided by the Development Entity to PennDOT, affording PennDOT access to/right of participation in meetings, compelling participation in dispute resolution, permitting assignment to PennDOT, requiring attornment during PennDOT exercise of step-in rights, requiring record-keeping no less than the scope of the Development Entity's record-keeping obligations to PennDOT, compelling compliance with post-termination obligations as a consequence of a termination for convenience of the Project Agreement, imposing Commonwealth prompt payment obligations, and such other terms as the Parties may agree. ● Design-build contracts shall also include express grant to PennDOT for access to draft amendments, restriction amendments pertaining to record-keeping obligations, include "drop-down" of federal requirements, and otherwise shall not adversely affect PennDOT's rights under the Project Agreement relating to Key Contracts. ● Refer to row "Federal and Commonwealth Requirements" regarding the federal requirements, including specifically that compliance with FHWA Form 1273 shall be a part of all Key Contract and drop-down contracts.
Assignment	<ul style="list-style-type: none"> ● The Development Entity may not assign without PennDOT's prior written consent (with certain exceptions for affiliates and lenders). ● PennDOT may assign without the Development Entity's consent, to any a party that (i) succeeds to the governmental powers and authority of PennDOT, and (ii) has the sources of funding for the Availability Payments at least as adequate as PennDOT's.
Change of Control	<ul style="list-style-type: none"> ● The Parties acknowledge and agree that no less than 51% of the equity ownership of the Development Entity shall be held by the equity members of the PDA Entity (until two years following the Final Acceptance Date). ● Subject to exceptions, and without limiting the foregoing regarding 51% equity ownership of the Development Entity, no Change of Control prior to the second anniversary of the Final Acceptance Date, without PennDOT approval in its sole discretion, it being agreed that within the definition of "Change of Control," there are certain changes of control or transfers that are expressly excluded from the definition and therefor not bound by this prohibition.

<p>Characterization of Actions</p>	<ul style="list-style-type: none"> • A reasonable act shall be binding unless disputed or legally challenged, where permitted under the Project Agreement, and found to be unjust, in appropriate, lacking sound judgment, not sensible, or otherwise unfair • An act in good faith shall be binding unless disputed or legally challenged where permitted under the Project Agreement and found to be arbitrary or capricious • An act exercising sole discretion shall not be subject to dispute or other legal challenge
<p>Time of Essence</p>	<p>Subject to exceptions, time to be generally of the essence with respect to (a) time periods and limitations for formal communications and submittals, and (b) the time periods, limitations, and milestones (including milestone deadlines) in the Baseline Project Schedule or identified under the Contract Documents.</p>
<p>Independent Contractors</p>	<p>The Development Entity is an independent contractor, and the Project Agreement shall not be construed as creating an employment or partnership relationship between PennDOT and the Development Entity (or its employees or agents).</p>
<p>Governing Law/Venue</p>	<p>The Project Agreement shall be governed by the laws of the Commonwealth. The Development Entity to consent to the jurisdiction of the courts of the Commonwealth.</p>
<p>Survival</p>	<p>The Parties' representations, covenants, warranties, and the Project Agreement's provisions regarding dispute resolution, escrowed documents, indemnification, any hazardous materials releases by or attributable to Development Entity, express obligations of the Parties following termination, the Development Entity's payment obligations to PennDOT, and all other provisions that by their inherent character should survive the termination of the Project Agreement to survive such termination.</p>
<p>CONFIDENTIALITY/INTELLECTUAL PROPERTY</p>	
<p>Right-to-Know Law</p>	<p>All books, records, and other materials in PennDOT's possession, and in the Development Entity or its affiliate's possession or control, to be subject to requests for records under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, as may be amended. Development Entity or its affiliates will receive notice and participate in PennDOT's review of records to determine what may be public under the Pennsylvania Right-to-Know Law or Section 9111 of the P3 Law, 74 Pa. C.S. § 9111.</p>
<p>Proprietary Intellectual Property</p>	<p>The Development Entity to maintain possession of, but grant PennDOT a perpetual, non-exclusive, and irrevocable license to use, reproduce, modify, adapt and disclose, and sublicense to others, the proprietary intellectual property of the Development Entity to be used in providing the Work (subject to restrictions on use).</p>

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

<p>Project Intellectual Property</p>	<p>PennDOT to own the rights and copyright to all intellectual property generated in connection with the Project.</p>
<p align="center">COMMONWEALTH AND FEDERAL REGULATORY AND PUBLIC POLICY</p>	
<p>Federal and Commonwealth requirements</p>	<p>The Development Entity shall comply and require its contractors, subcontractors and, when applicable, suppliers to comply, with all federal requirements applicable to transportation projects that receive federal credit or funds, many of which are expressly set forth in the Project Agreement.</p> <p>In addition to those expressly mentioned elsewhere in this Term Sheet, the Development Entity shall comply and require its contractors to comply with Commonwealth requirements applicable to transportation projects.</p> <p>The foregoing (federal- and Commonwealth-related) includes, but is not limited to, Title VI assurances, nondiscrimination, audit, lobbying, contractor integrity, contractor responsibility, and ADA provisions.</p>

EXHIBIT A

DEFINITIONS

The following select the Project Agreement definitions are as set forth below. Capitalized terms used, but not defined, in this Exhibit A have the meanings ascribed in this Term Sheet (as noted by capitalized/underlined words in their initial use). Note that the Parties' intent is that the terms below will be defined as such in the Project Agreement, with only such additional edits as to conform to the greater detail within the Project Agreement (e.g., section references, use of other defined terms not listed here but in the Project Agreement, etc.).

“Abandonment” means that the Development Entity abandons all or a material part of the Project, which abandonment shall have occurred if either (a)(i) the Development Entity does not commence to perform the Work in a material way, as determined in PennDOT's good faith discretion, or (ii) no significant Work (taking into account the then-current, stasured, Baseline 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) the Development Entity or any major³⁰ 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, construct, or maintain any or all of the Project, (c) the Development Entity or any major 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 the Project Agreement, (ii) during the pendency of, and without final determination under, any dispute resolution procedures, or (iii) not in good faith; or (d) any anticipatory Abandonment, as determined in PennDOT's reasonable discretion.

“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 the Development Entity consistent with and reflecting the PDA Proposal's schedule and milestone schedule, as and when such Baseline Project Schedule has been accepted by PennDOT.

“Change in Costs” has the meaning given in Exhibit B to this Term Sheet.

“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 the Development Entity 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 an equity member may constitute a Change of Control of the Development Entity if such equity member possesses the power to direct or control or cause the direction or control of the management of the Development Entity. 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 the Development Entity or a material aspect of its business due to a bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

³⁰ “Major” contractor to be defined specifically as the entities and individuals named as part of the PDA Entity's PDA Proposal (which shall include specifically all “Major Team Members” and Key Personnel (PDA Work and Work under the Project Agreement)).

(b) a change in possession of the power to direct or control the management of the Development Entity or a material aspect of its business due to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of an equity member (but not if equity 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 Commonwealth department or agency;

(c) an upstream reorganization or transfer of direct or indirect interests in the Development Entity 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 the Development Entity;

(d) an equity transfer, where the transferring equity member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(e) the exercise of minority veto or voting rights (whether provided by applicable law, by the Development Entity's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Development Entity; or

(f) the grant of security documents, in strict compliance with the Project Agreement, or the exercise of lender remedies thereunder, 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.

“Committed Investment” means:

(a) Any form of direct investment of good and immediately available funds by equity members, including the purchase of equity shares in and/or the provision of subordinate debt to the Development Entity; or

(b) An irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, in good and immediately available funds, by a date which is no later than the Final Acceptance Date, coupled with an on-demand letter of credit issued by or for the account of an equity member naming the Development Entity as beneficiary and guaranteeing such commitment.

“Conditions to Assistance” means evidence reasonably satisfactory to PennDOT that:

(a) the subject Utility Adjustment is necessary;

(b) the time for completion of the Utility Adjustment in the Baseline Project Schedule was, at its inception, a reasonable amount of time for completion of such work;

(c) Development Entity has made diligent efforts to obtain the Utility Owner's cooperation;
and

(d) the Utility Owner is not cooperating.

“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 individuals only), partners, employees, agents, representatives, consultants, attorneys, contractors, successors, and assigns.

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

“Construction Period” means the period commencing at issuance of NTP3 and ending upon the effective date of Final Acceptance.

“Contract Documents” means, generally, the Project Agreement, the Technical Provisions, certain commitments from the PDA Entity’s Package Proposal, and the accepted and then-current Project Management Plan, as each may be amended.

“Controlling Work Item” means the activity or work item on the critical path of the D&C Work having the least amount of float.

“CPI-U or CPI” means CPI for All Urban Consumers (BLS Series ID CUUR0000SA0) as published by the Bureau of Labor Statistics using a reference year of 1982-84 that equals 100.0 or, if such index in its present form becomes unavailable, such similar index as may be agreed by the Parties, acting reasonably. If such index is revised so that the base year differs from that set forth above, the “Inflation Index” shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

“D&C Amount” means firm, fixed price for the D&C Work.

“D&C Period” means the period commencing at issuance of NTP1 and ending upon the effective date of Final Acceptance.

“D&C Work” means the Design Work and the construction Work (including maintenance during design and construction).

“Defect” means any Work that (a) does not conform with the Contract Documents, or (b) 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:

- (i) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;
- (ii) a structural deterioration of the affected part of the Work or portion of the Project;
- (iii) damage to a third party or a third party’s property or equipment;
- (iv) damage to the Environment; or
- (v) failure of a part of the Work or portion of the Project to meet a performance requirement.

“Delay Costs” has the meaning given in Exhibit B to this Term Sheet.

“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, regardless as to whether included in the Design Work or other 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 Work” means (a) all Work of design, redesign, engineering, (b) design activities relating to Utility Adjustment Work, and (c) design activities relating to railroad-related Work. “Design Work” includes maintenance during design and construction, as applicable, development of the Design Documents, and performance of the design-related quality management. “Design Work” also includes activities (such as subsurface utility investigations and geotechnical investigations) incidental to Design Work.

“Development Entity-Related Entities” means (a) Development Entity, (b) the Development Entity’s equity members, (c) Development Entity’s contractors, subcontractors, and suppliers (and such contractors’, subcontractors’, and suppliers’ respective contractors, subcontractors, and suppliers), in each case performing any part of the Work for or on behalf of the Development Entity, (d) any other person or entity performing any of the Work, (e) any other person or entity for whom the Development Entity may be legally or contractually responsible, and (f) the employees, members, managers, officers, directors, share/stockholders (closed corporations only), partners, agents, representatives, successors, or assigns of any of the foregoing clauses (a) to (e) of any of the foregoing, to the extent not included within the foregoing clauses (a) to (e); and (g) Affiliates of the Development Entity (including the PDA Entity); provided, however, that no PennDOT-Related Entity, acting under or relating to the Work, shall be considered a Development Entity-Related Entity.

“Discriminatory Maintenance Change” means (a) materially more onerous application to the Development Entity or the Project of alterations or changes (including additions) to the Technical Provisions and safety standards relating to the Maintenance Work than the application thereof to other comparable PennDOT projects, or (b) selective application of alterations or changes (including additions) to the Technical Provisions and safety standards relating to the Maintenance Work to the Development Entity or the Project and not to other comparable PennDOT projects. Notwithstanding the foregoing, such application in response to any negligence, willful misconduct, or breach of applicable law, governmental approval or contract by the Development Entity or any the Development Entity-related entity shall not be Discriminatory Maintenance Changes.

“Distributions” means, whether in cash or in kind, any:

- (a) dividend or other distribution with respect to share capital;
- (b) reduction of capital, redemption, or purchase of shares or any other reorganization or variation to share capital;
- (c) payments made by the Development Entity under the Package Equity Member Funding Agreement (whether of principal, interest, breakage costs, or otherwise);
- (d) payment, loan, contractual arrangement, or transfer of assets or rights directly to the extent that, in each case, it was put in place after financial close and was neither in the ordinary course of business nor on reasonable commercial terms;
- (e) receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms; or
- (f) the early release or cancellation of any contingent debt or equity funding liabilities of the Development Entity, the amount of such release or cancellation being deemed a Distribution for the purpose of calculating any Refinancing gain.

“Effective Date” means the date as of which the Project Agreement is executed by both Parties.

“**Equity IRR**” means the nominal post-tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full PA Term calculated, using the Financial Model, as the discount rate that, when applied to the cash flows of the Committed Investment and Distributions, gives a zero net present value. The Equity IRR produced by the Financial Model as updated to reflect financial close will be the “Original Equity IRR”. For purposes of this definition:

(a) The phrase “post-tax” refers only to U.S. federal and state/Commonwealth income tax liability of the Development Entity or its equity members and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any withholding tax, including any tax that the Development Entity or an equity member is obligated to withhold on distributions (whether actual or constructive) or other payments or allocations to equity members or holders of debt of or equity interests in an equity member under 26 U.S.C. §§ 1441 — 1446, notwithstanding 26 U.S.C. § 1461; and

(b) The phrase “cash flows” refers to Distributions (when received by the Development Entity), minus Committed Investment (when cash funded by the Development Entity). For the avoidance of doubt, the Equity IRR should be calculated on a cash-on-cash basis.

“**Exempt Refinancing**” means:

(a) Any refinancing that was fully and specifically identified and taken into account in the Financial Model and calculation of the Base MAP (excluding planned refinancings for TIFIA or PABs);

(b) Minor and non-monetary amendments, modifications, supplements, or consents to funding agreements and security documents, excluding extensions and renewals, and the exercise by a lender to the Development Entity of rights, waivers, consents and similar actions, in the ordinary course of day-to-day administration and supervision of the funding agreement(s) or security document(s) that do not, individually or in the aggregate, provide a financial benefit to Development Entity;

(c) Movement of monies between Project accounts in accordance with the terms of the funding agreement(s);

(d) Any of the following acts by a lender of senior lien priority project debt:

(i) The syndication of any of such lender’s rights and interests in the senior funding 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 the senior funding agreements in favor of any other lender of senior lien Project debt or any other investor; or

(iii) The grant by such lender of any other form of benefit or interest in either the senior funding agreements or the revenues or assets of Development Entity, whether by way of security or otherwise, in favor of any other lender of senior lien Project debt or any investor; or

(e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and that are money market eligible under SEC Rule 2a-7.

“**Existing Improvements**” means the existing highway, bridge, and related improvements as of the date of the Package Proposal within the required permanent real property rights included in the Package Proposal

(and, in any event, not additional real property rights) that, as and when acquired, will comprise part of the Project ROW.

“**Extra Work**” means any Work in the nature of additional work, altered work or deleted work which is directly attributable to occurrence of a Compensation Event and absent such Compensation Event would not be required by the Contract Documents.

“**Extra Work Costs**” means the incremental increase in the following costs of the Development Entity directly attributable to Extra Work:

- (a) Labor and burden costs;
- (b) Material and supply costs;
- (c) Equipment costs;
- (d) Indirect costs and expenses excluding cost of funds (whether debt or equity) and excluding lender charges, damages, and penalties; and
- (e) Profit.

“**Final Acceptance**” means, generally, the milestone following Substantial Completion, further to which certain events have occurred and criteria have been satisfied, and when confirmed by PennDOT, evidenced by a certificate from PennDOT to the Development Entity.

“**Final Acceptance Date**” means the effective date of Final Acceptance.

[“**Flood**” means a “flood” (as defined by the Federal Emergency Management Agency) where flood waters at the Project limits reach [two] or more acres measured, at or in excess of: (a) for the period commencing on the Effective Date up to and including the earlier of (i) the Substantial Completion Date and (ii) early termination of the Project Agreement, NAVD88 Elevation [_____] **[NTD: to be determined on a bridge-by-bridge basis under the PDA]** (or its equivalent, successor measurement); or (b) for the period commencing the day subsequent to the Substantial Completion Date up to and including the end of the Term, NAVD88 Elevation [_____] **[NTD: to be determined on a bridge-by-bridge basis under the PDA]** (or its equivalent, successor measurement), in each case as such measurement is officially determined and recorded by the U.S. National Oceanic and Atmospheric Administration’s National Weather Service for the geographic region that includes the Project limits.]

“**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, maintenance contractor, or other contractor:

- (a) performing work such as the Work;
- (b) that seeks in good faith to comply with its contractual obligations (i.e., with respect to the Project, complying with the Contract Documents) and all applicable laws and governmental approvals;
- (c) that
 - (i) with respect to design or engineering matters, uses the skill, care, diligence, and professional standards ordinarily used by similarly-situated design or engineering professionals;

(ii) 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 Commonwealth; or

(iii) with respect to maintenance matters, uses the skill, care, diligence, and professional standards ordinarily used by similarly-situated maintenance contractors; and

(d) that seeks to perform such work in a manner commensurate with standards of safety, performance, dependability, efficiency, and economy as would other skilled and experienced designers, engineers, constructors, maintenance contractors, or other contractors, as applicable, engaged in the same type of undertaking:

(i) in the United States;

(ii) under similar circumstances and conditions (including environmental conditions);
and

(iii) 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, solutions, etc., to the exclusion of all others, but rather a spectrum of possible, but reasonable, practices, methods, solutions, etc., having due regard for, among other things, contractual and legal obligations as well as manufacturers' requirements and warranties. Without limiting the foregoing, neither the existence of a particular design, construction, or maintenance practice, method, or solution on a completed Commonwealth project, prior acceptance or approval by PennDOT on any such other completed Commonwealth project, nor contemporary acceptance or approval by PennDOT on any other Commonwealth project not yet completed shall be, nor shall be deemed to be, conclusive as to whether a particular design, construction, or maintenance practice or solution constitutes Good Industry Practice; provided, however, that any such prior acceptance or approval may be asserted as evidence of Good Industry Practice, it being understood and agreed by the Parties that such prior acceptances or approvals may have been given for reasons other than PennDOT's assessment that such practices, methods, or solutions constituted Good Industry Practice.

"Institutional Lender" means:

(a) The United States of America, any state or commonwealth 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, development, operation and maintenance of projects;

(b) Any (i) bank, trust company (whether acting individually or in a fiduciary capacity), savings and loan organization or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States of America or any state or commonwealth thereof, or (iii) pension fund, foundation or university or college endowment fund (provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state/commonwealth and federal courts in the Commonwealth in any actions);

(c) Any "qualified institutional buyer" under Rule 144(a) under 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; or

(d) Any other financial institution or entity designated by the Development Entity and approved in writing by PennDOT (provided that such institution or entity, in its activity under the Project Agreement, is acceptable under then current guidelines and practices of PennDOT);

provided, however, that each such entity (other than entities described in clause (c) and clause (d) 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 \$[1 billion]. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

“Lane Closure” means that for any duration of time all or part of any traffic lanes, ramps, direct connectors or cross roads or shoulders – including those approaching or on bridges – are closed or blocked, or that the use thereof is otherwise restricted, unless the reason therefore is otherwise permitted by the Project Agreement. Lane shifting activities that do not decrease the number of lanes available are not “Lane Closures.”

“Maintenance Limits” means that portion of the Project Limits within which the Development Entity is obligated to perform Maintenance Work during the Maintenance Period.

“Maintenance Period” means for the period starting on the Final Acceptance Date and ending at the end of the PA Term.

“Maintenance Work” means any and all maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including scheduled maintenance work, Rehabilitation Work and Handback Requirements work, during the Maintenance Period.

“Maximum Availability Payment” means the Maximum Availability Payment that the Development Entity can earn in a given fiscal year from and after the Final Acceptance Date, calculated in accordance with the formula set forth under the Project Agreement, and as may be further adjusted in accordance with the Contract Documents.

“Non-Discriminatory Maintenance Change” means any alteration or change (including addition) to provisions in the Technical Provisions and safety standards relating to the Maintenance Work of general application to PennDOT transportation facilities, including revision to manuals, publications and guidelines, adoption of new manuals, publications and guidelines, changed, added or replacement standards, criteria, requirements, conditions, procedures and specifications, including safety standards, relating to Maintenance Work of general application to PennDOT transportation facilities.

“Package Proposal” has the meaning given in the PDA.

“Party” or **“Parties”** means either or both of PennDOT and the Development Entity.

“PDA Entity” means PennDOT’s counterparty under the PDA, an affiliate of the Development Entity.

“PDA Work” means the scope of the work of the PDA Entity under the PDA, as pertains to the Project (or otherwise as context may require).

“PennDOT-Caused Delay” means any of the following events 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 then-current critical path (as of the date of the event):

- (a) failure of PennDOT to issue NTP1 and/or failure to issue NTP2;
- (b) issuance of a directive letter that requires the Development Entity to perform additional Work or causes an actual, material increase to the costs to perform the Work;
- (c) failure of PennDOT to obtain (but not to maintain) the PennDOT-provided governmental approvals;
- (d) failure of PennDOT to provide:
 - (i) with respect to any complete, compliant Type 3 Submittal for which a response period is specified in the Submittal Requirements Database, a response to such Type 3 Submittal within the time period determined under the Project Agreement, subject to the Development Entity complying with its obligation to notify PennDOT of its failure to timely respond; and
 - (ii) with respect to any complete, compliant Type 2 Submittal, a response to such Type 2 Submittal within the time period determined under the Project Agreement, subject to the Development Entity complying with its obligation to notify PennDOT of its failure to timely respond; and
- (e) failure of PennDOT to provide the required right of way, temporary construction easements, and other real property rights by the dates identified in the Package Proposal;
- (f) the occurrence of a PennDOT hazardous materials release;
- (g) certain special events impacting work, if PennDOT either does not provide or provides notice to the Development Entity less than 30 days prior to the event or, in the case of PennDOT's obligations solely respecting the financial closing, []³¹ days prior to the event **NTD: not to exceed 60 days**;
- (h) PennDOT's extension of the date for financial close or an extension of the date for financial close due to a delay in the effective date of the Project Agreement, for the period commencing on the first day after the original date for financial close until the date of financial close set forth in the PennDOT's notice of such delay;
- (i) damage to the Project directly caused by PennDOT;
- (j) re-evaluation, modification, or supplement to any PennDOT-provided governmental approval issued by PennDOT acting in its capacity as a governmental entity, where such re-evaluation, modification, or supplement is not caused by any Development Entity-Related Entity; or
- (k) any other event that the Contract Documents expressly state shall be treated as a PennDOT-Caused Delay.

“PennDOT-Related Entities” means (a) PennDOT, (b) any other person or entity for which PennDOT may be legally or contractually responsible, and (c) the Constituents of any of the foregoing; provided, however, that no Development Entity-Related Entity, acting under or relating to the Work, shall be considered a PennDOT-Related Entity.

“Persistent Breach” means any breach of the Project Agreement other than (a) any breach for which a Noncompliance Point could not have been assessed, and (b) a breach that arises as a direct result of the

³¹ To be determined in connection with the proposed financing plan.

occurrence of a Compensation Event or a Relief Event that, in either case, (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 PennDOT gave a warning notice.

“Project” means the one or more “Bridges” (as defined in the PDA) that comprise a Package (also as defined in the PDA), the design, construction, financing, and maintenance of which is the subject of the Project Agreement. The “Project” is not the program of Bridges to be “packaged” pursuant to the PDA.

“Project Debt” means bona fide indebtedness (including subordinated indebtedness) for or with respect to funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more security documents. Project Debt includes principal, capitalized interest, default interest (when caused by PennDOT), accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and breakage costs and any other amounts, in each case, owing or outstanding to Institutional Lenders, including any prepayment costs or other make-whole amounts. Project Debt excludes any indebtedness of the Development Entity or any shareholder, member, partner or joint venture member of the Development Entity that is secured by anything less than the entire the Development Entity’s interest, such as indebtedness secured only by an assignment of economic interest in the Development Entity or of rights to cash flow or dividends from the Development Entity. Project Debt also excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement the Development Entity enters into or first becomes obligated to repay after it was aware of the occurrence or prospective occurrence of an event of termination, including the Development Entity’s receipt of a notice of termination for convenience. In addition, no debt shall constitute Project Debt unless the collateral agent or the Development Entity provides PennDOT with notice thereof and the related funding agreements and security documents. Subject to the foregoing exclusions, Project Debt includes the PABs and obligations arising thereunder and TIFIA loans, guaranties and credit support, and obligations arising thereunder.

“Project Standards” means those standards, manuals, and guidelines, policies, details, specifications (including portions of PennDOT’s design manual and construction specifications), and special provisions set forth in the Technical Provisions 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, standards pertaining to Utility Adjustment Work not listed in the Technical Provisions as “Project Standards” are not Project Standards.

“Reasonable Investigation”³² means the following activities by appropriate, qualified professionals prior to the Setting Date, in each case as is diligent and thorough, exercising due care and skill and Good Industry Practice in the same or equivalent circumstances:

- (a) Visit and visual inspection of the existing ROW and, to the extent not included therein, the planned Project ROW and adjacent locations, except areas to which access rights have not been made available by the Setting Date;
- (b) Review and analysis of all RIDs;

³² PDA Work will include site investigation work (e.g., Phase I, Phase II, etc.)

- (c) Review and analysis of the PennDOT-provided environmental approvals³³ and other documents available prior to the Setting Date;
- (d) Review and analysis of public and accessible private records;
- (e) (i) with respect to the first Package, inquiry with stakeholders and other third parties expressly identified by PennDOT to the Development in the Project Agreement and review of publicly-accessible and Utility Owner documents made available by PennDOT to the Development Entity or the PDA Entity prior to the Setting Date; or (ii) with respect to all other Packages, inquiry with potentially-impacted stakeholders and other third parties, including review of publicly-accessible and Utility Owner documents, and exercising good faith effort to obtain other private information relevant to the Work;
- (f) Review and analysis of laws applicable to the Project or the Work as of the Setting Date;
- (g) Performance, review and analysis of Site Investigations within the existing ROW and, to the extent not included therein, the planned Project ROW, except areas to which access rights have not been made available by the Setting Date; and
- (h) To the extent not subsumed under any of the foregoing clauses, perform such other activities to familiarize, or impute to, the Development Entity and the PDA Entity with surface and subsurface conditions, including the presence of Utilities, hazardous materials, archaeological, paleontological and cultural resources or artifacts, and threatened or endangered species, affecting the Site or surrounding locations;

except that none of the foregoing activities includes original research of private records not contained or referenced in the Contract Documents or RIDs.

“Refinancing” means:

- (a) Any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, funding agreement or security document (other than any subordinate debt);
- (b) The issuance by Development Entity of any indebtedness in addition to the initial Project Debt, secured or unsecured;
- (c) The disposition of any rights or interests in, or the creation of any rights of participation with respect to, Project Debt, funding agreements and security documents or the creation or granting by Development Entity or any lender of any other form of benefit or interest in either Project Debt, funding agreements and security documents or the Development Entity’s interest under the Project Agreement whether by way of security or otherwise; or
- (d) Any other arrangement put in place by Development Entity or another person or entity which has an effect similar to any of clauses (a) through (c) above.

“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 Technical Provisions.

³³ PDA precludes submission of a Package Proposal without NEPA approvals.

“**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.

“**Setting Date**” means (a) with respect to the first Package, August 1, 2022, and (b) the date of the submission of the Package Proposal by the PDA Entity, as such term is defined under the PDA.

“**Substantial Completion**” means, generally, the milestone indicating completion of the Work, where certain events have occurred and criteria have been satisfied, and when confirmed by PennDOT, evidenced by a certificate from PennDOT to the Development Entity.

“**Substantial Completion Date**” means the effective date of Substantial Completion.

“**Technical Provisions**” means the “Pennsylvania Department of Transportation Technical Provisions for DBFM Agreement [Project Name],” **[NTD: actual title may change]** dated as of the Effective Date, as such documents that comprise the Technical Provisions may individually or collectively be changed, added to or replaced pursuant to the Contract Documents. The Technical Provisions include all identified Project Standards, safety standards, attachments that are particular to the Project, as well as other standards, criteria, requirements, conditions, procedures, specifications and other provisions set forth in the manuals and documents identified therein.

“**Unidentified Utility Facility**” means any Utility present on the required right of way (but not as relates to temporary construction easements and other real property rights) as of the date such permanent real property rights (to comprise part of the Project ROW) are provided by PennDOT to the Development Entity, where such Utility was not reflected within the Utility Information, in each case excluding any Utility that:

- (a) was installed on a part of such portion of the required right of way after access was granted to the Development Entity;
- (b) would not have been discovered with a Reasonable Investigation; or
- (c) is a Service Line.

If any discrepancy exists between the information provided by one component of the Utility Information and that provided by any other component of the Utility Information, only the more accurate information shall be relevant for purposes of this definition.

“**Utility**” means a privately, publicly, or cooperatively owned line, facility, or system for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, a combined storm water and sanitary system, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems, which directly or indirectly serve the public. However, the term Utility excludes (a) streetlights and traffic signals, (b) ITS (intelligent transportation systems) and IVHS (intelligent vehicle highway systems) facilities as well as any other line, facility, or system that would otherwise meet this definition that is owned by PennDOT, and (c) facilities owned by any railroad. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any service line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service line.

“**Utility Adjustment**” means, generally, each relocation (temporary or permanent), abandonment or dormancy, “protection in place”, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, maintenance and/or use of the Project or the Work; provided, however, that the term Utility

Adjustment shall not refer to any of the Work associated with facilities owned by any railroad. The Utility Adjustment Work for each crossing of the Project by a Utility that crosses the Project more than once shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project, the Utility Adjustment Work for each continuous segment of that Utility shall be considered a separate Utility Adjustment.

“Utility Adjustment Work” means all efforts and costs necessary to accomplish the required Utility Adjustments during the Construction Period, including all design and construction Work but excluding Utility Coordination and Investigation Work, whether provided by PennDOT, Development Entity, or by the Utility Owners. For the avoidance of doubt, Utility Adjustment Work includes work the Utility Owner incorporated into the Utility Adjustment Work.

“Utility Coordination and Investigation Work” means design review, permitting, investigation, inspection, record-keeping and maintenance of records, and coordination with Utility Owners regarding Utilities, as relates to Utility Adjustment Work.

“Utility Information” means the information pertaining to Utility location provided by, or on behalf of, the Development Entity and identified within the approved Package Proposal.

“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 entities (including, without limitation, PennDOT)).

“Warranty Period” means a period of the later of (a) one year from the date of Final Acceptance of the entirety of the D&C Work, (b) such longer periods as required pursuant to the Contract Documents (e.g., vegetation establishment), and (c) the period agreed under (i) certain third-party agreements (as relates to relevant Work), if any, (ii) agreements with railroads (as relates to relevant Work), and (iii) Utility agreements (as relates to Utility Adjustment Work).

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

Terms for which definitions are used in this Term Sheet (and which will be refined in the Project Agreement):

Availability Payments (Maintenance Period)
Base Maximum Availability Payment (Base MAP)
Baseline Substantial Completion Date
Compensation Event (CE)
Development Entity
Development Entity Default
Final Acceptance Deadline
Financial Closing Deadline
Financial Closing Security
Handback Requirements
Handback Requirements Reserve Account
Key Contractor
Key Personnel
Long Stop Date
Noncompliance Event

Noncompliance Points
NTP2 Conditions Deadline
NTP3 Conditions Deadline
PA Term
Parcel
PDA
PennDOT
PennDOT-Retained O&M
Project Agreement
Rehabilitation Work
Rehabilitation Work Schedule
Relief Events (RE)
Required Personnel
SOV
Term Sheet

EXHIBIT B

CALCULATION OF EXTRA WORK COSTS AND DELAY COSTS

1. EXTRA WORK COSTS

Where Extra Work Costs are payable to the Development Entity, the amount of such Extra Work Costs shall be determined based upon either (a) negotiation by the Parties of an agreed upon sum, or (b) force account, pending resolution of any dispute or during negotiation of a change order further to a directive letter.

1.1 Negotiated Sum

Negotiated sum Extra Work Costs shall be agreed upon by the Parties based on estimated costs of labor, materials, equipment, third-party fees/charges, extra insurance, performance security costs, other direct costs, and a reasonable contingency.

1.2 Force Account

When Extra Work Costs are determined on a force account basis, the Development Entity will be compensated for the direct costs of labor, materials and equipment used in performing the Extra Work, plus markup for indirect costs, overhead and profit

2. DELAY COSTS

“Delay Costs” shall be determined that result to Controlling Work Items by calculating (a) the direct costs of actual idle time of labor and owned equipment, so long as the (i) as pertains to equipment, the equipment is on the Project site at the time of the delay and (ii) as pertains to labor and equipment, such idled labor or equipment cannot be used at other locations for the benefit of the Project, (b) the rental rate for idled leased or rented equipment (at the leased or rented rate) for the duration of the delay so long as the equipment is on the Project site at the time of the delay and cannot be used at other locations for the benefit of the Project, (c) actual costs of materials storage during the delay at the invoiced storage cost. Delay Costs that stem from a Relief Event with a related Compensation Event shall be subject to a percentage mark-up of direct costs/labor and idle time of labor and equipment. Delay Costs shall not include any indirect costs, expenses, or lost profit, nor any costs or expenses pertaining to non-Controlling Work Items.

3. LIMITATIONS ON EXTRA WORK COSTS AND DELAY COSTS

Extra Work Costs and Delay Costs attributable to a Compensation Event shall exclude (among other things) third-party entertainment costs, lobbying and political activity costs, unallowable costs under 48 CFR Part 31, affiliate payments unless arms’ length, costs incurred in pursuing any Compensation Event, dispute, taxes, organizational/employment matter costs, costs for rejected and remedial Work, and insurance proceeds including deductibles with respect to cost or revenue impacts of such Compensation Event. Extra Work Costs and Delay Costs attributable to a Compensation Event shall be reduced by any savings in costs resulting therefrom and subject to the Development Entity’s obligation to mitigate.

4. CHANGE IN COSTS

In connection with a Compensation Event (or, as relates to PennDOT-Caused Delays, Relief Events), the Development Entity, in addition to any Delay Costs or Extra Work Costs, will also be entitled to claim (collectively, “Change in Costs”):

4.1 Compliance Costs

Actual and reasonable costs to comply with the requirements of any change order, directive letter, or Compensation Event (without double-counting Extra Work Costs) resulting from a financial model adjustment (but to include the actual and reasonable costs of preparation of design and estimates, including reasonable additional professional services fees).

4.2 Debt Financing Costs

Actual and reasonable costs to the Development Entity to use Project Debt to finance the additional costs of any Compensation Event, including commitment fees, capital costs, interest, and hedging costs, and otherwise any financing pending receipt of payment by PennDOT, to include the actual and reasonable costs to ensure continued compliance with existing financing documents (e.g., obtaining consents, continuing disclosure, etc.).

4.3 Insurance Costs

The actual and reasonable costs to the Development Entity to extend or reinstate in insurance as a result of any claim made under insurance policies placed pursuant to the Project Agreement as a result of a Compensation Event, to include the increase of any deductible or increase in premium under any such insurance policy.

4.4 Increased Maintenance and Lifecycle Costs

Actual, unavoidable, incremental, and reasonable costs to the Development Entity to maintain the Project or to implement the lifecycle program then in place as of the date of the Compensation Event.

4.5 Equity IRR

(PennDOT-Caused Delays only) The actual amount of a “make-whole” to the Development Entity’s Original Equity IRR as a result of the Compensation Event or Relief Event.

EXHIBIT 9

PDA PROPOSAL COMMITMENTS

The below commitments represent commitments of the PDA Entity **as of the date the PDA Entity’s proposal in response to the ITP was submitted to PennDOT, and is subject to adjustment in** accordance with the terms and conditions of this Agreement. Capitalized terms used in the below chart have the meanings ascribed to them in the PDA Proposal.

ID	ITP Section Description	Page Number
	4.6.1(a) Introduction to Proposer’s High-Level Approach to Predevelopment and Packaging (Page Limit: 5 Pages)	
	Commitments:	
1	PDA Entity’s organizational structure, including (i) Macquarie Infrastructure Developments LLC (Macquarie) and Shikun and Binui Concessions USA, Inc. (SBC) together as PDA Entity, (ii) Shikun & Binui Americas (SBA) and FCC Construcción (FCC) together as Lead Construction Contractor as Lead Engineering Firm, shall remain the same during the Pre-Development Phase. The same team shall develop both Packages.	Volume 2, PDF Page 10 Section: 4.6.1(a)(ii) Section Page 2
2	PDA Entity’s Management Team (as defined in Section 4.6.1(c)- Preliminary PDA Organization of the PDA Proposal) shall remain consistent throughout the entire Term of this Agreement, with the same leadership and subject matter experts working across the development of both Packages.	Volume 2, PDF Page 10 Section: 4.6.1(a)(ii) Section Page 2
3	Development Entity shall provide a solution that has a single maintenance contractor with a unified maintenance approach across the entire Program, irrespective of the Package.	Volume 2, PDF Page 10 Section: 4.6.1(a)(ii) Section Page 2
4	As a member of the Lead Construction Contractor, FCC shall only perform non-construction activities until either registered or replaced in accordance with this Agreement.	Volume 2, PDF Page 10 Section 4.6.1(a)(ii) Section Page 2
5	PDA Entity shall hold monthly risk management workshops with PennDOT, to jointly update the risk and opportunity tracker (a form of which will be subject to agreement between the Parties) and shall ensure that all relevant risks continue to be identified and that their elimination and minimization stays a core focus of the PDA Work. The risk and opportunity tracker will be a living document used as a tool to follow our PDA Work progress and help plan our de-risking activities.	Volume 2, PDF Page 12 Section: 4.6.1(a)(iii) Section Page 4
6	During the Pre-Development Phase, the PDA Entity, Major Team Members and Key Contractors will self-perform some critical scopes, such as project management, personnel oversight, and design and construction engineering, with in-house and direct-hired labor forces to leverage our teams local engineering and construction expertise.	Volume 2, PDF Page 12 Section: 4.6.1(a)(iv) Section Page 4
7	PDA Entity and its Key Contractors will compete and subcontract other activities whenever possible, such as certain field site investigations or MOT, by getting quotes from at least two pre-qualified suppliers as well as any DBE firm interested in and able to provide such services.	Volume 2, PDF Page 12 Section: 4.6.1(a)(iv) Section Page 4
8	For the Package Work, PDA Entity will reach out to the broader contracting market in Pennsylvania, directly or indirectly, through its large group of nominated subcontractors, to meet the subcontracting requirement of 65-70% of the Package Work as set out in the Project Agreement Term Sheet.	Volume 2, PDF Page 12 Section: 4.6.1(a)(iv) Section Page 4
9	PDA Entity intends to develop a job portal website that will be used to increase targeted outreach to local organizations, and shall work collaboratively with community-based organizations, including Philadelphia Works, who Macquarie is actively working with, to develop new programs where immediate employment opportunities would be established with the Project.	Volume 2, PDF Page 12 Section: 4.6.1(a)(iv) Section Page 4

ID	ITP Section Description	Page Number
	<p>Section 4.6.1(c) Preliminary PDA Organization (Page Limit: 5 Pages) Provide a preliminary roster and organizational chart of the PDA Entity’s staff performing the PDA Work including roles, in alignment with the expectations outlined in Section 2.1.1 of the PDA Work Requirements. Provide a narrative description of the organizational structure including roles, responsibilities, and personnel/staffing to be provided to ensure the PDA Work will be completed within the schedule and defined milestones set forth herein and in this Agreement.</p>	
	<p>Commitments:</p>	
1	<p>PDA Entity shall coordinate the workstreams, and more specifically the Design and Construction and Maintenance workstreams, through Technical Working Groups (TWGs), Bridge Status Meetings, and Management Team Meetings.</p>	<p>Vol 2, PDF Page 34 Section: 4.6.1(c)(ii)(b) Section Page 2</p>
2	<p>Systematic meeting schedules: PDA Entity shall work with PennDOT early in the Pre-Development Phase to establish an agreed schedule for joint standing meetings. Once the schedule is agreed with PennDOT, the PDA Entity shall provide agendas and meeting minutes and set an expectation of consistent attendance.</p>	<p>Vol 2, PDF Page 35 Section: 4.6.1(c)(ii)(d) Section Page 3</p>
3	<p>Co-location: To the extent feasible, PDA Entity and PennDOT, including consultant staff, shall co-locate to streamline interfaces at all organizational levels and build rapport efficiently and rapidly.</p>	<p>Vol 2, PDF Page 35 Section: 4.6.1(c)(ii)(d) Section Page 3</p>
4	<p>Partnering Process: PDA Entity and PennDOT shall implement a formal partnering process, outlined in a partnering charter that describes a common mission, goal, and issue resolution process, including regularly scheduled partnering meetings throughout the Pre-Development Phase facilitated by an external moderator.</p>	<p>Vol 2, PDF Page 35 Section: 4.6.1(c)(ii)(d) Section Page 3</p>
5	<p>Identified Points of Accountability: The following three key individuals shall be responsible for managing specific coordination activities with relevant approval agencies (Design Lead, Alexander Houseal, P.E.; Environmental Compliance Manager, Arik Tapiero; Construction Manager, Greg Yavicoli, P.E.).</p>	<p>Vol 2, PDF Page 35 Section: 4.6.1(c)(ii)(d) Section Page 3</p>
6	<p>Third-Party Coordination and Utility Managers: PDA Entity shall provide a Third-Party Coordination Manager and a Utility Manager, exclusively dedicated to the First Package, who shall be primary contacts with third parties and Utility Owners and (i) develop Project execution plans, third-party coordination work plans and Utility coordination plans; (ii) lead initiation and monthly coordination meetings and (iii) coordinate between the design team and third-party/ Utility Owner.</p>	<p>Vol 2, PDF Page 35 Section: 4.6.1(c)(ii)(d) Section Page 3</p>
	<p>Section 4.6.1(d) Approach to D&C Work Pricing and Maintenance Work Pricing for Packages (Page Limit: 4 Pages) Describe the Proposer’s approach to achieving a firm, fixed price (D&C Work and the net present value, of the Maintenance Work) and costs for each Package in accordance with Sections 12 and 13 of the PDA Work Requirements. This should include preliminary methodologies for the development of a D&C Costing Model and a Maintenance Costing Model and should highlight the Proposer’s strategies for facilitating transparent and collaborative costing processes.</p>	
	<p>Commitments:</p>	
1	<p>Local Nominated Contractors – Joseph B. Fay Co. (Fay), the H&K Group (H&K), Wagman Heavy Civil, Inc. (Wagman) and Kokosing Construction Company, Inc. (Kokosing) shall review designs for feasibility and constructability, analyze alternatives, plan construction means and methods and develop detailed and accurate cost estimates and schedules.</p>	<p>Vol 2, Section 4.5.1(d)(i) PDF Page 107</p>
2	<p>First Draft of D&C Costing Model – Building upon the outputs from the progression of the PDA Work, PDA Entity shall prepare a first draft of the D&C Costing Model within the first 30 days of the Pre-Development Phase for the First Package, and shall update it continuously for all elements, risks and assumptions related to the D&C Work up to submission of the final version with the Technical Package Proposal for that Package.</p>	<p>Vol 2, Section 4.5.1(d)(i)(a) PDF Page 107</p>

ID	ITP Section Description	Page Number
3	Format of First Draft of D&C Costing Model within first 30 days – PDA Entity shall prepare the D&C Costing Model using Microsoft Excel. The Costing Model shall follow the recommendations and procedures outlined in the PennDOT Estimating Manual that are relevant and practical; in the context of a design-build rather than a design-bid-build. PDA Entity’s D&C Cost Model also shall outline the D&C General Conditions and D&C Mark-up costs, the dollar values of which will be derived from the application of the D&C General Conditions Cost and the D&C Mark-up Percentages consistent with the calculation and definitions presented in the ITP.	Vol 2, Section Page 4.5.1(d)(i)(a) PDF Page 107
4	Quantity Take Off – PDA Entity will develop an independent base price using the “quantity take off” method, which will produce a detailed direct costs price based on estimated quantities and unit rate prices for the activities required to produce the work.	Vol 2, Section Page 4.5.1(d)(i)(b) PDF Page 107
5	Unit Price Rate – PDA Entity shall determine unit rate prices on the basis of historical production rates observed on similar projects across Pennsylvania adjusted for location, access conditions, labor considerations, inflation and other considerations unique to that specific Bridge. Detailed calculations may also be performed to determine unit prices in some circumstances.	Vol 2, Section Page 4.5.1(d)(i)(b) PDF Page 108
6	Risk Analysis and Contingency – PDA Entity shall undertake various Excel-based Monte-Carlo simulations to assess the cost and delay impact that each identified Bridge and Package’s risks could have should they materialize, based on each risks’ probability of occurrence, severity of impact, and consideration of all available mitigants. The total amount of contingency included in the D&C Costing Model shall be sized to mitigate and partially cover a combination of impacts arising from potential risk events retained by the Development Entity and D&C Contractor for that Package.	Vol 2, Section Page 4.5.1(d)(i)(b) PDF Page 108
7	D&C Cost Model Process –PDA Entity shall evolve the D&C Costing Model’s level of detail to a high level of granularity as the PDA Work progresses and PDA Entity shares, evaluates and validates the model outputs with PennDOT through an open and transparent process.	Vol 2, Section Page 4.5.1(d)(i)(b) PDF Page 108
8	Gateway Pricing Process – Early in the Pre-Development Phase, PDA Entity shall: (1) reach an agreement with PennDOT regarding whether it is preferable for the gateway pricing approach to be conducted separately for each Bridge or across categories within a Package on a combined Bridges basis for each Package; (2) define each open-book process “gate” which PDA Entity shall use to update the D&C Costing Model and pricing and provide to PennDOT, with all available supporting documentation, for review, evaluation, audit and comment; and (3) detail for each gate the level and format of the information that PDA Entity shall make available to PennDOT, including pricing documentation, calculations, risk analysis, quantifications and assumptions used to determine pricing, which may include PDA Entity’s assumptions related to schedule, composition of equipment spreads, equipment rates, productivity, estimating factors, design and productivity allowance, agreed-upon contingencies, mark-ups and risk analysis along with any other information that PennDOT may require and deem necessary to obtain FHWA approval.	Vol 2, Section Page 4.5.1(d)(i)(b) PDF Page 109
9	Self-perform Maintenance – Development Entity intends to self-perform the maintenance of all Bridges to provide a unified maintenance regime across the Project. Development Entity will engage specialist advisors including, but not limited to, pavement and structural advisors to supplement our in-house team.	Vol 2, Section Page 4.5.1(d)(ii) PDF Page 110
	Section 4.6.1(e) Approach to PDA Partnering and Collaboration (Page Limit: 4 Pages) Describe the Proposer’s partnering approach, including the potential benefits and risks of the approach, and how that will facilitate PennDOT’s understanding and management of Project risks and opportunities during the PDA Term. Provide two relevant examples of P3 projects in the United States or Canada (one during D&C and one during maintenance) that, if managed unsuccessfully, would have risked project viability. Describe how the Proposer previously has employed the planned partnering approach effectively or how the lessons learned from those critical experiences have informed its approach to the Project.	
	Commitments:	
1	PDA Entity shall onboard its partners, including contractors and participating DBE firms, to the appropriate TWGs upon selection. The TWGs will serve as primary forums in which PDA Entity integrates all its specialist consultants, subcontractors, suppliers and other key Project stakeholders. PDA Entity will require the same level of cooperation and engagement from all of its partners.	Vol 2, PDF Page 112 Section: 4.6.1(e)(i)(a) Section Page 1

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ID	ITP Section Description	Page Number
2	PDA Entity's Leadership and Management Team shall remain the same through delivery of each Package, with the team being supplemented over time to meet anticipated requirements.	Vol 2, PDF Page 113 Section: 4.6.1(e)(i)(b) Section Page 2
3	Establish a Kick-Off Meeting: PDA Entity shall organize a kick-off meeting between PennDOT and PDA Entity's Project teams and senior leadership. During this meeting, PDA Entity and PennDOT will shall establish the risk and opportunity register that will be developed and updated on an ongoing basis during the Pre-Development Phase as part of the overall Risk Management Plan	Vol 2, PDF Page 113 Section: 4.6.1(e)(i)(c) Section Page 2
4	Utilize Collaboration Workshops: PDA Entity shall organize and conduct collaboration workshops at least every two months, post Kick-Off Meeting up to closing of the last Package, between PDA Entity, Senior Executive Leadership, Leadership and Management Teams and Management Teams of each party and their PennDOT counterparts. These workshops shall be facilitated by a third-party partnering professional.	Vol 2, PDF Page 113 Section: 4.6.1(e)(i)(c) Section Page 2
5	Utilize Design Field View Submissions: PDA Entity shall utilize design field view submissions to review and evaluate preliminary design and engineering commitments (PIF/NEPA) under field conditions with the involvement of PennDOT district units, central office and other stakeholders to review comments, reach consensus on critical issues, approve a final design for development and identify aspects of the Project requiring special attention in final design development.	Vol 2, PDF Page 113 Section: 4.6.1(e)(i)(c) Section Page 2
6	Utilize a Single Project Document Management System: PDA Entity shall utilize a single project document management system that shall be in place before the PDA Work fully commences for document management and as a conduit for information sharing from Project onset.	Vol 2, PDF Page 114 Section: 4.6.1(e)(i)(c) Section Page 3
7	PDA Entity will favor face-to-face interactions at any time. PDA Entity shall co-locate most of PDA Entity's team at a main project office (currently an STV office) in Harrisburg, 6.5 miles away from PennDOT's office. PDA Entity shall also provide satellite offices in the vicinity of each Bridge, which will be used to host targeted activities, such as local stakeholders' engagement, community and DBE outreach.	Vol 2, PDF Page 114 Section: 4.6.1(e)(i)(c) Section Page 3
	Section 4.6.1(f) Preliminary PDA Quality Management Plan (Page Limit: None) Provide a preliminary PDA Quality Management Plan that outlines how the Proposer will provide quality assurance and quality control during the PDA Term, in accordance with the expectations outlined in Section 2.8 of the PDA Work Requirements.	
	Commitments:	
1	SAI personnel shall train all PDA Entity required staff to ensure that the PDA QMP is understood and followed as intended. These trainings shall start soon after execution of this Agreement and continue incrementally throughout the Pre-Development Phase to train any new hires on the Project and to educate existing staff on major changes included in the PDA QMP. Post training, the staff will be certified to work on the Program and PDA Entity shall maintain an up to date record of all certified staff at all times.	Vol 2, PDF Page 119 Section 4.6.1 (f) Section Page 3
2	The Preliminary PDA Quality Management Plan that PDA Entity submitted as part of the PDA Proposal shall be the basis for the PDA Quality Management Plan that PDA Entity shall submit to PennDOT in accordance with the PDA Work Requirements. PDA Entity shall clearly indicate any changes between the two documents with a redline version.	Vol 2, Starts on PDF Page 122
	Section 4.6.1(g) Approach to PDA Reporting (Page Limit: 3 Pages) Describe the Proposer's approach to reporting, including systems and sample reporting formats for weekly and monthly reports, in alignment with the expectations outlined in Section 2.5.3 of the PDA Work Requirements.	

ID	ITP Section Description	Page Number
Commitments:		
1	For each coordination meeting, PDA Entity shall circulate an agenda before the meeting, with the meeting’s purpose and objectives listed, for review by PennDOT. PDA Entity shall work with PennDOT to ensure that all meetings remain targeted and agenda-focused. For each meeting, PDA Entity shall have a nominated person in charge of circulating the record of attendees and minutes. PDA Entity shall circulate the minutes for comments after the meeting, before finalizing them, to ensure that these documents record an accurate depiction of the interactions and that the action items are understood by all and that the parties will be encouraged to ensure that the right participants attend.	Vol 2, PDF Page 225 Section: 4.6.1(g)(i) Section Page 1
2	PDA Entity shall provide joint training sessions for PDA Entity and PennDOT’s personnel as necessary for the use of e-Builder and shall work with PennDOT to ensure that any required transfer is compatible with its electronic storage and management systems and any data transfer requirements have been met prior to Package Proposal submissions.	Vol 2, PDF Page 225 Section: 4.6.1(g)(ii) Section Page 1
3	PDA Entity shall use the following additional software for data sharing: Microsoft Teams, Bluebeam, and Bentley System’s ProjectWise. PDA Entity shall maintain a complete file index for each platform, providing easy navigation and document review.	Vol 2, PDF Page 225-226 Section: 4.6.1(g)(ii) Section Page 1-2
4	PDA Entity shall upload each Submittal to the e-Builder system with a transmittal cover sheet, substantially in accordance with the example presented Attachment 1 to these Proposal Commitments.	Vol 2, PDF Page 226 Section: 4.6.1(g)(ii) Section Page 2
5	PDA Entity shall prepare and update Bi-Weekly Progress Reports, substantially in accordance with the sample provided in Attachment 2 to these Proposal Commitments. These reports shall cover all information required in Section 2.5.3 of the PDA Work Requirements.	Vol 2, PDF Page 226 Section: 4.6.1(g)(iii)(a) Section Page 2
6	Each PDA Entity workstream shall establish weekly coordination meetings with their PennDOT counterparts. During these meetings, the parties will cover: <ul style="list-style-type: none"> • PDA Entity’s activities from the previous week, a one-week look-ahead of upcoming activities and meetings related to the workstream and action items for each party; • The results of any investigations or de-risking activities and impact on the workstream activities; • All stakeholder coordination activities, status, and any required actions by PDA Entity, PennDOT, a Governmental Entity or a third-party in relation to the workstream; and • Any issue or opportunity encountered, mitigation steps or action taken, and resolution since the last report in relation to the workstream The mutually agreed meeting minutes from these weekly coordination meetings shall be used to inform the PDA Bi-Weekly Progress Reports that will consolidate the information for all workstreams.	Vol 2, PDF Page 226 Section: 4.6.1(g)(iii)(b) Section Page 2
7	PDA Entity shall coordinate meetings in accordance with schedules and protocols set forth in the PDA Proposal.	Vol 2, PDF Page 227 Section: 4.6.1(g)(iii)(a) Section Page 3

ID	ITP Section Description	Page Number
	<p>4.6.2(a) First Package Approach, Schedule, and Organizational Strategy (Page Limit: 8 Pages excluding schedule)</p> <p>(i) Preliminary Approach for the First Package. Describe the Proposer’s overall approach to the First Package, including a preliminary approach and rationale for including specific Bridges in the First Package (the “First Package Bridges”). By submitting the First Package Bridges, the Proposer commits to including the First Package Bridges as part of the First Package subject to the terms and conditions of this Agreement.</p> <p>(ii) Preliminary Baseline Project Schedule for the First Package. Provide a Preliminary Baseline Project Schedule for the First Package in accordance with the expectations outlined in Section 2.6.3 of the PDA Work Requirements, excepting that the following requirements of Section 2.6.3 of the PDA Work Requirements shall not be requirements of the Preliminary Baseline Project Schedule submitted under this Section 4.6.2(a)(ii): (a) the requirement that schedule activities not exceed 21 days in duration; and (b) the requirement that schedule activities be cost- and resource-loaded. Please provide the Preliminary Baseline Project Schedule using software compatible with ASTA, in accordance with the PDA Work Requirements, as well as in .pdf format. Provide a narrative description of the preliminary schedule strategy for the First Package.</p> <p>(iii) Preliminary Organizational Strategy for the First Package. Provide a preliminary roster and organizational chart for the Development Entity for the First Package, in alignment with the expectations in Section 2.1.2 of the PDA Work Requirements. Provide a narrative description of the preliminary organizational strategy for the First Package, including preliminary strategies and approaches for:</p> <ul style="list-style-type: none"> (A) achieving the self-performance requirements for the First Package; and (B) overall subcontracting strategy for the First Package, including but not limited to design, construction, and maintenance. 	
	Commitments:	
1	PDA Entity shall include the following six Bridges in the First Package: I-81 Susquehanna, I-80 Nescopeck, I-78 Lenhartsville, I-80 Lehigh River, I-80 Canoe Creek and I-80 North Fork. PDA Entity shall include the remaining three Bridges in the Second, final Package.	Vol 2, PDF Page 240 Section 4.6.2(a)(i) Section Page 1
2	The Preliminary Project Baseline Schedule shall serve as the basis for PDA Entity’s draft Baseline Project Schedule that PDA Entity shall update throughout the Pre-Development Phase and submit with each of the Package Proposal Design submittal.	Vol 2, PDF Page 243 Section 4.6.2(a)(ii) Section Page 4
3	PDA Entity Key Personnel and Required Personnel during the Pre-Development Phase shall remain the same for the delivery of the First Package as required and in accordance with Section 15.1 and 15.2 of this Agreement. The PDA Entity Management Team including all workstream leads together with the PDA Entity Project Manager shall transition from the development to the delivery of the First Package.	Vol 2, PDF Page 244 Section 4.6.2(a)(iii)(a) Section Page 5
4	Early in the Pre-Development Phase, PDA Entity shall employ a pre-qualification process to guarantee broad-based bidding opportunities to all qualified subcontractors ensuring work items being competed are broken down into economically feasible units to facilitate DBE participation. PDA Entity shall use PDA Entity’s extensive network of certified and highly capable MBE and DBE firms, and shall make an extensive outreach effort including public sub-contractors information days and leveraging the PennDOT Directory of Certified MBE and DBE firms to extend Development Entity’s and PDA Entity’s outreach to the entire contracting market in Pennsylvania.	Vol 2, PDF Page 245 Section 4.6.2(a)(iii)(b) Section Page 6

ID	ITP Section Description	Page Number
	<p>4.6.2(b) Approach to D&C for the First Package (Page Limit: 30 Pages) Describe the Proposer’s approaches to the D&C Work for the First Package. Include a narrative that demonstrates an understanding of the various Bridge types, type of work needed, geographic conditions and other challenges of the Bridges that may be included in the First Package and, at a minimum, addressing the following key elements: (i) describe approaches to introducing innovative D&C methods for the First Package; (ii) describe the approach to demolition for the First Package, including but not limited to, an overall approach for demolition of a two girder multi-span continuous steel bridge, a sketch of the critical stage of demolition and a detailed engineering approach to ensure critical stage of demolition satisfies key structural considerations; (iii) describe the approach to construction staging for the First Package; (iv) describe the approach to evaluating bridge designs provided in the RIDs for Bridges considered for the First Package, including the approach to determining whether bridge type, span arrangement, superstructure and substructure designs are considered efficient; (v) describe the approach to achieve 100-year Bridge service life. Specifically, describe the approach for the following components of each Bridge envisioned for the First Package: (A) deck, (B) expansion joints, (C) superstructure and (D) substructure; (vi) describe the approach to ensure conformance to D&C specifications for the First Package; and (vii) provide a table listing the top three structural design, top three roadway design, and top three geotechnical design challenges for each potential Bridge in the First Package.</p>	
	Commitments:	
1	PDA Entity shall approach the D&C innovation process as an ‘open book’ process with PennDOT, in which PDA Entity will explore innovative concepts and present them to PennDOT for consideration.	Vol 2, PDF Page 293 Section: 4.6.2(b)(i) Section Page 4
2	PDA Entity’s innovation process shall include the evaluation of sequencing and staging to deliver a better Project, across its lifecycle and with an optimized construction schedule.	Vol 2, PDF Page 294 Section 4.6.2(b)(i)(c) Section Page 5
3	PDA Entity shall evaluate further during the Pre-Development Phase, in partnership with PennDOT, the following means and methods innovations: Beam Launcher, Temporary Trestle, Bridge Incremental Launching, Accelerated Bridge Construction (ABC) on overhead bridges.	Vol 2, PDF Page 294-296 Section 4.6.2(b)(i)(d) Section Page 5
4	PDA Entity shall arrange for additional discussions for a detailed engineering approach for the demolition of the I-80 Lehigh River.	Vol 2, PDF Page 294-296 Section 4.6.2(b)(ii)(b) Section Page 8
5	PDA Entity shall further refine its single span alternative for the I-81 Susquehanna River Bridge during the Pre-Development Phase to evaluate the railroad agreement status and the potential schedule implications of a change at this point and discuss its evaluation with PennDOT.	Vol 2, PDF Page 309 Section 4.6.2(b)(iv)(b) Section Page 20
6	PDA Entity shall investigate deep foundation types other than pile driving for the I-81 Susquehanna River Bridge for comparison to determine if the cost efficiency could be improved.	Vol 2, PDF Page 309 Section 4.6.2(b)(iv)(b) Section Page 20
7	PDA Entity shall explore and progress design for the size of the drilled caissons for I-80 Lehigh River, I-80 Canoe Creek and I-80 North Fork presented in the foundation recommendations regarding substructure design during the Pre-Development Phase and consider whether additional smaller diameter caissons may provide a more efficient solution.	Vol 2, PDF Page 310 Section 4.6.2(b)(iv)(b) Section Page 21

ID	ITP Section Description	Page Number
9	PDA Entity shall integrate maintenance and lifecycle experts with the design team from day-one. In addition to implementing AASHTO, MD 4 and PennDOT standards, policies and preferences, PDA Entity shall identify the potential use of higher performance materials or innovative details, and shall analyze the cost-effectiveness of each alternative in recurring workstream meetings and select solutions to realize a 100-year service life or beyond most cost-effectively.	Vol 2, PDF Page 311 Section 4.6.2(b)(v) Section Page 22
10	PDA Entity shall plan for concrete overlays to extend the typical bridge deck life as part of the initial construction as well as prior to the hand back of these bridges to PennDOT.	Vol 2, PDF Page 311 Section 4.6.2(b)(v)(a) Section Page 22
11	<p>PDA Entity shall incorporate the following approaches and best practices during design the bridge decks to maximize service life:</p> <ul style="list-style-type: none"> • Design Measures - Ensure that the distribution of reinforcing steel in the slab is appropriate. Determine an appropriate pouring sequence to limit tension in the slab. Verify that beam configuration allows for future half-width re-decking • Material Selection - Use epoxy coated reinforcement at a minimum, but consider stainless steel or galvanized reinforcement bars, where cost-effective. Use Class AAAP cement concrete. Install concrete overlays in accordance with the PDA Work Requirements, creating a low-permeability protective layer over the conventional concrete • Construction Measures - Perform deck pours when ambient conditions are favorable. Utilize proper curing times and moisture retention systems. • District Best Practices - Deck concrete will be placed per Pub 408 Section 1001 per PennDOT standards. Allow 14 days of water curing and 7 days of dry curing. Apply penetrating sealers 28 days after concrete has been placed. Specify additional 1/4" deck/overlay thickness for mechanical grinding. Apply penetrating sealers on entire bridge deck and bridge barriers down to drip notches. Consider power washing the deck early in the Spring to remove deicing salt residue. 	Vol 2, PDF Page 311 Section 4.6.2(b)(v)(a) Section Page 22
12	PDA Entity shall consider minimizing/eliminating deck joints on the Bridges by maximizing the utilization of continuous deck slabs, which removes the typical joint location over the abutments, and places them back at the end of the approach slabs.	Vol 2, PDF Page 312 Section 4.6.2(b)(v)(b) Section Page 23
13	<p>PDA Entity shall implement the following approaches to prolong the life of the bridge superstructure elements:</p> <ul style="list-style-type: none"> • Pre-Stressed Concrete - Follow established design practice, using PennDOT approved beam shapes to provide sufficient capacity, limit deflections, and accommodate appropriate reinforcement. Beams will be fabricated with approved concrete mixes by approved PennDOT fabricators with inspection staff on-site during fabrication. • Steel Beams - Use weathering steel for bridges over watercourses provided that they meet the requirements of DM-4. Painted steel systems will only be considered for roadway overpasses. • Diaphragms - Provide bolted connections to girders. Steel diaphragms on concrete girders will be painted. Investigate use of galvanized steel intermediate diaphragms with concrete girders to enhance service life and eliminate potential issues with painting of intermediate diaphragms with concrete girders. • Bearings - Accommodate future bearing replacement with details included as part of the final bridge designs. Jacking locations will be provided at each girder or under a diaphragm, and pedestals will be used under each bearing to allow for future adjustment of bearing height. • Drainage System - Eliminate low points on bridges if possible. Design proper structure end drainage systems and scuppers in accordance with PennDOT standards 	Vol 2, PDF Page 312 Section 4.6.2(b)(v)(c) Section Page 23

ID	ITP Section Description	Page Number
14	<p>PDA Entity’s approach to maximizing substructure service life shall take into account factors that reduce service life including scour undercutting, concrete deterioration from chloride infiltration, and seized/misaligned bearings that result in damaged anchor bolts and shall design appropriate scour countermeasures and ensure adequate protection from chloride infiltration through utilization of PennDOT standards, policies, and leveraging PDA Entity’s experience with PennDOT’s preferences to ensure that these are implemented. PDA Entity shall mitigate the impact of extreme events through the appropriate design specification and PennDOT standards including, but not limited to:</p> <p>Abutments:</p> <ul style="list-style-type: none"> • Use integral abutments where possible and ensure that all abutments are located out of the 100-year floodplain • Design drains for positive drainage and outlet <p>Piers:</p> <ul style="list-style-type: none"> • Locate piers outside of the waterway as much as possible, and if they are within the waterway, they will be aligned with the flow of the stream as to avoid unfavorable flow patterns • Ensure that for multi-column bents a solid wall will meet the requirements of 1 inch above 100-year flood event • Propose tulip piers at bridge locations with tall piers which are less prone to cracking than typical hammerhead type piers • Use high-strength corrosion-resistant reinforcement, where efficient, to reduce reinforcement congestion in the piers and provide for additional corrosion protection <p>Foundations:</p> <ul style="list-style-type: none"> • Ensure proper design for extreme event loading along with meeting required scour depth and design • Locate spread footings below the scour design depth • Design piles and drilled shafts for unsupported lengths based on the height as determined by the maximum scour depth 	Vol 2, PDF Page 313 Section 4.6.2(b)(v)(d) Section Page 24
15	<p>PDA Entity shall centralize the Electronic Document Management System (EDMS) and document control managers at the Project office and shall leverage the latest technology to enable cloud access to the design drawings at all Bridge construction sites. PDA Entity shall ensure a consistent approach to document control across the entirety of the Project. PDA Entity shall tailor the EDMS to the Project requirements, and shall build Project-specific PennDOT folder structures, document standards, CAD standards, workflows, and version control into the EDMS.</p> <p>PDA Entity shall store the Draft Project Agreement Technical Provisions, once received from PennDOT, on the EDMS with strict administration, editing and access controls in place.</p>	Vol 2, PDF Page 314 Section 4.6.2(b)(vi)(a) Section Page 25
16	<p>STV’s team is comprised of supporting engineering firms, including Dewberry Engineers, Inc. (Dewberry), Greenman-Pedersen Inc. (GPI) and Whitman Requardt and Associates, LLP (WRA). PDA Entity shall ensure that the design team will be joined by specialty and DBE firms familiar with the D&C specifications and PennDOT requirements. PDA Entity shall require that all subconsultants go through a Project orientation process in which they will be introduced to the Project and Project Documents and instructed on EDMS procedures. PDA Entity shall ensure that all subconsultants are fully informed of Project requirements, including identification of the latest Technical Provisions and quality procedures, prior to performing any work.</p> <p>PDA Entity shall cause STV to bolster the design effort for each Bridge in the First Package with one of the supporting design firms who will then continue into the Delivery Phase, through final design and construction of the Bridge. PDA Entity’s engineers shall continue from the Pre-Development through the Delivery Phase. PDA Entity shall ensure that procedures established during the PDA Work that ensure conformance with the specifications remain in place throughout the delivery of the Bridges.</p>	Vol 2, PDF Page 315 Section 4.6.2(b)(vi)(b) Section Page 26

ID	ITP Section Description	Page Number
17	<p>PDA Entity shall base the draft DQMP on the existing, proven, Quality Assurance/Quality Control (QA/QC) processes that are currently used by PDA Entity’s Lead Engineering Firm augmented, as necessary, to comply with the additional PDA or Project Agreement requirements. PDA Entity shall include a design responsibilities/oversight matrix, a summary of the production process and built-in QC, list of design hold-points, milestones and deliverables, process for addressing/closing comments, and other sections as needed in the final DQMP. PDA Entity shall require that, throughout the D&C Work, SAI shall perform submittal reviews, random field audits, testing and verification to confirm that the construction period QMP is being adhered to and shall ensure conformance with the D&C specifications.</p>	<p>Vol 2, PDF Page 316 Section 4.6.2(b)(vi)(c) Section Page 27</p>
	<p>4.6.2(c) Preliminary Versions of PDA Work Submittals for the First Package (Page Limit: None) Provide preliminary versions of the following submittals that would be finalized during the PDA Work for the First Package in accordance with the PDA Work Requirements:</p> <p>(i) Preliminary Risk Management Plan for First Package. Provide the Proposer’s approach to risk mitigation for the First Package, including the approach to identification, management, mitigation, and allocation of risks in alignment with the expectations outlined in Section 2.4 of the PDA Work Requirements. This should include a preliminary risk matrix in accordance with the expectations outlined in Section 2.4 of the PDA Work Requirements.</p> <p>(ii) Preliminary Safety and Security Plan for First Package. Provide a preliminary Safety and Security Plan that outlines the Proposer’s approach to managing safety and maintaining safe practices for all activities, in alignment with the expectations outlined in Section 2.9.2 of the PDA Work Requirements.</p> <p>(iii) Preliminary Public Information and Communications Plan for First Package. Provide a preliminary Public Information and Communications Plan that outlines the Proposer’s approach to robust public outreach and community engagement efforts in close collaboration and partnership with PennDOT, in alignment with the expectations outlined in Section 2.10.2 of the PDA Work Requirements.</p> <p>(iv) Preliminary Plan for Maintenance Work and Handback Requirements for First Package. Provide a preliminary plan for Maintenance Work and Handback Requirements that outlines the Proposer’s approach to planning for the Maintenance Work and Handback Requirements, in alignment with the expectations outlined in Section 10 of the PDA Work Requirements.</p>	
	<p>Commitments:</p>	
1	<p>PDA Entity shall use the Preliminary Risk Management Plan for First Package submitted as part of the PDA Proposal as the basis for the Risk Management Plan that PDA Entity shall submit to PennDOT in accordance with the PDA Work Requirements for the First Package. PDA Entity shall clearly indicate any changes between the two documents with a redline version.</p>	<p>Vol 2, Plan Starts on PDF Page 322</p>
2	<p>PDA Entity shall use the Preliminary Safety and Security Plan for First Package submitted as part of the PDA Proposal as the basis for the Safety and Security Plan that PDA Entity shall submit to PennDOT in accordance with the PDA Work Requirements for the First Package. PDA Entity shall clearly indicate any changes between the two documents with a redline version.</p>	<p>Vol 2, Plan Starts on PDF Page 386</p>
3	<p>PDA Entity shall use the Preliminary Public Information and Communications Plan for First Package submitted as part of the PDA Proposal as the basis for the Public Information and Communications Plan that PDA Entity shall submit to PennDOT in accordance with the PDA Work Requirements for the First Package. PDA Entity shall clearly indicate any changes between the two documents with a redline version.</p>	<p>Vol 2, Plan Starts on PDF Page 504</p>
4	<p>PDA Entity shall use the Preliminary Plan for Maintenance Work and Handback Requirements for First Package submitted as part of the PDA Proposal as the basis for the Plan for Maintenance Work and Handback Requirements submitted to PennDOT in accordance with the PDA Work Requirements for the First Package. PDA Entity shall clearly indicate any changes between the two documents with a redline version.</p>	<p>Vol 2, Plan Starts on PDF Page 544</p>

ID	ITP Section Description	Page Number
	<p>4.7(g) Indicative Financing Plan (Page Limit: 3 Pages) Proposers shall submit an explanation of its approach to securing committed financing for the First Package not to exceed three pages, which shall include: (A) a detailed timeline and process for securing all financing commitments prior to submitting a Package Proposal for the First Package; (B) a timeline of key financing related milestones between Package Proposal submission and the target financial close date for the First Package in December 2022; (C) a detailed description of the interplay between key financing and technical related workstreams during the PDA Term for the First Package; (D) an overview of the debt competition process to be undertaken by Proposer; and (E) the optimal sources of debt financing, any anticipated deliverables or requirements of PennDOT that will be required to secure such debt financing, and how this debt structure provides best value for money to PennDOT.</p>	
	<p>Commitments:</p>	
1	<p>PDA Entity shall utilize combined global lending relationships to explore all feasible financial alternatives and value-optimizing concepts.</p>	<p>Volume 3, page 26</p>
2	<p>PDA Entity shall maintain maximum flexibility, partnership, dialogue and transparency with PennDOT throughout the Pre-Development Phase and the entirety of the financing process.</p>	<p>Volume 3, page 26</p>
3	<p>PDA Entity shall consider, as reasonably appropriate, TIFIA, PABs, Taxable Bonds, Private Placement, and Bank debt as financing sources for the First Package.</p>	<p>Volume 3, page 26</p>
4	<p>PDA Entity shall convene a joint workshop between PennDOT and PDA Entity to ensure coordination and collaboration in achieving the best financing outcome for the First Package and the overall Project. Based on the discussion and outcome of this workshop, PDA Entity will either pursue a parallel multi-track process, focusing on a few identified structures, or select a singular structure, balancing value for money with certainty of closing by the required deadline.</p>	<p>Volume 3, page 27</p>
5	<p>If a TIFIA loan is not progressed or is determined to be unfeasible for the First Package, PDA Entity shall continue under the other alternatives and maintain TIFIA as a financing option for the Second Package and as a potential refinancing option for the First Package.</p>	<p>Volume 3, page 27</p>
6	<p>PDA Entity shall work closely with PennDOT to support a PABs allocation. PDA Entity shall maintain flexibility between the taxable and tax-exempt bonds pending the result of the PABs allocation PDA Entity shall progress the First Package due diligence in advance of the ratings process in time for the Package Proposal deadline and ensure commitments from the underwriters.</p>	<p>Volume 3, page 27</p>
7	<p>Immediately following an agreed decision with PennDOT on the preferred financing structure for the First Package, PDA Entity shall run a competitive process to secure optimal terms, including the lowest possible financing costs, from the market, keeping several institutions in discussions to maintain competitive tension up to the date of lenders commitment. PDA Entity shall work with PennDOT to select a pool of the most competitive and deliverable lenders in the US infrastructure market.</p> <p>PDA Entity shall obtain lender group approvals within four to six weeks of lender group selection. PDA Entity shall commit to terms and pricing with the approved lenders for the First Package via commitment letters and long form term sheets PDA Entity shall run redundancies between lenders, allowing a lending group oversubscribed by one or two lenders.</p>	<p>Volume 3, page 27</p>
8	<p>Development Entity Equity Members shall commit the required equity amounts at submittal of the First Package Proposal by providing an Equity Member Letter from each Equity Member, assurance that the Committed Investment will be secured and in place prior to Financial Close and written approval of the Package Proposal by each Equity Member. Prior to this submission, Development Entity's Equity Members shall obtain internal approvals for their equity commitments from their respective internal committees before the end of August 2022. Development Entity shall prepare the Equity Member Letters in tandem with progressing the technical due diligence.</p>	<p>Volume 3, page 28</p>
9	<p>Development Entity shall continue to explore value realization of the Project by implementing financial efficiencies past Financial Close of the First Package, including pursuit of a TIFIA loan and pursuit of PABs allocations even if a bank/private placement financing approach is preferred for the First Package.</p>	<p>Volume 3, page 28</p>

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

ID	ITP Section Description	Page Number
10	PDA Entity shall coordinate participation of representatives of the Finance workstream in the majority of the TWGs to ensure that they are abreast of the development of the Package Proposal and work efficiently with the potential lenders and their advisors. PDA Entity's Finance workstream lead, Jason Chun, shall be part of the PDA Entity Management Team and shall connect with all other workstream leads and the Leadership Team on a weekly basis to discuss progress of the PDA Work and tracking against the Baseline PDA Schedule. PDA Entity shall ensure that the Finance workstream will work with the TWGs to ensure all technical information and due diligence relevant to the lenders is provided to the lenders' advisors in a timely manner such that lenders can achieve their credit approvals before the end of August, 2022.	Volume 3, page 28

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

ATTACHMENT 1



BPP SUBMITTAL COVER SHEET

To: Mr. Michael Bonini, Director Public-Private Transportation Partnership Office 400 North Street - 6th Floor Harrisburg, PA 17130	A From: Ms. Sarah Schick Bridging Pennsylvania Partners	B Date Submitted:
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C PennDOT e-Builder FIELDS - Choose from drop down list	BPP FIELDS - Choose from drop down list
LETTER/TRANSMITTAL: Transmittal <u>TRAN</u> TYPE: Exhibit 6 Submittal REQUEST ACTION: For Review and Comment PennDOT DISCIPLINE: Project Controls Submittal ID #: PH1-TRAN-BPP-1900-00022	CONTRACT SEGMENT: [To be Included] ELEMENT: [To be Included] TECHNICAL DISCIPLINE CODE: [To be Included] PACKAGE NO.: [To be Included] SUBCONTRACTOR ID: [To be Included] SPECIFICATION NO.: [To be Included] INPUT SUBMITTAL ID: 00022 <small>See Note below</small> BPP INTERNAL TRANSMITTAL NUMBER: [To be Included] REV NO.: 00 RELATED TO ANOTHER SUBMITTAL: NO INPUT RELATED SUBMITTAL #: [Redacted]

D Title of Submittal
BPP Predevelopment Schedule

E Description of Submittal	Number of File Attachments in Submittal
This Baseline of the PDA Work Schedule has been prepared and is submitted in line with the requirements outlined in Section 2.6.3. The PDA Work Schedule of Exhibit 6 of the Project Agreement. This Baseline PDA Work Schedule is a refinement to the originally provided Proposal Schedule and carries the full scope of work as outlined in the Predevelopment Work requirements, in addition to the follow-on D&C work. We are prepared to submit schedule updates as soon as this Baseline Schedule is accepted by PennDOT.	5

File Attachments NO YES. Include File List File Format:--> DGN DWG XLXS PDF DOCX OTHER: XER

#	File Name include Extension	#	File Name include Extension	#	File Name include Extension
1	00022 Transmittal Cover Sheet.pdf	6		11	
2		7		12	
3		8		13	
4		9		14	
5		10		15	

TYPE OF DISTRIBUTION:	SHA	3rd Party Entity	Utility Owner
Information			
Review & Comment			
Review & Approval			

G VARIANCE

NO YES If yes, please provide list and references. _____

H DISCIPLINE LEAD SUBMITTED BY:		DATE:	
DISCIPLINE LEAD SIGNATURE			

I LEAVE THIS AREA EMPTY (For Internal Use Only)

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

ATTACHMENT 2

Draft

BPP Bi-Weekly Progress Report

Project Name:

Pathways Major Bridge P3 Initiative

Project Owner:

Pennsylvania Department of Transportation

Prepared by:

Bridging Pennsylvania Partners (BPP)

Bridging Pennsylvania Partners

Bi-Weekly Progress Report

TABLE OF CONTENTS

1. Introduction	2
2. Status of PDA Work	2
3. Summary of meetings and activities.....	2
3.1 Previous period meetings and activities	2
3.2 Upcoming period meetings and activities	3
4. Commercial development: key documents and open issues	4
4.1 PDA	4
4.2 Project Agreement	4
4.3 Other Ancillary Documents	5
5. Environmental Assessments	5
6. Updated list of Submittals for PDA Work	5
7. Updated Risk and Opportunity Tracker	5
8. Allowed Costs update	5
9. Decisions and Approvals.....	6

1. Introduction

This report covers work activities carried out under the Public-Private Transportation Partnership Pre-Development Agreement (PDA) by Bridging Pennsylvania Partners (BPP) and its agents, that have occurred in the period from [X] to [X]. Where relevant, the update also covers the period to the time of writing in [X].

As required in Exhibit 6 Section 2.5.3, this report is intended to update the Pennsylvania Department of Transportation (PennDOT) on work under the PDA completed and anticipated in the upcoming eight weeks to [X].

The following items required under the same Section will be submitted to PennDOT in separate submittals to this report through e-Builder with the corresponding transmittal numbers:

1. DBE submittals are packaged in the DBE Monthly Report ([X] submitted [X])
2. BPP Allowed Costs Report ([X] submitted [X])

2. Status of PDA Work

This section report status of the PDA Work, broken down by workstreams and compared to the PDA Baseline Schedule, and will include:

- D&C PDA Work Progress including:
 - Design Submittals
 - Site and Field Investigations
 - D&C Costing Model
 - Risk Workshops and Analysis
 - Technical Provisions
 - Subcontracting and DBE approach
- Maintenance PDA Work Progress, including Maintenance Costing Model
- Commercial and Legal PDA Work Progress including negotiation of the Project Agreement and other Ancillary Documents
- Finance PDA Work Progress including financing structure, debt and equity process
Public and Community Engagement (including Stakeholders') PDA Work Progress

3. Summary of meetings and activities

3.1 Previous period meetings and activities

The following table summarizes the PDA Entity's key activities anticipated and completed for the period from [X] to [X], broken down by workstream. [Note: This table should be based on anticipated activities for that period included in previous period report]

Table 1 - PDA Work Activities for the Period

Workstream	Scheduled Activities for the Period	Completed Activities for the Period
Project Management	• [XX]	• [XX]
Design and Construction	• [XX]	• [XX]

Workstream	Scheduled Activities for the Period	Completed Activities for the Period
Maintenance	• [XX]	• [XX]
Public and Community Engagement	• [XX]	• [XX]
Commercial and Legal	• [XX]	• [XX]
Finance		

All meetings that occurred during the period of this report, in which the PDA Entity participated are listed in the table below. [Note: This table should be based on anticipated meetings for that period included in previous period report]

Table 2 - Meetings for the Period

Date	Title	Workstream	Attendees	Name and Location of Minutes File
[MM-DD-YY]	[X]	[Project Management / Commercial and Legal / Finance / Design and Construction / Maintenance / Public and Community Engagement]	• [XX]	File Name [hyperlink]
...				

3.2 Upcoming period meetings and activities

Upcoming meetings between BPP and PennDOT are listed in Table 3. Some meetings may be cancelled or rescheduled to accommodate holidays or conflicts.

Table 3 - Meetings Scheduled for Upcoming Period

Date	Title	BPP Attendees	PennDOT Attendees	Third Party Attendees	Responsible Party
[MM-DD-YY]	[Progress Meeting]	• [XX]	• [XX]	• [XX]	[XX]
[MM-DD-YY]	[Commercial Workstream Meeting]	• [XX]	• [XX]	• [XX]	[XX]
[MM-DD-YY]	[Design Review Workshop]	• [XX]	• [XX]	• [XX]	[XX]
[MM-DD-YY]	[Steering Committee]	• [XX]	• [XX]	• [XX]	[XX]
...					

Table 4 summarizes meetings coming up relating to community and stakeholder engagement.

Table 4 - Stakeholders and Community Engagements Meetings

Date	Title	BPP Attendees	Third Party Attendees	Responsible Party
[MM-DD-YY]	[XX]	• [XX]	• [XX]	[XX]
...				

The following table summarizes the PDA Entity’s key activities anticipated over the next 8 weeks, for the period from [X] to [X], broken down by workstream.

Table 5 -8-week look-ahead of key PDA Work Activities

Workstream	Scheduled Activities
Project Management	• [XX]
Design and Construction	• [XX]
Maintenance	• [XX]
Public and Community Engagement	• [XX]
Commercial and Legal	• [XX]
Finance	• [XX]

4. Commercial development: key documents and open issues

4.1 PDA

This section outlines any open point of discussion, claim or relief being raised or negotiated between the PDA Entity and PennDOT under the Pre-Development Agreement.

4.2 Project Agreement

This section summarizes all open items in the negotiation of the Project Agreement between BPP and PennDOT.

Table 6 - Commercial Open Issues

Section of the Project Agreement	BPP Position	PennDOT Position	Status
...

4.3 Other Ancillary Documents

This section summarizes all open items in the negotiation of the other Ancillary Documents for each Package between BPP and PennDOT.

Table 7 - Commercial Open Issues

Document	Section of the Agreement	BPP Position	PennDOT Position	Status
...

5. Environmental Assessments

This section summarizes all properties where additional environmental assessment has occurred, might occur or which the environmental risk is unknown.

6. Updated list of Submittals for PDA Work

The list of Submittals required under Section 2.5.2 of Exhibit 6 of the PDA (PDA Work Requirements) is presented in Table 8 below.

Table 8 – PDA Work List of Submittals

Date	Submittal and Type	Description	Level and Duration of Review	Status
....				

7. Updated Risk and Opportunity Tracker

Table 9 below present the updated risk and opportunity tracker updated for the period from [X] to [X].

Table 9 – Risk and Opportunity Tracker

Risk / Opportunity	Owner	Potential Cost/Schedule Impact	Mitigation Strategy	Actions
[X]	[BPP] / [PennDOT]	[High / Medium / Low]	[XX]	[XX]
...				

Key changes and notable events from previous period include:

- [XX]

8. Allowed Costs update

Table 10 below present the costs incurred by BPP in undertaking the PDA Work updated for the period from [X] to [X].

Table 10 – Cost and Allowed Cost Incurred

Costs Category	Allowed Cost incurred during period	Total Allowed Costs incurred to date	Predevelopment Cost Cap	Other Cost Incurred during period	Total Cost Incurred to Date
[X]	[\$X]	[\$X]	[\$X]	[\$X]	[\$X]
....					

9. Decisions and Approvals

This section summarizes decisions and approvals that was undertaken by either party during this reporting period.

EXHIBIT 10

REQUIRED INSURANCE FOR PDA WORK

1. PDA ENTITY INSURANCE

The PDA Entity shall obtain and maintain, or cause to be obtained and maintained, with the PDA Entity as a named insured or an additional named insured, provided that being named as an additional named insured bears the same protections as a named insured, (except on Professional Liability policies insuring a Major Team Member; or on any railroad protective liability policy required by a railroad; or with respect to Contractor Pollution Liability Insurance maintained by a Contractor during the pre-development period), the following insurances throughout the Term:

(a) Workers' Compensation and Employer's Liability Insurance

- (i) Workers' Compensation and Employer's Liability insurance with statutory workers' compensation (Coverage A), limits and employer's liability (Coverage B), limits of at least \$1 million bodily injury by accident for each accident, and \$1 million bodily injury by disease, for each employee and policy aggregate.
- (ii) The coverage must 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).
- (iii) PennDOT must be named as an "alternate employer" on the policy for any insurances obtained or maintained under this Section 1(a).

(b) Commercial General Liability Insurance

- (i) Commercial General Liability insurance with limits of at least \$1 million per occurrence and \$2 million annual aggregate (with aggregate applicable on a per project basis). The coverage must include premises and operations, independent contractors, personal injury, product and completed operations, broad form contractual liability, explosion, collapse, and underground. There shall be no exclusion for work within 50 feet of a railroad.
- (ii) PennDOT must be named as an additional insured on a primary, non-contributory basis for any insurances obtained or maintained under this Section 1(b).
- (iii) Commercial General Liability insurance must be in force for the Term, and include completed operations coverage for a period of at least five years thereafter.

(c) Automobile Liability Insurance

- (i) Automobile liability insurance with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles.
- (ii) PennDOT must be named as an additional insured on a primary, non-contributory basis for any insurances obtained or maintained under this Section 1(c).

(d) Umbrella/Excess Liability Insurance

- (i) Umbrella / excess liability insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$10 million per occurrence and in the aggregate.
- (ii) PennDOT and the Commonwealth must be named as additional insureds on a primary, non-contributory basis for any insurances obtained or maintained under this Section 1(d).

(e) Professional Liability Insurance

- (i) The PDA Entity shall ensure that any Major Team Member providing professional services during the Term obtains and maintains professional liability insurance for liability for any acts, errors, or omissions arising in connection with the PDA Work. Such coverage may be written on a claims-made basis and be evidenced utilizing so-called 'practice' policies and shall have a minimum limit of \$5 million per claim and in the aggregate, provided, however, that the Lead Engineering Firm shall provide proof of coverage with a minimum limit of \$15 million per claim/aggregate.
- (ii) The Professional Liability Insurance required under this Section 1(e) must be maintained until the last Project Agreement achieves Substantial Completion and then for five years thereafter.

(f) Railroad Protective Liability Insurance

- (i) If the PDA Entity, or any party undertaking work on behalf of the PDA Entity, is undertaking any work within 50 feet of a railroad, the PDA Entity and/or the party undertaking such work shall procure and keep in force, prior to performing any work, railroad protective liability insurance policy with limits and coverage terms and conditions as required by the railroad operator.
- (ii) The railroad operator shall be the named insured on any Railroad Protective Liability Insurance policy under this Section 1(f). The PDA Entity shall submit a copy of the Railroad Protective Liability insurance policy to PennDOT prior to entering any railroad property.

(g) Contractor's Pollution Liability Insurance

- (i) The PDA Entity shall procure, or in the alternative, ensure that any Contractor undertaking subsurface investigation procure, Contractor's Pollution Liability Insurance to indemnify for bodily injury, property damage, clean up and remediation costs, and other amounts which the PDA Entity or any of its subcontractors and their employees or agents, are legally obligated to pay arising out of such activities.
- (ii) Contractor Pollution Liability Insurance shall cover any drilling, test borings, or excavation, and shall include transit and disposal at sites.

- (iii) The Contractor Pollution Liability Insurance policy does not need to be project specific. The policy must have a minimum limit of \$1 million for any one claim and in the aggregate. Coverage shall include the PDA Entity (if not the named insured), PennDOT and PennDOT-Related Entities as additional insureds, and shall remain in full force and effect for the period of the subsurface activities and three years thereafter.

All Insurance Policies must insure against certified acts of terrorism regardless of whether the Terrorism Risk Insurance Act is amended or subsequently suspended.

Any limit requirements may be met through a combination of primary and excess (umbrella) insurance policies.

2. **CONTRACTOR INSURANCE**

The PDA Entity shall ensure that any Contractor or consultant performing services under this Agreement carries, as appropriate, the following insurances. Such coverages need not be project-specific.

(a) **Workers' Compensation and Employer's Liability Insurance**

- (i) Workers' Compensation and Employer's Liability insurance with statutory workers' compensation (Coverage A), limits and employer's liability (Coverage B), limits of at least \$500,000 bodily injury by accident for each accident, and \$500,000 bodily injury by disease, for each employee.
- (ii) The Workers' Compensation and Employer's Liability insurance must 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**

- (i) Commercial General Liability insurance with limits of at least \$1 million per occurrence and \$1 million annual aggregate (with aggregate applicable on a per project basis). Coverage must include premises and operations, independent contractors, personal injury, product and completed operations, broad form contractual liability, explosion, collapse, and underground.
- (ii) PennDOT and the Indemnified Parties and the PDA Entity must be included as additional insureds on a primary, non-contributory basis for any insurance obtained or maintained under this Section 2(b).
- (iii) The Commercial General Liability insurance must be maintained for the period of any work under this Agreement plus three years of completed operations coverage after all work is complete.

(c) **Automobile Liability Insurance**

- (i) 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.

- (ii) PennDOT, the Indemnified Parties and the PDA Entity must be included as additional insureds on a primary, non-contributory basis for any insurance obtained or maintained under this Section 2(c).

(d) Professional Liability Insurance

- (i) The PDA Entity shall ensure that any Contractor or consultant, other than a Major Team Member, which must comply with the requirement in Section 1(e) above, providing professional services during the Term obtains and maintains professional liability insurance for any liability for acts, errors, or omissions arising in connection with the PDA Work.
- (ii) The professional liability insurance may be written on a claims-made basis and be evidenced utilizing so-called 'practice' policies.
- (iii) The professional liability insurance shall have a minimum limit of \$1 million for any one claim and in the aggregate.
- (iv) The professional liability insurance must be in force for any period during which professional services are being provided and include an extended reporting period or continuation of coverage for a period of three years thereafter.

(e) Other Insurances

- (i) If any activities during the PDA Term involve marine operations, the PDA Entity shall require the applicable Contractor to obtain and maintain Marine Protection and Indemnity insurance with a minimum limit of \$1 million per occurrence and in the aggregate. The Marine Protection and Indemnity insurance must provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations,
- (ii) If any activities during the PDA Term involve the use of aircraft or unmanned aircraft systems (UASs), the PDA Entity shall procure or cause the applicable Contractor to procure Aviation Liability Insurance with a minimum limit of \$1.0 million per occurrence and in the aggregate.
- (iii) PennDOT, the Commonwealth and the PDA Entity must be included as additional insureds on a primary, non-contributory basis for any insurances obtained or maintained under this Section 2(e).

EXHIBIT 11

KEY PERSONNEL FOR PDA WORK

Position title	Primary Responsibilities	Minimum qualifications and experience	Name of initial individual
Project Manager	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.1.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.1.	Sarah Schick
Design-Build Project Manager	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.2.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.2.	Hezi Snir Schlinger
Construction Manager	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.3.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.3.	Greg Yavicoli
Quality Assurance Manager (QAM)	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.4.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.4.	Raymond Henney
Financing Manager	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.5.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.5.	Jason Chun
Maintenance Manager	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.6.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.6.	Dan Dennis
Design Lead	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.7.	As identified in Exhibit 6 (PDA Work Requirements) Section 2.1.1.1.7.	Alexander Houseal

EXHIBIT 12

ALLOWED COSTS

1. ALLOWED COSTS

1.1 Allowed Costs and Reporting

Allowed Costs are intended to cover costs incurred by the PDA Entity in performing the PDA Work. For any given Package, PDA Work shall include work performed by the PDA Entity commencing on the Effective Date up to the execution date of the Project Agreement for such Package (the Effective Date of the Project Agreement or the Commercial Close date).

In relation to those Bridges included within a Package that has achieved Commercial Close, any costs incurred by the Development Entity after the Commercial Close date in connection with achieving Financial Close are not defined as Allowed Costs and will not count against the Pre-Development Cost Cap included in the PDA Proposal. Any costs expected to be incurred by the Development Entity after the Commercial Close and payable on the Financial Close date shall be clearly documented in the Package Proposal pursuant to Section 1.1(a)(xiii) of EXHIBIT 7 (Package Proposal Requirements), which will be subject to PennDOT review and approval (e.g., financing related fees payable at Financial Close for third-party services). Success fees or other similar fees payable at Financial Close to members or Affiliates of the Development Entity or the PDA Entity will not be allowed, apart from the Development Entity Closing Fee, excluding, for clarity, any fees paid to Macquarie Capital (USA) Inc. solely for financial service advisory services actually performed for the PDA Entity and which are permitted under this Agreement or the Project Agreement for such Package.

Any Allowed Costs claimed by the PDA Entity or a Development Entity must meet the requirements of this Exhibit 12 (Allowed Costs) and must have been properly reported in accordance with Section 10.3 (Reporting of PDA Allowed Costs) of the Agreement.

1.2 Allowed Cost Inclusions

- (a) Allowed Costs will be limited to, and calculated in accordance with, the following:
 - (i) for work performed using the personnel, materials, and equipment of the PDA Entity, Major Team Members, or a Development Entity:
 - (A) an amount equal to the reasonable and documented fully burdened hourly rate (including overhead and fringe benefits) of each employee performing such work multiplied by the actual number of hours the employee performed that work; plus
 - (B) the reasonable and documented cost of all materials used, including sales taxes, freight and delivery charges, and any applicable discounts; plus
 - (ii) the costs for the use, operating, maintenance, fuel, storage, and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc., or its successors, or at any lesser hourly rate PennDOT may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate

adjustment tables, provided, that if rates are not published for a specific type of tool or equipment, PennDOT will establish a rate for it that is consistent with its cost and use in the industry;

- (iii) if the work is performed by a Contractor (“**Performing Subcontractor**”) under contract with the PDA Entity, a Major Team Member, or a Development Entity, or under contract with a Contractor at any tier, all reasonable amounts owing for work under such contract as determined by PennDOT, provided that if the Performing Subcontractor is an Affiliate of the PDA Entity, Major Team Member, or a Development Entity, or the applicable higher tier Contractor, the lesser of the contract amount or the amount that would be reasonably obtained in an arm’s length transaction for comparable work with a person that is not an Affiliate;
 - (iv) reasonable fees and costs paid or to be paid to legal, technical, financial, insurance, tax, and other professional advisers as well as financial model auditor firms and credit rating agencies (note that breakage fees will only be deemed Allowed Costs insofar as they represent reasonable compensation for time and expenses incurred);
 - (v) insurance costs and premiums in relation to the insurance required for PDA Work under EXHIBIT 10 (Required Insurance for PDA Work); and
 - (vi) costs of PDA Performance Security.
- (b) For the purposes of this Section 1.2, “**Official Business Travel**” shall mean any travel between either:
- (i) the Site or the PennDOT office; and
 - (ii) a location directed to by PennDOT (for example a local agency office).

“Official Business Travel” shall not include an employees’ normal commute miles from his or her local home address to the Site, Project office, or PennDOT office.

1.3 Allowed Cost Exclusions

Allowed Costs will not include the following:

- (a) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for international travel, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships;
- (b) Development Entity Closing Fees; and
- (c) Allowed Costs shall not include any costs that are excluded under the Federal Contract Cost Principles, 48 CFR §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).

EXHIBIT 13

FEDERAL AND STATE REQUIREMENTS

- Part A [Federal Requirements for Federal-Aid Construction Facilities](#)
- Part B [FHWA Form 1273](#)
- Part C [Federal Prevailing Wage Rates](#)
- Part D [Equal Employment Opportunity Special Provision](#)
- Part E [On-the-Job Training Program for Federal-Aid Highway Construction Projects](#)
- Part F [Debarment Certification](#)
- Part G [Federal Nondiscrimination Clause](#)
- Part H [Federal Audit Clause](#)
- Part I [Disadvantaged Business Enterprise Requirements](#)
- Part J [Title VI Assurances](#)
- Part K [Other State and Federal Requirements](#)
- Part L [Americans with Disability Act Provisions](#)
- Part M [Contractor Responsibility Provisions](#)
- Part N [Contractor Integrity Provisions](#)
- Part O [Reserved](#)
- Part P [Lobbying Certification](#)

PART A

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 [Exhibit 13 \(Federal and State Requirements\)](#). 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 Development Entity or its authorized representative and/or the Lead Construction 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 Lead Construction Contractor; and
- (d) “department,” “agency” or “department or agency entering into this transaction,” such references shall be construed to mean PennDOT, except where a different department or agency is specified.

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.

RECOVERED MATERIALS

Development Entity 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.

PART B

FHWA-1273 – Revised July 5, 2022

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

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).

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

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).

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.

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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

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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

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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. All laborers and mechanics employed or working upon the site of the work, 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 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.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall 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. (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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, 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.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, 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.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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

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the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(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 of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) 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. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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d. 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 journeymen 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 shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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 (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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 watchmen 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. 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 watchmen 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. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) 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. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

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

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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 long-standing 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

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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 200.326.

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 200.326.

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 contractor). “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.

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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.

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

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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.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) 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;

(b) 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

(c) 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)

2. 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.

* * * * *

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.

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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.

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.

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.

PART C

FEDERAL PREVAILING WAGE RATES

County Bridge Site information:

Region 2 – Western PA:

- I-79 Bridgeville (D11) – Allegheny County
- I-80 North Fork (D10) – Jefferson County
- I-80 Canoe Creek (D10) – Clarion County

Region 4 – District 6:

- I-95 Girard Point (D6) - Philadelphia County

Region 6 – Eastern PA:

- I-83 South Bridge (D8) - Dauphin and Cumberland County
- I-78 Lenhartsville (D5) - Berks County
- I-80 White Haven (D5) - Luzerne and Carbon County
- I-80 Nescopeck (D4) - Luzerne County
- I-81 Susquehanna (D4) - Susquehanna County

PA 2 Western Fed Wage 2-25-2022

"General Decision Number: PA20220002 02/25/2022

Superseded General Decision Number: PA20210002

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington and Westmoreland Counties in Pennsylvania.

HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (excluding sewer grouting projects and excluding sewage and water treatment plant 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)(2)-(60).

| If the contract is entered | . Executive Order 14026
| into on or after January 30, | generally applies to the
| 2022, or the contract is | contract.
| renewed or extended (e.g., an | . The contractor must pay

| option is exercised) on or | all covered workers at
| after January 30, 2022: | least \$15.00 per hour (or
| | the applicable wage rate
| | listed on this wage
| | determination, if it is
| | higher) for all hours
| | spent performing on the
| | contract in 2022.

|
| If the contract was awarded on | Executive Order 13658
| or between January 1, 2015 and | generally applies to the
| January 29, 2022, and the | contract.
| contract is not renewed or | . The contractor must pay
| all | covered workers at least
| extended on or after January | \$11.25 per hour (or the
| 30, 2022: | applicable wage rate
| listed | on this wage
| determination, | if it is higher) for all
| | hours spent performing on
| | that contract in 2022.

|
| 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 <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/14/2022
2	01/21/2022
3	01/28/2022
4	02/11/2022
5	02/25/2022

BOIL0013-005 01/01/2022

CENTRE, FRANKLIN, POTTER, CLINTON, FULTON, HUNTINDON AND MIFFLIN COUNTIES

	Rates	Fringes
BOILERMAKER.....	\$ 50.17	34.96

BOIL0154-004 01/01/2021

ALLEGHENY, ARMSTRONG, BEAVER, BEDFORD, BLAIR, BUTLER, CAMBRIA, CAMERON, CLARION, CLEARFIELD, CRAWFORD, ELK, FAYETTE, FOREST, GREENE, INDIANA, JEFFERSON, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON AND WESTMORELAND COUNTIES

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	Rates	Fringes
BOILERMAKER.....	\$ 43.90	29.55

 BOIL0744-003 07/01/2008

ERIE COUNTY

	Rates	Fringes
BOILERMAKER.....	\$ 35.34	18.48

 BRPA0005-033 05/03/2020

MIFFLIN COUNTY

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 30.97	20.02

 BRPA0005-046 05/03/2020

FRANKLIN COUNTY

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 33.99	16.87

 BRPA0005-071 05/03/2020

CLINTON COUNTY

	Rates	Fringes
BRICKLAYER.....	\$ 34.17	17.20

 BRPA0009-004 02/01/2021

BEDFORD, BLAIR, CAMBRIA, CENTRE COUNTY (Halfmoon, Houston,

Patton, Rush, Taylor and Worth Townships), FULTON,
HUNTINGDON,
and SOMERSET COUNTIES

	Rates	Fringes
Bricklayer, Stonemason & Marble Setter.....	\$ 31.50	20.79

BRPA0009-006 02/01/2021

CLEARFIELD, FOREST, JEFFERSON, VENANGO, AND CLARION (Except
Brady, Madison, Perry, Porter, Redbank, and Toby Townships)
COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 31.80	21.26
Marble mason.....	\$ 31.80	21.26

BRPA0009-023 06/01/2018

BEAVER COUNTY

	Rates	Fringes
BRICKLAYER.....	\$ 30.16	21.41

BRPA0009-025 12/01/2021

BUTLER, LAWRENCE, AND MERCER COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 33.41	23.44

BRPA0009-032 06/01/2017

FAYETTE (Jefferson & Washington Twps), GREENE (Except Cumberland, Dunkirk, Greene, Monongahelia Twps), INDIANA, AND WESTMORELAND (Rostraver Twp) COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 31.00	20.66

 BRPA0009-033 12/01/2020

ARMSTRONG, CLARION (Brady, Madison, Perry, Tobe, Porter, Redbank Twps), FAYETTE (Except Jefferson & Washington Twps), GREENE (Cumberland, Dunkirk, Greene, Monongahelia Twps), INDIANA, AND WESTMORELAND (Except Rostrave Twp) COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 34.00	23.16

 BRPA0009-034 11/01/2019

ERIE COUNTY

	Rates	Fringes
BRICKLAYER.....	\$ 28.64	21.86

 BRPA0009-058 06/01/2020

ALLEGHENY, WASHINGTON (Cross Creek, Hanover, Jefferson, Mt Pleasant, Nottingham, Peters, Robinson, Smith, Union Twps) COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 34.05	22.81

 BRPA0009-059 02/01/2021

CAMERON, ELK, McKEAN, POTTER AND WARREN COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 29.50	21.08

 CARP0443-004 06/01/2021

	Rates	Fringes
MILLWRIGHT.....	\$ 42.27	46.80%+.91

 CARP2235-005 01/01/2022

	Rates	Fringes
PILEDRIVERMAN		
Piledriverman (welder).....	\$ 38.55	20.50
Piledriverman.....	\$ 37.60	20.50

 CARP2235-006 01/01/2022

	Rates	Fringes
Diver.....	\$ 56.40	20.50
Tender.....	\$ 37.60	20.50

 CARP2274-001 01/01/2022

	Rates	Fringes
CARPENTER (ALLEGHENY, ARMSTRONG, BEAVER, BUTLER, ERIE, FAYETTE, GREENE, LAWRENCE, MERCER, WASHINGTON, AND WESTMORELAND COUNTIES)		

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Carpenters (Welders).....	\$ 38.05	19.84
Carpenters.....	\$ 37.10	19.84
CARPENTER (BEDFORD, BLAIR, CAMBRIA, CAMERON, CENTRE, CLARION, CLINTON, CLEARFIELD, CRAWFORD, ELK, FOREST, FRANKLIN, FULTON, HUNTINGDON, INDIANA, JEFFERSON, MCKEAN, MIFFLIN, POTTER, SOMERSET, VENANGO, AND WARREN COUNTIES)		
Carpenters (Welders).....	\$ 37.80	19.84
Carpenters.....	\$ 36.85	19.84

ELEC0005-006 12/24/2021

ALLEGHENY, ARMSTRONG, BEDFORD, BLAIR, BUTLER CAMBRIA,
CAMERON,
CENTRE (Remainder), CLARION, CLEARFIELD, ELK, FAYETTE,
FULTON,
GREENE, HUNTINGDON, INDIANA, JEFFERSON, MCKEAN, SOMERSET,
VENANGO, WASHINGTON, AND WESTMORELAND COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 45.11	29.00

ELEC0056-004 06/01/2021

ERIE, FOREST AND WARREN COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 36.29	23.83

ELEC0126-005 05/31/2021

ALLEGHENY, ARMSTRONG, BEAVER, BEDFORD, BLAIR, CAMBRIA,
CENTRE,
CLARION, CLEARFIELD, FAYETTE, FULTON, GREENE, HUNTINGDON,
INDIANA, JEFFERSON, SOMERSET, WASHINGTON AND WESTMORELAND

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	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 50.33	32.25%+11.00
Groundman.....	\$ 30.20	32.25%+11.00
Lineman.....	\$ 50.33	32.25%+11.00
Truck Driver.....	\$ 32.71	32.25%+11.00
Winch Truck Operator.....	\$ 35.23	32.25%+11.00

 ELEC0126-007 05/31/2021

FRANKLIN AND MIFFLIN COUNTIES

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 49.22	32.25%+11.00
Groundman.....	\$ 29.53	32.25%+11.00
Lineman.....	\$ 49.22	32.25%+11.00
Truck Driver.....	\$ 31.99	32.25%+11.00
Winch Truck Operator.....	\$ 34.45	32.25%+11.00

 ELEC0143-007 06/01/2021

FRANKLIN and MIFFLIN COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 33.50	25.63

 ELEC0712-003 12/27/2021

CRAWFORD, BEAVER, LAWRENCE AND MERCER COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 43.55	26.25

ELEC0812-008 06/01/2020

CLINTON COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 35.25	21.31

ELEC0812-009 06/01/2021

POTTER COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 36.84	22.41

ELEC0812-011 06/01/2020

CENTRE COUNTY (Burnside, Curtin, Liberty, Howard, Marion, Walker, Miles, Haines Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 35.25	21.31

ELEC1319-004 01/01/2022

BUTLER, CAMERON, CLINTON, CRAWFORD, ELK, ERIE, FOREST, LAWRENCE, MCKEAN, MERCER, VENANGO, WARREN AND POTTER COUNTIES

	Rates	Fringes
Line Construction:		
Equipment Operator.....	\$ 60.72	21.91
Groundmen.....	\$ 37.65	13.23
Linemen.....	\$ 60.72	26.41
Truck Driver.....	\$ 39.47	13.36

 ENGI0066-016 01/01/2022

	Rates	Fringes
Power equipment operators: (ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CENTRE, CLARION, CLEARFIELD, CRAWFORD, ERIE, ELK, FAYETTE, GREENE, INDIANA, JEFFERSON, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON, AND WESTMORELAND COUNTIES)		
GROUP 1.....	\$ 34.79	23.33
GROUP 1-A.....	\$ 37.79	23.33
GROUP 1-B.....	\$ 36.79	23.33
GROUP 2.....	\$ 34.53	23.33
GROUP 3.....	\$ 30.88	23.33
GROUP 4.....	\$ 30.42	23.33
GROUP 5.....	\$ 30.17	23.33
Power equipment operators: (BEDFORD, CAMERON, CLINTON, FOREST, FRANKLIN, FULTON, HUNTINGDON, MIFFLIN, AND POTTER COUNTIES)		
GROUP 1.....	\$ 34.50	23.33
GROUP 1-A.....	\$ 37.50	23.33
GROUP 1-B.....	\$ 36.50	23.33
GROUP 2.....	\$ 34.22	23.33
GROUP 3.....	\$ 30.58	23.33
GROUP 4.....	\$ 30.09	23.33
GROUP 5.....	\$ 29.88	23.33

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Asphalt Paving Machine (Spreader), Autograde
 (C.M.I. and similar); Backfiller, Compactor with Blade,
 Backhoe - 360 and 180 degree Swing; Cableway; Caisson
 Drill
 (similar to Hugh Williams), Central Mix Plant; Cooling
 Plant; Concrete Paving Mixer, Concrete Pump (self-

propelled); Cranes; Cranes (boom or mast over 101ft.\$.50 per each additional 50 feet inclusive of jib), Cranes (Tower Stationary- Climbing Tower Crane); Derrick;

Derrick
Boat; Dozer (greater than 25,000 lbs.); Dragline; Dredge; Dredge Hydraulic; Elevating Grader; Franki Pile Machine; Gradall (remote control or otherwise), Grader (power-fine grade); Hllift (4 cy. and over); Hoist 2 Drums or more (in one unit); Hydraulic Boom Truck with pivotal cab (single motor-Pitman or similar), (Boom and Mast over 101 feet will be paid an additional 50 feet inclusive of jib if used;)

Kocal; Mechanic, Locomotive (std. Gauge); Metro-chip Harvester or similar; Milling Machine (Roto Mill or similar); Mix Mobile; Mix Mobile (with Self Loading Attachment), Mucking Machine (tunnel); Pile Driver Machine;

Pipe Extrusion Machine; Presplitter Drill (self contained); Refrigeration Plant (soil Stablization) Rough Terrain Crane (25 ton over) (Boom and Mast over 101 feet will be paid an additional 50 feet inclusive of jib if used); Rough Terrain Crane (under 25 ton), Scrapers; Shovel-Power; Slip form Paver (C.M.I. and similar); Trenching Machine (30,000 lbs. and over), Trenching Machine (under 30,000 lb.), Tunnell Machine (Mark XXI Jarva or similar), Vermeer Saw, Whirley, Mechanic, Compactor with blade

GROUP 1-A Backhoes-360 degree swing (above 120,000 lbs. gross weight); Cranes (over 100 tons), Cranes-Rough Terrain (over 100 ton)

GROUP 1-B Backhoes-360 degree swing (above 70,000 lbs. to 120,000 lbs. gross weight); Cranes (up to 100 ton), Cranes-Rough Terrain (65 ton-100 ton), Tower Crane

GROUP 2: Asphalt plant operator; auger (tractor mtd.);
auger
(truck mtd.); belt loader (euclid or similar); boring
machine; cable placer or layer; Directional drill over
3,000 lbs thrust; concrete batch plant (electronically
synchronized); concrete belt placer (C.M.I. and similar);
concrete finishing machine and spreader, concrete mixer
(over 1 cy.) concrete pump (stationary); core drill
(truck
or skid mtd. - similar to penn drill), dozer (25,000 lbs
or
less); Ditch Witch Saw, force feedloader; fork lift (lull
or similar); grader - power; grease unit operator (head);
guard rail post driver (truck mounted) guard rail post
driver (skid type); hilift (under 4 cy.); skid steer
loader; hydraulic boom truck (non-pivotal cab); job work
boat (powered), jumbo operator; locomotive (narrow
gauge);
minor equipment operator (accumulative four units);
mucking
machine; multi-head saw (groover); overhead crane; roller
-power- asphalt; ross carrier; side boom or tractor
mounted
boom; shuttle buggy (asphalt), stone crusher
(screening-washing plants); stone spreader (self
propelled)
truck mounted drill (davey or similar); welder and
repairman; well point pump operator; bidwell concrete
finishing machine (or similar).

GROUP 3: Broom Finisher (C.M.I. or similar);
Compactors/Rollers (static or vibratory (Self-propelled)
on
dirt or stone; Curb Builder; Minor Equipment Operator (two
or three units); Multi-head Tie Tamper; Pavement Breaker
(self-propelled or ridden); Soil Stabilizer Machine; Tire
Repairman; Tractor (snaking and hauling); Well Driller
and
Horizontal: Winch or "A" Frame Truck (when hoisting and
lowering).

GROUP 4: Ballast Regulator; Compressor; Concrete Mixer
(1
cy. & under with skip); Concrete Saw (Ridden or

self-propelled); Conveyor; Elevator (Material hauling only); Fork-lift (Ridden or self-propelled); Form Line Machine; Generator; Groute Pump; Heater (Machinical);
 Hoist
 (single Drum); Ladavator, Light Plant; Mulching Machine; Personnel Boat (Powered), Pulverizer, Pumps, Seeding Machine, spray Cure Machine (powered Driven); Subgrader; Tie Puller; Tugger; Welding Machine (Gas or Diesel).

GROUP 5: Deck Hand; Farm Tractor; Fireman on Boiler; Oiler;
 Power Broom; Side Delivery Shoulder Spreader (attachment);

 IRON0003-001 06/01/2021

ALLEGHENY, FAYETTE, WESTMORELAND, CAMBRIA, INDIANA, ARMSTRONG,
 BUTLER, BEAVER, CLARION, AND WASHINGTON COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 37.79	33.14

 IRON0003-007 06/01/2020

BLAIR, CAMERON, CENTRE, CLEARFIELD, CLINTON, ELK, JEFFERSON,
 MCKEAN, AND POTTER COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 31.11	30.48

 IRON0003-011 06/01/2021

CRAWFORD, ERIE, FOREST, AND WARREN COUNTIES

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	Rates	Fringes
IRONWORKER.....	\$ 32.65	31.00

IRON0207-002 06/01/2021

LAWRENCE, MERCER, AND VENANGO COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 31.07	26.00

IRON0404-008 07/01/2021

FRANKLIN (Remainder), HUNTINGDON (Remainder), AND MIFFLIN COUNTIES

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 34.01	31.13

IRON0549-002 12/01/2021

GREENE COUNTY

	Rates	Fringes
IRONWORKER.....	\$ 34.44	24.61

IRON0568-004 05/01/2021

BEDFORD, FRANKLIN (Southwest 1/3), FULTON, HUNTINGDON (Western 2/3), AND SOMERSET COUNTIES

	Rates	Fringes
IRONWORKER		

Structural, Ornamental, Reinforcing, Machinery Mover, Rigger & Machinery Erector, Welder, Fence Erector.....	\$ 28.91	22.76
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LABO1058-001 01/01/2022

	Rates	Fringes
LABORER (BEDFORD, CAMERON, CENTRE, CLINTON, CRAWFORD, FOREST, FRANKLIN, FULTON, HUNTINGDON, JEFFERSON, MIFFLIN, AND POTTER COUNTIES)		
GROUP 1.....	\$ 27.60	25.50
GROUP 2.....	\$ 27.76	25.50
GROUP 3.....	\$ 28.25	25.50
GROUP 4.....	\$ 28.70	25.50
GROUP 5.....	\$ 29.11	25.50
GROUP 6.....	\$ 25.95	25.50
GROUP 7.....	\$ 28.60	25.50
GROUP 8.....	\$ 30.10	25.50
Laborers: (ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CLARION, CLEARFIELD, ELK, ERIE, FAYETTE, GREENE, INDIANA, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON, AND WESTMORELAND COUNTIES)		
GROUP 1.....	\$ 27.70	25.50
GROUP 2.....	\$ 27.86	25.50
GROUP 3.....	\$ 28.25	25.50
GROUP 4.....	\$ 28.70	25.50
GROUP 5.....	\$ 29.11	25.50
GROUP 6.....	\$ 25.95	25.50
GROUP 7.....	\$ 28.70	25.50
GROUP 8.....	\$ 30.20	25.50

LABORERS CLASSIFICATIONS

GROUP 1: Asphalt curb sealer; Asphalt tamper; Batcherman
(weigh) Blaster, Boatman, Brakeman, Change house
attendant,
Coffer dam, Concrete curing pitman, Puddler, Drill
Runner's
helper (Includes Drill Mounted on Truck, Track, or
similar
and Davey Drill Spots, Clean up, helps to maintain),
Electric Brush and or Grinder, Fence Construction
(Including Fence Machine Operator) Form stripper and
Mover,
Gabion (Erectors and Placers) Hydro jet blaster
nozzleman;
Landscape laborer, Manually moved emulsion sprayer,
Radio
actuated traffic control operator Rip rap work, scaffolds
and Runways, Sheeters and Shorers (includes lagging)
structural concrete Top Surfacers, Walk Behind Street
Sweeper, and Wood Chipper; water boy

GROUP 2: Air tool operator (all types); Asphalt, batch &
concrete plant operator (manually operated) Burner,
Caisson; men (open air); Carryable pumps; Chain saw
operator including attachments, Cribbing, (concrete or
steel); Curb machine operator (asphalt or concrete walk
behind); Diamond head Core Driller, Drill runner's helper
(tunnel) Fork Lift, (walk behind), Form Setter (Road
Forms
Line man) Highway Slab reinforcement placers (including
joint and Basket Setters) Hydraulic pipe pusher; Liner
plates (Tile or Vitrified Clay) Mechanical compacting
equipment operators, Mechanical joint sealer, Dope pot
and
Tar Kettle, Mortar mixer (hand or machine) Muckers,
Brakemen & all other Labor, (Includes installation of
utility lines) Pipe Layers /Fusion /Heating Iron
(Regardless of materials) Portable Single Unit Conveyor,
Post Hole Auger, (2 or 4 cycle hand operated) Power
wheelbarrows and buggies, Rail porter or similar; Sand
blaster; Signal Man, Vibrator operator, All RAILROAD TRACK
WORK TO INCLUDE THE FOLLOWING: adzing machine, ballast
Router, Bolting Machine, Power Jacks, Rail Drills,
Railroad
Brakeman, Rail Saws, Spike Drivers (Manually or hand held

tool) Spike Pullers Tamping Machine, Thermitweld

GROUP 3: Asphalt Luteman/Raker, Blacksmith, Blaster, Brick, stone and block pavers and block cutters (wood, belgian and asphalt); Cement mortar lining car pusher; Cement mortar mixer (pipe relining); Cement mortar pipe reliners; concrete saw operator (walk behind); Curb cutters and setters; Elevated roadway drainage construction; erector of overhead signs, Form setter (road forms-lead man); Grout machine operator; Gunite or dry pack gun (nozzle and machine man); Manhole or catch basin builder (Brick block concrete or any prefabrication) Miners and drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos); Multi-plate pipe (aligning and securing); Placing wire mesh on gunite projects; Wagon drill operators (air track or similar); Walk behind ditching machine (trencher or similar); crown screed adjuster and welder

GROUP 4: Reinforcing Steel Placer (Bending, aligning, and securing, Cadweld)

GROUP 5: High Burner, (Any burning not done from deck), Welder (Pipeline)

GROUP 6: Uniformed Flagperson, Watchman

GROUP 7: Toxic/Hazardous Waste Removal Laborer Levels C & D

GROUP 8: Toxic/Hazardous Waste Removal Laborer Levels A & B

PAIN0021-019 05/01/2021

CLINTON COUNTY

Rates

Fringes

Painters:		
Bridge.....	\$ 36.67	18.80
Brush & Roller.....	\$ 29.02	21.14
Spray.....	\$ 30.02	21.14

PAIN0021-024 05/01/2021

FRANKLIN COUNTY

	Rates	Fringes
PAINTER		
Brush.....	\$ 25.84	16.30

PAIN0057-014 06/01/2021

ALLEGHENY, FAYETTE, GREENE, WASHINGTON COUNTIES

	Rates	Fringes
Painters:		
Bridge.....	\$ 36.25	21.61
Brush & Roller.....	\$ 29.15	21.61
Spray.....	\$ 29.15	21.61

PAIN0057-015 06/01/2021

ARMSTRONG, BEAVER, BEDFORD, BLAIR, BUTLER, CAMBRIA, CENTRE, CLARION, CLEARFIELD, ELK, FULTON, HUNTINGTON, INDIANA, JEFFERSON, LAWRENCE, MERCER, MIFFLIN, SOMERSET, VENANGO AND WESTMORELAND COUNTIES

	Rates	Fringes
Painters:		
Bridge.....	\$ 36.25	21.61
Brush and Roller.....	\$ 29.15	21.61
Spray.....	\$ 29.15	21.61

 PAIN0057-022 05/01/2020

	Rates	Fringes
Painters: (ERIE, McKEAN, AND WARREN (Including Columbus and Freehold twps) COUNTIES)		
Bridges, Stacks, Towers.....\$	25.82	19.71
Brush and Roller.....\$	23.32	19.71
Spray and Sandblasting.....\$	24.07	19.71

 PAIN0057-027 06/01/2020

CAMERON, CRAWFORD, POTTER, WARREN, (Excluding Columbus and Freehold twps)

	Rates	Fringes
PAINTER		
Brush and Roller.....\$	28.80	20.04

 PLAS0526-002 01/01/2021

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...\$	32.84	22.60

 PLUM0027-001 06/01/2021

ALLEGHENY, ARMSTRONG, BEAVER, BUTLER, CLARION, GREENE (Except extreme Eastern portion), LAWRENCE, WASHINGTON (Except extreme Eastern portion) and WESTMORELAND (City of Arnold and City of New Kensington Only) COUNTIES

	Rates	Fringes
Plumbers and Pipefitters (Bridge Drain Pipe).....	\$ 44.45	24.57

 PLUM0027-009 06/01/2021

CRAWFORD, ERIE, FOREST, MCKEAN, MERCER, VENANGO and WARREN
 COUNTIES

	Rates	Fringes
Plumbers and Pipefitters (Bridge Drain Pipe).....	\$ 42.78	24.57

 PLUM0354-005 06/01/2012

BEDFORD, BLAIR, CAMBRIA, CAMERON, CLEARFIELD, ELK, FAYETTE,
 GREENE (Extreme Eastern portion), HUNTINGDON, INDIANA,
 JEFFERSON, SOMERSE, WASHINGTON (Extreme Eastern portion),
 AND
 WESTMORELAND COUNTIES

	Rates	Fringes
Plumbers and Pipefitters (Bridge Drain Pipe).....	\$ 35.54	19.97

 TEAM0040-006 01/01/2022

	Rates	Fringes
TRUCK DRIVER (ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CENTRE, CLARFIELD, CRAWFORD, ERIE, FAYETTE, GREENE, INDIANA, JEFFERSON, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO,		

WARREN, WASHINGTON, AND WESTMORELAND)		
GROUP 1.....	\$ 31.43	21.71
GROUP 2.....	\$ 31.89	22.02
Truck drivers: (BEDFORD, CAMERON, CLAIRON, CLINTON, ELK, FOREST, FRANKLIN, FULTON, HUNTINGDON, MIFFLIN, AND POTTER COUNTIES)		
GROUP 1.....	\$ 31.29	21.63
GROUP 2.....	\$ 31.75	21.93

FOOTNOTES: A. Hazardous/toxic waste material/work level A & B receive additional \$2.50 per hour above classification rate

B. Hazardous/toxic waste materials/Work level C & D receive \$1.00 per hour above classification

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1 - Single Axle (2 axles including steering axle); Includes partsman and warehoueman. Tandem - Tri-Axle - Semi-Tractor Trailer (combination) (3 axles or more including steering axle)

GROUP 2 - Specialty Vehicles; Heavy equipment whose capacity exceeds that for which state licenses are issued specifically refers to units in excess of eight (8) feet width (such as Euclids, Atley Wagon, Payloader, Tournawagons, and similar equipment when not self loaded); Tar and Asphalt Distributors Trucks, Heavy Duty Trailer, such as Low Boy, High Boy

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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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 <https://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 (29CFR 5.5 (a) (1) (ii)).

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 National Office because National Office has responsibility for the Davis-Bacon survey program. 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 DECISIO"

PA 04 District 6 Fed Wage 2-25-2022

"General Decision Number: PA20220004 02/25/2022

Superseded General Decision Number: PA20210004

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania.

HEAVY AND 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)(2)-(60).

If the contract is entered	. Executive Order 14026
into on or after January 30,	generally applies to the
2022, or the contract is	contract.
renewed or extended (e.g., an	. The contractor must pay
option is exercised) on or	all covered workers at
after January 30, 2022:	least \$15.00 per hour (or
	the applicable wage rate
	listed on this wage

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/11/2022
2	02/18/2022
3	02/25/2022

BOIL0013-003 01/01/2022

	Rates	Fringes
BOILERMAKER.....	\$ 50.17	34.96

CARP0219-005 05/01/2021

	Rates	Fringes
MILLWRIGHT.....	\$ 48.09	33.70

CARP0255-006 05/01/2021

	Rates	Fringes
CARPENTER.....	\$ 52.11	27.69

FOOTNOTE:

A. PAID HOLIDAY: LABOR DAY

CARP0441-004 05/01/2021

	Rates	Fringes
PILEDRIVERMAN.....	\$ 43.73	37.99

ELEC0098-001 04/29/2018

BUCKS COUNTY: Starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north 09113 to Route 152, north along Route 152 to the Humeville Road, east on Humeville Road to Route 333, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded. Starting at the Delaware at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, Southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09060, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

DELAWARE COUNTY: That portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Ave, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in

a straight line to the Delaware River. MONTGOMERY COUNTY:
 That portion southeast of a line following Lower State
 Road
 from Bucks County southwest to the Bethlehem Pike (U.S
 Highway
 309), south on the Bethlehem Pike to the Penllyn Pike,
 southwest on the Penllyn and Blue Bell Pikes to the
 Wissahickon Creek, southeast on the Wissahickon Creek to
 the
 Butler Pike to North Lane near Conshohocken Borough,
 southwest
 on North Lane to Schuylkill River and continuing southeast
 in a
 line to the Spring Mill Road and southwest on the Spring
 Mill
 Road to Delaware County. PHILADELPHIA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 58.33	59%+1.75

 ELEC0102-003 05/31/2021

BUCKS COUNTY (Plumstead, Bedminister, Tinicum, Nockamixon,
 Bridgeton and Durham Townships in their entirety, and that
 portion of Haycock and Springfield Townships east of a line
 following State Highway 412, from Northampton County south
 to
 Route 09071 to State Highway 212, along Highway 212 to
 Route
 09068, and along 09068 to State Highway 313. Also included
 is
 that portion of Dublin Borough east of State Highway 313

	Rates	Fringes
ELECTRICIAN.....	\$ 58.65	60.50%

 ELEC0126-002 05/31/2021

CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, AND REMAINDER
OF
BUCKS COUNTY

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 57.93	32.25%+11.00
Groundman.....	\$ 34.76	32.25%+11.00
Lineman.....	\$ 57.93	32.25%+11.00
Truck Driver.....	\$ 37.65	32.25%+11.00
Winch Truck Operator.....	\$ 40.55	32.25%+11.00

ELEC0269-001 07/06/2020

BUCKS COUNTY (Area East of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to route 152, north along route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on route 344 to the junction of Spurs 281 and 252 continue north on spur 252 and route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope; including the Boroughs of New Hope and Bristol)

	Rates	Fringes
ELECTRICIAN.....	\$ 51.71	64.70%

 ELEC0269-002 07/06/2020

BUCKS COUNTY - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to route 152, north along route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on route 344 to the junction of Spurs 281 and 252 continue north on spur 252 and route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included.

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 54.30	64.15%
Groundman, Truck Driver.....	\$ 41.37	64.15%
Linemen and Heavy		
Equipment Operator.....	\$ 51.71	64.15%

 ELEC0313-003 06/01/2011

DELAWARE COUNTY : (That portion south of U.S. Highway No. 1 and west of U.S. Highway No. 202) Chester County (That portion South and east of U. S. Highway 1)

	Rates	Fringes
ELECTRICIAN.....	\$ 35.00	23.70

ELEC0375-001 06/01/2021

BUCKS COUNTY (East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships west of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to state Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313) MONTGOMERY COUNTY (Upper Hanover Twp. in its entirety)

	Rates	Fringes
ELECTRICIAN.....	\$ 42.65	22.69

ELEC0380-001 09/29/2014

BUCKS COUNTY (Hilltown and New Britain Townships in their entirety; that portion of Telford Borough Northeast of County Line Road (Main Street) and bounded by West Rock Hill and Hilltown Township that portion of Dublin Borough West of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough Northwest of a line following U.S. Highway 611 South from Route 09064 to the spur of Route 270, and proceeding Northwest along the spur to Route 397, Southwest on 397 to Route 350, Southeast on 350 to Route 395,

Southwest on 395 to Route 09069, Southeast on 09069 to Route 09041, Southwest on 09041 to the Montgomery County Line) DELAWARE COUNTY (The portion of Radnor Township North of U.S Highway 30 and West of State Highway 320) MONTGOMERY COUNTY (The portion Northwest of a line following Lower State Road from Bucks County Southwest to Bethlehem Pike (U.S. Highway 309), South on Bethlehem Pike to Penllyn Pike, Southwest on the Penllyn and Blue Bell Pikes to Wissahickon Creek to the Butler Pike, Southwest Wissahickon Creek to Butler Pike, Southwest on Butler Pike, to North Lane near Conshohocken Borough, Southeast on North Lane to the Schuylkill River and continuing Southeast in a line to Spring Mill Road, Southwest on Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the Borough of Pottstown North and West of a line drawn Northeast on Kein Street from the Schuylkill River to Reading Railroad Northwest on the railroad to Madison Street, to High Street, East on High Street to Green Street, North on Green Street and Northeast on Mintzer Street to Lower Pottsgrove Township Line, along this township line and the borough line Northwest to Adams Street and Beehive Road, Northeast on Beehive Road to the Township Line at Mervine Street)

CHESTER COUNTY (East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charleston Townships in their entirety, and that portion of Clan, East Clan, East Whiteland &

West Whiteland, Tredyffrin, Willistown, Easttown Townships
and
Borough of Downingtown north of U. S. Highway 30)

	Rates	Fringes
ELECTRICIAN.....	\$ 41.05	29.99

ELEC0654-001 05/31/2021

DELAWARE COUNTY (The portion south of U.S. Highway 30 and north of that part U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 between U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania) CHESTER COUNTY (That portion south of U. S. Highway 30 and north of that part of U.S. Highway 1)

	Rates	Fringes
ELECTRICIAN.....	\$ 45.49	26.50%+22.64

ELEC0743-001 09/01/2021

CHESTER (Coatesville, Honey Brook, South Coventy, Valley, Wallace, Warwick, West Brandywine, West Clan, and West Nantmeal Twps); AND MONTGOMERY (Douglas, Pottstown, Upper Pottsgrove,

and West Pottsgrove, Twps) COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 39.02	24.72

New Year's Day, Good Friday, Memorial Day, Fourth of July,
 Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

 ELEC0743-007 09/01/2021

CHESTER COUNTY (The portion of Sadsbury and West Sadsbury Township north of U.S. Highway 30)

	Rates	Fringes
ELECTRICIAN.....	\$ 39.02	24.72

 * ENGI0542-005 05/01/2021

	Rates	Fringes
Power equipment operators: (HEAVY, HIGHWAY, AND WATER LINE CONSTRUCTION (Off Plant Site))		
GROUP 1.....	\$ 49.50	31.51
GROUP 1a.....	\$ 52.51	32.39
GROUP 2.....	\$ 49.25	31.44
GROUP 2a.....	\$ 52.27	32.31
GROUP 3.....	\$ 45.16	30.24
GROUP 4.....	\$ 44.86	30.15
GROUP 5.....	\$ 43.14	29.64
GROUP 6.....	\$ 42.16	29.34

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Handling steel and stone in connection with erection, cranes doing hook work, any machine handling machinery, helicopters, concrete pumps building machines similar to the above, including remote control equipment.

GROUP 1a: Machines handling steel, or the functional equivalent, and stone in connection with erection 15 ton and over factory rating; Cranes doing hook work 15 ton and

over factory rating; Any machines handling machinery; High

Rail/Burro Crane 15 ton and over factory rating; Rail Loader (Winch Boom Type) 15 ton and over factory rating; Concrete Pumps (Building) 120 feet of Boom length or less (200 yard pour or less); Machines similar to above, including remote control equipment; Equipment in this

Wage

Group that does not require an oiler.

GROUP 2: All types of cranes, All types of backhoes, Cableways, Draglines, Keystones, all types of shovels, Derricks, Pavers 21E and over, Trenching machines, Trench shovel, Graddalls, Front-End loaders, Boat Captain, Pippin

type backhoes, Tandems scrapers, Towers type crane operation erecting, Dismantling, Jumping or Jacking,

Drills

(self-contained), (drillmaster type) forklift (20 ft. and over), Moter patrols (fine grade), Batch plant with

mixer,

Carryalls, Scraper, Trounapulls, Roller (Hith Grade Finishing), Spreaders (asphalt), Bulldozers and Tractors, Mechanic welder, Conveyor loaders (euclid-type wheel), Concrete pump, Milling Machines, Hoist with two towers, Building hoist double drum (unless used as a single

drum),

Mucking machines in tunnel, All auto grade and concrete finishing machines, Bundle pullers/extractors (tublar), toxic/hazardous waste removal rate 20 per cent added to

all

classification, bobcat, side broom, directional boring machines, vermeet saw type machines (other than hand

held)

tractor mounted hydro axe, chipper with boom, all machine

similar to the above including remote control equipment.
3: Asphalt plant engineers, Well drillers, Ditch witch (small trencher), Motor patrols, Fine grade machines, Ten-ton roller (grade fill stone base), Concrete breaking machines, Guilloline only, Stump grinder, Conveyors (except building conveyors), Fork lift trucks of all types, High pressure boliers, Machine similar to the above, including remote control equipment.

GROUP 2a: Crawler backhoes and Crawler gradalls over one cubic yard factory rating; Hydraulic backhoes over one cubic yard factory rating; All types of cranes 15 ton and over factory rating; Single person operation truck cranes 15 ton and over factory rating; Cherry picker type machinery and equipment 15 ton and over factory rating; Concrete Pumps (Heavy/Highway); Machines similar to above, including remote control equipment; Equipment in this Wage Group that does not require an oiler.

GROUP 3: Asphalt plant engineers, Well drillers, Ditch witch (small trencher), Motor patrols, Fine grade machines, Ten-ton roller (grade fill stone base), Concrete breaking machines, Guilloline only, Stump grinder, Conveyors (except building conveyors), Fork lift trucks of all types, High pressure boliers, Machine similar to the above, including remote control equipment.

GROUP 4: Seaman, Pulverzer form line grader, Farm tractors, road finishing, Concrete spreader, Power broom (self-contained), Seed spreader, Grease truck.

GROUP 5: Compressors pumps, Well point pumps, Welding machines Tireman, Power equipment, Maintenance engineer (power boats), and macnines similar to the above.

GROUP 6: Fireman, Oilers and deck hands (personnel Boats), grease truck.

FOOTNOTE: A. PAID HOLIDAYS: New Year's Day; Memorial Day;
 Independence Day; Labor Day; Thanksgiving Day and Christmas Day

****TOXIC/HAZARDOUS WASTE REMOVAL****

Add 20 per cent to basic hourly rate for all classifications

 IRON0068-003 07/01/2014
 BUCKS COUNTY (Remainder)

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 42.65	30.28

 IRON0068-005 07/01/2014
 BUCKS COUNTY (Remainder)

	Rates	Fringes
IRONWORKER (STRUCTURAL & ORNAMENTAL)	\$ 44.64	30.28

 IRON0401-001 07/01/2021
 BUCKS (Includes the towns of BEnsalem, Breadysville, Bristol Churchville, Cornwells Heights, Davisville, Eddington, Feasterville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southampton, Tradesville, Trevose, Unionville, Warminster, and Warrington): DELAWARE (North of a line running along State Rt 352 to right on State Rt 291 to State Line);

CHESTER (Includes the towns of Aldham, Anselma, Bacton, Berwyn, Cedar Hollow, Charlestown, Chester Springs, Cromby, Devon, Devault, Daylesford, Diamond Rock, Dutton Mill, Frazer, Goshenville, Howellville, Kimberton, Ludwigs Corner, Paoli, Matthews, Perkiomen Junction, Phoenixville, Rapps Corner, Rocky Hill, Strattford, Sugartown, Tanguy, Valley Forge, Valley Store, White Horse, Williams Corner, and Wilsons Corner); MONTGOMERY (Remainder); and PHILADELPHIA COUNTIES

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 47.70	39.10

IRON0404-023 07/01/2021

MONTGOMERY COUNTY (Anise, Berguy, Congo, Douglas, East Greenfield, East Limerick, East Slaford, East Zieglerville, Engleville, Fagleysville, Ford, Gilbertsville, Green Lane, Hanover, New Perksionenville, Niato, Palm, Obelish, Pennsburg, Perkiomen, Pottstown, Royerfored, Roytown, Sammamansville, Tylerport, Upper Hanover, Upper Pottsgrove, Upper Wodall, West Limerick, West Salford, and West Zieglerville Townships)

	Rates	Fringes
Ironworkers:.....	\$ 34.01	31.13

IRON0405-001 07/01/2019

BUCKS (Includes the towns of Bensalem, Breadysville, Bristol, Churchville, Cornwell Heights, Davisville, Eddington, Festerville, Hartsville, Johnsville, Line Lexington, Neshaminy,

Southampton, Transville, Trevoise, Unionville, Warminister, and Warrington), DELAWARE (North of a line running along State Route 352 to right on State Route 291 to State Line); CHESTER (Includes the towns of Aldham, Anselma, Bacton, Berwyn, Cedar Hollow, Charlestown Chester Springs, Cromby, Devon, Devault, Daylesford, Diamoond Rock, Dutton Mill, Frazer, Goshenville, Howellville, Kimberton, Ludwigs Corner, Paoli, Mathews, Perkiomen Junction, Phoenixville, Rapps Corner, Rocky Hill, Strafford, Sugartown, Tanguy, Valley Forge, Valley Store, White Horse, Williams Corner, and Wilsons Corner); MONTGOMERY (Remainder); AND PHILDELPHIA COUNTIES

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 43.88	30.25
Reinforcing Steel Mesh, Rebar Work		

The following holidays shall be observed and when work is performed thereon it shall be paid for at twice the base rate: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Employees shall be off Christmas Eve Day and receive four hours pay. Employees who have to work on Christmas Eve Day shall work four hours and be paid for eight hours pay for the holiday. Any time worked beyond fours hours shall be paid at the double time rate plus the four hours holiday pay. To receive holiday pay, the employee must work the day before Christmas Eve and the first working day after Christmas Day.

IRON0405-003 07/01/2021

BUCKS COUNTY (Includes the towns of Bensalem, Breadysville, Bristol, Churchville, Cornwells Heights, Davisville, Eddington, Feasterville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southhampton, Tradesville, Treiose, Unionville, Warminster, and Warrington), DELAWARE (North of a line running along State Route 352 to right on Stae Route 291 to State Line); CHESTER (Includes the towns of Alsham, Anselma, Bacton, Berwyn, Cedar Hollow, Charlestown, Chester Springs, Cromby, Devon, Devault, Daylesford, Diamond Rock, Dutton Mill, Frazer, Goshenville, Howellville, Kimberton, Ludwig Corner, Paoli, Mattews, Perkiomen Junction, Phoenixville, Rapps Corner, Rocky Hill, Strafford, Sugartown, Tanguy, Valley Forge, Valley Store, White Horse, Williams Corner); MONTGOMERY (Remainder); and PHILADELPHIA COUNTIES

	Rates	Fringes
IRONWORKER (Rigger and Machinery Mover).....	\$ 43.72	32.25

The following holidays shall be observed and when work is performed thereon it shall be paid for at twice the base rate: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Employees shall be off Christmas Eve Day and receive four hours pay. Employees who have to work on Christmas Eve Day shall work four hours and be paid for eight hours pay for the holiday. Any time worked beyond fours hours shall be paid at the double time rate plus the four hours holiday pay. To receive holiday pay, the employee must work the day before

Christmas Eve and the first working day after Christmas Day.

 IRON0451-004 07/01/2021

CHESTER (Remainder of County), AND DELAWARE (Remainder of County) COUNTIES

	Rates	Fringes
Ironworkers: (Structural, Ornamental, and Reinforcing).....	\$ 37.35	34.35

The following holidays shall be observed, and when work is performed thereon it shall be paid for at twice the base wage rate: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

 LABO0057-001 05/01/2021

	Rates	Fringes
LABORER		
GROUP 1.....	\$ 35.00	26.24
GROUP 2.....	\$ 35.20	26.24
GROUP 3.....	\$ 35.20	26.24
GROUP 4.....	\$ 29.80	26.24
GROUP 5.....	\$ 35.85	26.24
GROUP 6.....	\$ 35.90	26.24
GROUP 7.....	\$ 35.75	26.24
GROUP 8.....	\$ 35.50	26.24
GROUP 9.....	\$ 35.35	26.24
GROUP 10.....	\$ 35.50	26.24
GROUP 11.....	\$ 35.40	26.24
GROUP 12.....	\$ 39.13	26.24
GROUP 13.....	\$ 35.25	26.24

LABORERS CLASSIFICATIONS

GROUP 1: Yardwork Laborers; Scale Mixermen; Burnermen, Feeders; Dustmen

GROUP 2: General Laborer; Asphalt Shovelers; Sheeting, Shoring & Lagging Laborers; Stone, Granite & Artificial Stone Setting Laborer; Hod Carriers; Scaffold Builders; Relief Joints & Approach Slabs; Assembling & Placing Gabions; Pneumatic Tool Laborers; Concrete Forms & Stripping Laborers; Concrete & Lumber Material Laborers; Steel & Steel Mesh (Carrying & Handling); Form Pinners; Mortar Mixers; Pouring & Placing Concrete; Grade Men

GROUP 3: Vibrator Laborer; Finish Surface Asphalt Rackers; Jackhammer Operators; Paving Breaker Operator; Pipelayer & Caulker (all joints up to within 5 feet of the Building Foundation Line); Conduit & Duct Layers

GROUP 4: Flagperson

GROUP 5: Miners

GROUP 6: Burners

GROUP 7: Miner Bore Driver; Blasters; Drillers; Pneumatic Shield Operator

GROUP 8: Form Setters

GROUP 9: Trackmen; Brackmen; Groutmen; Bottom Shaft Men; All

Other Laborers in Free Air Tunnels; Underpinning (When an underpinning excavation is dug eight feet or more below the natural grade or where an excavation for a pier hole of five feet square or less and eight feet or more deep is dug, the rate shall apply only after a depth of eight feet is reached, to the men working in the bottom)

GROUP 10: Circular Caissons (Where an excavation for circular caissons are dug eight feet or more below the natural grade level adjacent to the starting point of the caisson hole, at ground level, for the men working in the bottom); Welders, Burners & Air Tuggers

GROUP 11: Powderman; Multiple Wagon Drill Operator

GROUP 12: Toxic/Hazardous Waste Handler

GROUP 13: Wagon Drill/Hydraulic Track Drill Operator

 LABO0413-005 05/01/2021

	Rates	Fringes
Landscaping		
Farm Tractor Driver,		
Hydroseeder Nozzleman,		
Mulcher Nozzleman.....	\$ 26.73	23.12+A

FOOTNOTE:

A. PAID HOLIDAYS: Independence Day, Labor Day, and Thanksgiving Day

 PAIN0021-003 02/01/2022

	Rates	Fringes
Painters:		
Bridge.....	\$ 59.58	28.86
All Other Work.....	\$ 48.62	28.82

 PLAS0592-008 05/01/2021

	Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER...\$ 39.65 33.41

 PLUM0420-001 05/01/2021

	Rates	Fringes
Steamfitter		
Bucks, Chester, Delaware,		
Montgomery and		
Philadelphia Counties.....\$	62.32	38.73

 PLUM0690-008 05/01/2021

	Rates	Fringes
PLUMBER.....\$	59.83	35.86

 TEAM0107-002 05/01/2020

	Rates	Fringes
Truck drivers:		
GROUP 1.....\$	33.07	19.675+a+b
GROUP 2.....\$	33.17	19.675+a+b
GROUP 3.....\$	33.42	19.675+a+b

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1 - Stake body truck (single axle, dumpster)

GROUP 2 - Dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

GROUP 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTE:

A. PAID HOLIDAYS: Memorial Day, Independence Day, Labor Day, Thanksgiving Day and five personal holidays provided employee works at least one day in the three work days before and at least one day in the three work days after the said holiday. Employee earns a personal holiday every two months, provided employee has worked twenty-six day in each consecutive two month period, up to a maximum of five per calendar year. After 130 work days the employee is entitled to all five personal holidays.

B. PAID VACATION: Employee will earn one vacation day for every two months, provided employee has worked twenty-six day in each consecutive two month period, up to a maximum of five vacation days per calendar year. After 130 workdays the employee is entitled to all five days of vacation. Employees with 5 years of seniority, earn an additional week of vacation, accrued in the same way.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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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 <https://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 (29CFR 5.5 (a) (1) (ii)).

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 National Office because National Office has responsibility for the Davis-Bacon survey program. 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 DECISIO"

PA 06 Eastern Fed Wage 2-25-2022

"General Decision Number: PA20220006 02/25/2022

Superseded General Decision Number: PA20210006

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties in Pennsylvania.

HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (Excluding Sewer Grouting Projects and Excluding Sewage and Water Treatment Plant 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)(2)-(60).

| If the contract is entered | . Executive Order 14026
| into on or after January 30, | generally applies to the
| 2022, or the contract is | contract.
| renewed or extended (e.g., an | . The contractor must pay

option is exercised) on or after January 30, 2022: all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.

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 \$11.25 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 2022.

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 <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/28/2022
2	02/11/2022
3	02/25/2022

BOIL0013-003 01/01/2022

	Rates	Fringes
BOILERMAKER.....	\$ 50.17	34.96

CARP0167-006 05/01/2019

BERKS, CARBON and LANCASTER

	Rates	Fringes
CARPENTER.....	\$ 32.07	15.49

CARP0167-007 05/01/2021

LEHIGH and NORTHAMPTON COUNTIES

	Rates	Fringes
CARPENTER.....	\$ 36.02	26.96

CARP0219-007 05/01/2021

CARBON (Townships: East Penn, Lower Towamensing, Mahoning, Franklin, Towamensing, Penn Forest. Everything south of Route 903 and east to the Kidder Township Line. Boroughs: Hauto, Nesquehoning, Lansford, Summit Hill, Jim Thorpe, Weissport, Bownmanstown, Palmerton, Lehighton, and Parryville) , LEHIGH AND NORTHAMPTON COUNTIES

	Rates	Fringes
MILLWRIGHT.....	\$ 45.09	31.94

CARP0441-005 05/01/2021

BERKS, CARBON, LANCASTER, LEHIGH and NORTHAMPTON COUNTIES

	Rates	Fringes
PILEDRIVERMAN.....	\$ 43.73	37.99

CARP0443-002 05/01/2021

ADAMS, BRADFORD, CARBON (Banks, Lausanne, Lehigh, Packer, Kidder Twps., and part of Penn Forest Township north of Route 903) COLUMBIA, CUMBERLAND, DAUPHIN, JUNIATA, LEBANON, LUZERNE (lower part of) MONROE, MONTOUR, NORTHUMBERLAND, PERRY, PIKE, SCHUYLKILL, SNYDER, SULLIVAN, SUSQUEHANNA, TIOGA, UNION, WAYNE, WYOMING, YORK (New Cumberland Army Depot and Harrisburg State Airport) COUNTIES

	Rates	Fringes
MILLWRIGHT.....	\$ 36.08	53.41%+.86

 CARP0443-010 05/01/2021

BERKS and LANCASTER COUNTIES

	Rates	Fringes
MILLWRIGHT.....	\$ 40.00	21.72

 CARP2274-003 05/01/2021

Adams, Bradford, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Monroe, Montour, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York

	Rates	Fringes
CARPENTER.....	\$ 33.12	17.74
PILEDRIVERMAN.....	\$ 33.12	17.74

 ELEC0126-001 05/31/2021

ADAMS, BERKS, CUMBERLAND, DAUPHIN, JUNIATA, LANCASTER, LEBANON, LEHIGH, NORTHAMPTON, PERRY AND YORK COUNTIES

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 49.22	32.25%+11.00
Groundman.....	\$ 29.53	32.25%+11.00
Lineman.....	\$ 49.22	32.25%+11.00
Truck Driver.....	\$ 31.99	32.25%+11.00
Winch Truck Operator.....	\$ 34.45	32.25%+11.00

 ELEC1319-001 01/01/2022

BRADFORD, CARBON, COLUMBIA, LACKAWANNA, LUZERNE, LYCOMING,
 MONROE, MONTOUR, NORTHUMBERLAND, PIKE, SCHUYLKILL, SNYDER,
 SULLIVAN, SUSQUEHANNA, TIOGA, UNION, WAYNE, AND WYOMING
 COUNTIES

	Rates	Fringes
Line Construction:		
Equipment Operator.....	\$ 60.72	21.91
Groundmen.....	\$ 37.65	13.23
Linemen.....	\$ 60.72	26.41
Truck Driver.....	\$ 39.47	13.36

 * ENGI0542-004 05/01/2021

	Rates	Fringes
Power equipment operators: (HIGHWAY CONSTRUCTION AND WATER LINES CONSTRUCTION (OFF PLANT SITE))		
GROUP 1.....	\$ 39.10	24.70
GROUP 1a.....	\$ 41.35	25.38
GROUP 2.....	\$ 37.93	24.35
GROUP 3.....	\$ 37.23	24.15
GROUP 4.....	\$ 36.77	24.03
GROUP 5.....	\$ 36.26	23.88
GROUP 6.....	\$ 39.33	24.77
GROUP 6a.....	\$ 41.58	25.43

BOOM LENGTH PAY:

On all machines with booms, jibs, masts and leads 100 ft.
 and
 over, twenty five cents (\$0.25) per hour additional will
 be
 paid for each increment of 25 ft. over 100 ft. On
 machines

with booms (including jibs, masts and leads, etc.), 200 ft. and over, two (2) Operating Engineers shall be required.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Pile drivers, all types of cranes, all types of backhoes, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, paver (blacktop and concrete), gradalls, all front end loaders, tandem scrapers, pippin types backhoes, boat captains, batch plant with mixer, drill self contained (drill-master type), CMI Autograde, milling machine, vemeer saw, conveyor loader (euclid type) scraper and tournapulls, bulldozers and tractors, concrete pumps, motor patrols, mechanic welders, log skidder, side boom, bobcat type (with attachments), boring machines including directional boring machines, chipper with boom, hydro ax, machines similar to the above including remote control equipment.

GROUP 1a: Crawler backhoes and Crawler gradalls over one cubic yard factory rating; Hydraulic backhoes over one cubic yard factory rating; All types of cranes 15 ton and over factory rating; Single person operation truck cranes 15 ton and over factory rating; Cherry picker type machinery and equipment 15 ton and over factory rating; Machines similar to above, including remote control equipment; Equipment in this Wage Group that does not require an oiler.

GROUP 2 - Spreaders, asphalt plant engineers, rollers (high grade finishing), machine similar to above, including remote control equipment, and forklifts 20ft and over.

GROUP 3 - Welding machine, well points, compressors, pump heaters, farm tractors, form line graders, ditch witch type trencher, road finishing machines, concrete breaking

machines, rollers, miscellaneous equipment operator,
 seaman
 pulverizing mixer, power broom, seeding spreader, tireman
 -
 (for power equipment) conveyors, loaders other than EUC
 type, conveyors, driller second class, machines similar
 to
 the above including remote control equipment, and
 forklift
 under 20 ft.

GROUP 4 - Fireman and grease truck

GROUP 5 - Oilers and deck hands

GROUP 6 - All machines with booms (including jibs, masts,
 leads, etc.) 100 ft. and over.

GROUP 6a: All machines with Booms (including Jibs,
 Masts,
 Leads, etc.) 100 feet 15 ton and over factory rating;
 Machines similar to above, including remote control
 equipment; Equipment in this Wage Group that does not
 require an oiler.

TOXIC/HAZXARDOUS WAST REMOVAL

Add 20 per cent to basic hourly rate for all
 classifications

* ENGI0542-022 05/01/2021

	Rates	Fringes
Power equipment operators:		
(HEAVY CONSTRUCTION:)		
GROUP 1.....	\$ 38.44	27.52+A
GROUP 1a.....	\$ 40.69	28.18+A
GROUP 2.....	\$ 38.16	27.43+A
GROUP 2a.....	\$ 40.41	28.10+A
GROUP 3.....	\$ 35.24	26.57+A
GROUP 4.....	\$ 34.10	26.24+A

GROUP 5.....	\$ 33.65	26.11+A
GROUP 6.....	\$ 32.77	25.85+A

HEAVY CONSTRUCTION:

FOOTNOTE:

A: PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, the employee works the day before and the day after the holiday.

BOOM LENGTH PAY:

On all machines with booms, jibs, masts and leads 100 ft. from ground up, fifty (\$0.50) per hour additional will be paid for each increment of 25 ft. over 100 ft. On cranes with booms (including jibs, masts and leads, etc.) 200 ft. and over, two (2) operators shall be required, no Oilers will be required, with seventy five (\$0.75) in increments of 25 ft.

TOXIC/HAZARDOUS WASTE REMOVAL

Add 20 per cent to basic hourly rate for all classifications

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above, including remote control equipment, all types of cranes, cableways, and draglines.

GROUP 1a: Machines doing hook work; Machines handling machinery; All types of cranes 15 ton and over factory rating; Cable ways; Draglines 15 ton and over factory rating; High Rail/Burro Crane 15 ton and over factory rating; Rail Loader (Winch Boom Type) 15 ton and over factory rating; Machines similar to above, including remote control equipment; Equipment in this Wage Group that does not require an oiler.

GROUP 2: Backhoes, keystones, shovels, derricks, trench shovels, trenching machines, hoist with two towers, pavers

21E and over, overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnels, front end loaders, tandem scrapers, pippin type backhoes, boat captains, batch plant operators concrete drills, self-contained rotary drills, fork lifts, 20ft, lift and over, scrapers, tournapulls, spreaders, bulldozers and tractors, rollers (high grade finishing), mechanic-welder,

motor patrols, concrete pumps, grease truck, bob cat type (all attachments), boring machines including directional boring machines, hydro ax, side boom, vermeer saw, chipper

with boom, machines similar to the above including remote control equipment

GROUP 2a: Crawler backhoes and crawler gradalls over one cubic yard factory rating; Hydraulic backhoes over one cubic yard factory rating; Equipment 15 ton and over factory rating; Machines similar to above, including remote

control equipment; Equipment in this Wage Group that does not require an oiler.

GROUP 3: Conveyors, building hoist (single drum), high or

low pressure boilers, drill operators, well drillers, asphalt plant engineers, ditch witch type trencher, second

class driller, forklift truck under 20ft. lift, stump grinder, tireman (for power equipment), machines similar to

above including remote control equipment.

GROUP 4: Welding machines, well points, compressors, pumps,

heaters, farm tractors, form line graders, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power boom, seeding spreader, chipper without boom, machines similar to the above including remote control equipment.

GROUP 5: Fireman.

GROUP 6: Oilers and deck hands (personnel boats).

 IRON0404-006 07/01/2021

ADAMS, BERKS, CUMBERLAND, DAUPHIN, JUANITA, LANCASTER,
 LEBANON,
 LEHIGH, LYCOMING, MONTOUR, NORTHAMPTON, NORTHUMBERLAND,
 PERRY,
 SCHUYLKILL, SNYDER, UNION and YORK COUNTIES

	Rates	Fringes
Ironworkers:.....	\$ 34.01	31.13

 IRON0404-017 07/01/2021

BRADFORD, CARBON, COLUMBIA, LACKAWANNA, LUZERNE, MONROE,
 PIKE,
 SULLIVAN, TIOGA, SUSQUEHANNA, WAYNE and WYOMING COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 34.01	31.13

 LABO0158-001 05/01/2021

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 23.21	18.09
GROUP 2.....	\$ 29.83	18.09
GROUP 3.....	\$ 26.82	18.09
GROUP 4.....	\$ 27.17	18.09
GROUP 5.....	\$ 27.84	18.09
GROUP 6.....	\$ 27.26	18.09

GROUP 7.....	\$ 27.55	18.09
GROUP 8.....	\$ 28.03	18.09

LABORERS CLASSIFICATIONS

GROUP 1: Flag person

GROUP 2: Hazardous/Toxic/Asbestos Waste Handler, Lead Paint Handler

GROUP 3: Asphalt tamper, concrete pitman, puddlers, highway guide rail right of way and property fence slab reinforcement placers, Laborers, landscaper, seeders, planters, magazine tenders, laser beam men for pipe laying and paving machines,, railroad trackman, signalman, asphalt rakers, lute or screed man, pneumatic and electric tool operators, jackmammers, paving breakers, concrete saws, whacker vibrator, chainsaw, highway concrete block layers, sheet hammer, pipe layers, Walk Behind Rollers, Walk Behind Trencher

GROUP 4: Caisson-open air below 8 feet, cofferdam open air below 8 feet where excavations for circular caissons and cofferdams 8 ft and below level of natural grade adjacent to starting point, form setters (road) wagon drill diamond point drill, gunite nozzle operators, walk behind rollers and concrete rubbers, blaster.

GROUP 5: Form Setter, Reinforced Steel Placer, Bonding Aligning and Securing and Burning and welding in Conjunction wth Rebar, and Concrete Surfacers.

FREE AIR TUNNELS AND ROCK SHAFTS

GROUP 6: Outside labers in conjunction with tunnels and rock

shafts

GROUP 7: Chuck tenders, muckers, nippers, miners, inside laborers

GROUP 8: Miners, drillers, blasters, pneumatic shield operators, lining, spotting and timber workmen, rebar steel placer, bonding and securing, welders, and concrete surfacers

 PAIN0021-026 05/01/2021

ADAMS, CUMBERLAND, DAUPHIN, LANCASTER, PERRY, AND YORK COUNTIES

	Rates	Fringes
Painters:		
Bridge.....	\$ 33.72	16.30
Brush.....	\$ 25.84	16.30
Spray, Sandblast.....	\$ 27.97	16.30

 PAIN0057-021 06/01/2021

JUNIATA COUNTY

	Rates	Fringes
Painters:		
Bridge, Towers.....	\$ 36.25	21.61
Commercial Brush & Roller...	\$ 29.15	21.61
Industrial Brush & Roller...	\$ 34.00	21.61
Spray.....	\$ 29.15	21.61

 PAIN1021-001 05/01/2012

BERKS, CARBON, LEBANON, LEHIGH, NORTHAMPTON, AND MONROE COUNTIES

	Rates	Fringes
Painters:		
Bridge; Brush, Roller.....	\$ 30.85	14.80
Bridge; Spray.....	\$ 31.85	14.80
Brush and Roller.....	\$ 26.55	14.80
Spray and Sandblast.....	\$ 27.55	14.80

PAIN1021-002 05/01/2009

BRADFORD, COLUMBIA, LACKWANNA, LUZERNE, LYCOMING, MONTOUR,
NORTHUMBERLAND, PIKE, SCHUYLKILL, SNYDER, SULLIVAN,
SUSQUEHANNA, TIOGA, UNION, WAYNE, WYOMING COUNTIES

	Rates	Fringes
Painters:		
Bridge; Brush, Roller.....	\$ 25.60	12.05
Bridge; Spray.....	\$ 26.60	12.05
Brush and roller.....	\$ 22.75	12.05
Spray, Sandblast.....	\$ 23.75	12.05

PLAS0592-004 06/01/2021

MONROE COUNTY; (EXCEPT TOBYHANNA DEPOT)

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 35.88	13.30

PLAS0592-005 06/01/2021

COLUMBIA COUNTY

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 35.88	13.30

PLAS0592-017 05/01/2021

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER BERKS (Northeastern part lying North of a line starting from the Southern boundary line of Lehigh County continuing through Huffs Church, Fredericksville, Dryville, Lyon Station, Kutztown, Krumsville, and Stoney Run in Berks County to the Lehigh County line), CARBON, LEHIGH, NORTHAMPTON (Northwest part including the towns of Walnutport, Bath, and Northampton) COUNTIES.....	\$ 32.65	23.43

PLAS0592-018 05/01/2021

	Rates	Fringes
Cement Mason/Concrete Finisher Adams, Lancaster and York Counties.....	\$ 31.75	21.50
PLASTERER Adams, Berks (Portions of), Lancaster, and Lebanon Counties.....	\$ 28.33	20.90

PLAS9592-002 06/01/2021

	Rates	Fringes
MONROE COUNTY (TOBYHANNA ARMY DEPOT) CEMENT MASON/CONCRETE FINISHER...	\$ 35.88	13.30

TEAM0229-003 05/01/2018

	Rates	Fringes
TRUCK DRIVER (ADAMS, BERKS, CARBON, COLUMBIA, CUMBERLAND, DAUPHIN, JUNIATA, LACKAWANA, LANCASTER, LEBANON, LEHIGH, LUZERNE, LYCOMING, MONROE, MONTOUR, NORTHAMPTON, NORTHUMBERLAND, PERRY, PIKE, SCHUYKILL, SNYDER, SULLIVAN, SUSQUEHANNA, UNION, WAYNE, WYOMING, AND YORK COUNTIES)		
GROUP 1.....	\$ 35.32	0.00
GROUP 2.....	\$ 35.39	0.00
GROUP 3.....	\$ 35.88	0.00
Truck drivers: (BRADFORD AND TIOGA COUNTIES)		
GROUP 1.....	\$ 22.21	13.11
GROUP 2.....	\$ 22.28	13.11
GROUP 3.....	\$ 22.77	13.11

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Flat Bed Truck (Single-Axle), Dump Trucks
(Under 10
Yds Single Axle), Stake Body Trck (Single Axle), Dumpster
(Single Axle)

GROUP 2: Dump Truck (Over 10 Yds), Asphalt Distributors,
Transit Mix (Under 5 Yds), Transit Mix (Over 5 Yds.),
Flat
or Stake Body (Tandem), Fuel Truck A-Frame/Winch Trucks,
Dry Batch Truck, Truck Mounted Sweeper and Vac Trucks,
Buses, Dumpster (Tandem)

GROUP 3: Euclid-Type, Off Highway Equipment-Back or
Double
Bottom Dump Trucks (Over 20 Tons), Straddle Trucks,
Pusher,
Articulate Dumped Trucks, Low Boy Trailers, Semi Trailers

Water Tank, Sprinkler Trucks, Winch Trucks and Fuel Trucks shall be governed by the appropriate classification as listed above.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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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 <https://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 (29CFR 5.5 (a) (1) (ii)).

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 National Office because National Office has responsibility for the Davis-Bacon survey program. 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

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

PART D

EQUAL EMPLOYMENT OPPORTUNITY SPECIAL PROVISION

The PDA Entity shall comply with the requirements of this [Part D \(Equal Employment Opportunity Special Provision\)](#) to the extent it is applicable to the PDA Work.

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The PDA Entity's attention is called to the "Equal Opportunity Clause" cited in the FHWA Form 1273.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the PDA Entity's aggregate workforce in each trade on all construction work in the Covered Area, are as follows:

Time tables	Goals for minority participation for each trade	Goals for female participation in each trade
Term	SEE ATTACHED APPENDIX B	SEE ATTACHED APPENDIX A

These goals are applicable to all of the PDA Entity's construction work (whether or not it is Federal or federally assisted) performed in the Covered Area. If the PDA Entity performs construction work in a geographical area located outside of the Covered Area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the PDA Entity also is subject to the goals for both its federally involved and non-federally involved construction.

The PDA Entity's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR §60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the PDA Entity shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the PDA Entity's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - (e) "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
 - (f) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - (g) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

- (h) “**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 PDA Entity, or any Contractor 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 PDA Entity is participating (pursuant to 41 CFR 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. The PDA Entity must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. The PDA Entity and each Contractor 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 the PDA Entity’s or Contractor’s failure to take good faith efforts to achieve the plan goals and timetables.
4. The PDA Entity shall implement the specific affirmative action standards provided in paragraphs 7(a) 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 PDA Entity 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 PDA Entity 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 PDA Entity has a collective bargaining agreement, to refer either minorities or women shall excuse the PDA Entity’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 PDA Entity during the training period, and the PDA Entity 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 PDA Entity shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the PDA Entity's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The PDA Entity 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 PDA Entity's employees are assigned to work. The PDA Entity, where possible, will assign two or more women to each construction project. The PDA Entity shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the PDA Entity'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 minority and female recruitment sources and to community organizations when the PDA Entity 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 PDA Entity by the union or, if referred, not employed by the PDA Entity, this shall be documented in the file with the reason therefor, along with whatever additional actions the PDA Entity may have taken;
 - (d) provide immediate written notification to the Director when the union or unions with which the PDA Entity has a collective bargaining agreement has not referred to the PDA Entity a minority person or woman sent by the PDA Entity, or when the PDA Entity has other information that the union referral process has impeded the PDA Entity'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 minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the PDA Entity's employment needs, especially those programs funded or approved by the Department of Labor. The PDA Entity shall provide notice of these programs to the sources compiled under paragraph 7(b) above;
 - (f) disseminate the PDA Entity's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the PDA Entity 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 PDA Entity'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 PDA Entity's EEO policy with other contractors and subcontractors with whom the PDA Entity 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 PDA Entity'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 PDA Entity 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 the PDA Entity's work force;
- (k) validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 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 PDA Entity'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 PDA Entity's EEO policies and affirmative action obligations.

8. The PDA Entity is encouraged to participate in voluntary associations which assist in fulfilling one or more of its affirmative action obligations (paragraphs 7(a) 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 paragraphs 7(a) 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 PDA Entity'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 PDA Entity. The obligation to comply, however, is the PDA Entity's and failure of such a group to fulfill an obligation shall not be a defense for the PDA Entity's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The PDA Entity, 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 PDA Entity may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the PDA Entity has achieved its goals for women generally, the PDA Entity may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The PDA Entity shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The PDA Entity shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The PDA Entity 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. If the PDA Entity fails to carry out such sanctions and penalties it shall be in violation of these specifications and Executive Order 11246, as amended.
13. The PDA Entity, 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 PDA Entity fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The PDA Entity 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.

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

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).

APPENDIX A

Appendix A to Part D of Exhibit 13

408/2020

APPENDIX A

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 (public and private) whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

AREA COVERED: See special provision entitled "E.E.O. Covered Area".

Goals and Timetables

Timetable	Goals (Percent)
From April 1, 1980, until further notice	6.9

Goals are applicable in each construction craft employed by the Contractor in the covered area.

APPENDIX B

Appendix B to Part D of Exhibit 13

408/2020

APPENDIX B

Until further notice, the following goals for minority utilization in each construction craft shall be included in Federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective covered areas in the State. The goals are applicable to the Contractor's aggregate on-site construction workforce regardless of whether that workforce is performing work on a Federal, federally assisted, or non-federally related construction contract or subcontract. This Appendix B shall be used jointly with Appendix A.

Economic Areas			
Area	Goal (Percent)	Area	Goal (Percent)
<u>Scranton – Wilkes Barre, PA</u>		<u>Pittsburgh, PA</u>	
SMSA Counties:		SMSA Counties	
Northeast Pennsylvania.....	0.6	Altoona, PA.....	1.0
PA Lackawanna;		PA Blair	
PA Luzerne; PA Monroe		Johnstown, PA.....	1.3
Non-SMSA Counties.....	0.5	PA Cambria; PA Somerset	
PA Columbia; PA Wayne;		Pittsburgh, PA.....	6.3
PA Wyoming		PA Beaver; PA Washington;	
<u>Williamsport, PA</u>		PA Westmoreland;	
SMSA Counties:		PA Allegheny	
Williamsport, PA.....	1.0	Non-SMSA Counties.....	4.8
PA Lycoming		PA Armstrong; PA Bedford	
Non-SMSA Counties.....	0.7	PA Butler; PA Fayette; PA Greene;	
PA Cameron; PA Centre;		PA Indiana; MD Allegheny;	
PA Clearfield; PA Clinton;		MD Garrett; WV Mineral	
PA Elk; PA Jefferson;		<u>Harrisburg – York – Lancaster, PA</u>	
PA Montour; PA Northumberland;		SMSA Counties:	
PA Snyder; PA Sullivan;		Harrisburg, PA.....	6.2
PA Union		PA Cumberland;	
<u>Erie, PA</u>		PA Dauphin; PA Perry	
SMSA Counties:		Lancaster, PA.....	2.0
Erie, PA.....	2.8	PA Lancaster	
PA Erie		York, PA.....	2.2
Non-SMSA Counties.....	1.8	PA Adams; PA York	
PA Clarion; PA Crawford;		Non-SMSA Counties.....	3.1
PA Forest; PA Venango;		PA Franklin; PA Fulton;	
PA Warren		PA Huntingdon; PA Juniata;	
		PA Lebanon; PA Mifflin	

Economic Areas			
Area	Goal (Percent)	Area	Goal (Percent)
<u>Philadelphia, PA</u>		<u>Ohio</u>	
SMSA Counties:		Non-SMSA Counties.....	6.7
Allentown-Bethlehem-Easton, PA-NJ.....	1.6	PA Lawrence; PA Mercer;	
PA Carbon; PA Lehigh; PA Northampton; NJ Warren		OH Columbiana; OH Cleveland	
Philadelphia, PA-NJ.....	17.3		
PA Bucks; PA Chester; PA Delaware;			
PA Montgomery; PA Philadelphia;			
NJ Burlington; NJ Camden; NJ Gloucester			
Reading, PA.....	2.5		
PA Berks			
Non-SMSA Counties.....	14.5		
PA Schuylkill; DE Kent; DE Sussex; NJ Cape May			
<u>Buffalo, NY</u>			
Non-SMSA Counties.....	6.3		
PA McKean; PA Potter; NY Allegany; NY Cattaraugus; NY Chautauqua; NY Wyoming			
<u>Binghamton-Elmira, NY</u>			
SMSA Counties:			
Binghamton, NY-PA.....	1.1		
PA Susquehanna; NY Broome; NY Tioga			
Non-SMSA Counties.....	1.2		
PA Bradford; PA Tioga; NY Chenango; NY Delaware; NY Otsego; NY Schuylker; NY Tompkins			
<u>New York, NY</u>			
Non-SMSA Counties.....	17.0		
PA Pike; NJ Hunterdon; NJ Ocean; NJ Sussex; NY Orange; NY Sullivan; NY Ulster			

PART E

ON-THE-JOB TRAINING PROGRAM FOR FEDERAL-AID HIGHWAY CONSTRUCTION PROJECTS

The PDA Entity shall comply with the requirements of this Part E (On-the-job Training Program for Federal-Aid Highway Construction Projects) provision to the extent applicable to the Pre-Development Work.^[1]

1. As part of the PDA Entity's equal employment opportunity affirmative action program training shall be provided as follows:

[•]

2. The PDA Entity shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification needed.
3. The number of trainees to be trained under the special provisions will be determined by using PennDOT's OJT Goal Setting Criteria.

3a. Goal Setting Criteria

- A. The minimum dollar value of the highway construction contract being considered is \$3 million. This is identified from the estimated cost of the project.
- B. The duration of the contract must be anticipated to be a minimum of 7 months. This information is provided by the project manager.
- C. The controlling operation(s) must be identified as being a minimum of 100 days. The anticipated scope of work of the controlling operation(s) must be addressed to identify whether or not there is potential to complete a significant, effective and meaningful training program. This is identified by the project's schedule and/or from input provided by the District's design team.
- D. The work classifications or activities that can be supported by the anticipated scope of work of the project are identified from reviewing the project's job description, which is posted in ECMS. The job description of the project is reviewed to identify if the work type is new construction or rehabilitation, etc.
- E. Identification of a satisfactory ratio of trainees to journeyman anticipated to be in the contractor's workforce during normal operations (a ratio of between 1:10 and 1:4) must be identified. This data comes from U.S. Department of Labor.

3b. Also taken into consideration are the:

- A. availability of minorities, women and disadvantaged individuals based on the geographic location of the project;

^[1] PennDOT is currently developing an OJT Manual that is being approved by FHWA that the PDA Entity will be required to comply with for the Pre-Development Work, and the Development Entity will be required to comply with for the Package Work. A copy of the manual will be included by addendum.

- B. the total normal workforce that the average bidder could be expected to have;
- C. the identified need for additional journeypersons in the area; and
- D. recognition of the suggested minimum goal for the state.

The results of this review criteria will be to identify a potential number of training slots a PennDOT highway construction project can support. This information is also used to determine the construction activities that would have potential to support significant, effective and meaningful training opportunities, based on the project's scheduled scope of work. The information identified is ultimately used by PennDOT to set its federal on-the-job training program goal for the year.

4. In the event that the PDA Entity subcontracts a portion of the contract work, they shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the PDA Entity shall retain the primary responsibility for meeting the training requirements imposed by this special provision and PennDOT's OJT training Criteria. The PDA Entity shall also ensure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
5. The number of trainees shall be distributed among the work classifications on the basis of the PDA Entity's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the PDA Entity shall submit to the Commonwealth highway agency for approval the number of trainees to be trained in each selected classification and training program to be used per PennDOT's OJT Trainee project selection criteria. Furthermore, the PDA Entity shall specify the starting time for training in each of the classifications. The PDA Entity will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.
6. Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the PDA Entity shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The PDA Entity will be responsible for demonstrating the steps that they have taken in pursuance thereof, prior to a determination as to whether the PDA Entity is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.
7. No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status or in which they have been employed as a journeyman. A trainee cannot be trained, regardless of the classification, more than 3 times. The PDA Entity should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the PDA Entity's records should document the findings in each case.
8. The minimum length of training is 100 project days. The minimum amount of training hours shall be 1000 or more as is under PennDOT's OJT selection criteria. The type of training for each classification will be established in the training program selected by the PDA Entity and approved by PennDOT and/or the Federal Highway Administration. PennDOT OJT approved classifications

may be used and can be found in Pub 635, (the PennDOT OJT Manual). The Commonwealth highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the PDA Entity and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the Commonwealth prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower-level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications and there are 4 trainee slots or more. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

9. Except as otherwise noted below, the PDA Entity will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the PDA Entity receives additional training program funds from other sources, provided such other does not specifically prohibit the PDA Entity from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the PDA Entity where they do one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.
10. No payment shall be made to the PDA Entity if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the PDA Entity and evidences a lack of good faith on the part of the PDA Entity in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until they have completed his training program. It is not required that all trainees be on board for the entire length of the contract. The PDA Entity will have fulfilled his responsibilities under this Training Special Provision if they have provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.
11. Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

12. The PDA Entity shall furnish the trainee a copy of the program they will follow in providing the training. The PDA Entity shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
13. The PDA Entity will provide for the maintenance of records and furnish monthly trainee evaluation reports by the 5th of each month, documenting the trainee's performance as under this Training Special Provision.
14. The PDA Entity shall submit the above stated records, documents and evaluations via PPCC or the OJT Resource Account at ra-pdbeo-ojt@pa.gov and ra-pdp3majorbridges@pa.gov.
15. The PDA Entity and Development Entities can review Publication 635 for reference.

TRAINING SPECIAL PROVISIONS (TSPs) ITEM # 1999-9999 or 3999-9999

ITEM 1999-9999 or 3999-9999 – TRAINEES

Provision Body:

This Special Provision is an implementation of 23 U.S.C. 140 (a).

I. DESCRIPTION - As part of the project equal employment opportunity affirmative action program, provide on-the-job training aimed at developing candidates toward full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under this contract is (as found in the Project Specific Details, Detail 1.)

II. CONSTRUCTION -

(a) General. In the event a subcontract is given for a portion of the contract work, determine how many, if any, of the trainees are to be trained by the subcontractor. However, retain the primary responsibility for meeting the training requirements imposed by this special provision. Insure that this Special Provision is physically included and is made applicable to any such subcontract. Where feasible, provide 25% of apprentices or trainees in each occupation, in their first year of apprenticeship or training.

Distribute the number of trainees among the work classifications on the basis of the project needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Within 10 calendar days following the Notice to Proceed, submit to the Department for approval the number of trainees to be trained in each selected classification and training program to be used, specifying the starting time for training in each of the classifications. The Department will give credit for each trainee employed on the contract currently enrolled or who becomes enrolled in an approved program and payment will be made for such trainees as provided herein.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Special Provision. Accordingly, make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. Accept responsibility for demonstrating that steps are taken in pursuance thereof, prior to a determination as to whether compliance is made with this Special Provision. This training commitment is not intended, and do not use it, to discriminate against any applicant for training, whether a member of a minority group or not.

Do not employ a person as a trainee in any classification in which he/she has successfully completed a training program leading toward journeyman status or in which he/she has been employed as a journeyman. Candidates may be trained a maximum of 3 times as long as the training is not repetitious in the scope of work and is not on the same project. Those candidates having attained journeyman status would be acceptable as trainee candidates only in classifications where they have not attained journeyman status. Satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, provide records documenting the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected and submitted to and approved by the Department. The Department will approve a program if it is reasonably calculated to meet the project equal employment opportunity obligations and gives meaningful training to move candidates toward journeyman status. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a

State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Obtain approval or acceptance of a training program and training candidate from the Department prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Department. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Furnish the trainee a copy of the program he/she will follow in providing the training.

Provide each trainee with a certification showing the type and length of training satisfactorily completed.

Provide for the maintenance of records and furnish required reports documenting his/her performance under this Special Provision.

Pay no less than the common laborer rate for this project to any trainee performing in a construction craft (percentage payments are no longer in effect). Pay non-construction crafts, such as timekeeper, office manager, and surveyor, the fair market rate for those services or classifications. Trainees in construction crafts may remain at the common laborer rate throughout the training program. Upon completion, pay trainees in accordance with wage rates scale for this contract for work performed. In the case of apprentices, the appropriate rates approved by the Federal Departments of Labor or Transportation in connection with the existing program apply to all trainees being trained for the same classification who are covered by this Special Provision.

(b) Reporting. On-the-Job Training Program reports and forms can be accessed via the following:

- ECMS. At “References / Publications / Forms & Publications”
- PennDOT Homepage. Under “Forms and Publications”
- BEO Homepage. Under “Forms”

Necessary OJT Program forms are not to be duplicated but rather are to be accessed via one of the above sources, on an as needed basis, to ensure the most current version of each form is always used.

On-the-Job Training Program reports and forms consist of the following:

- Form EO-363 - Contractor’s On-the-Job Program Classifications for PennDOT Approval
- Form EO-364 - PennDOT On-the-Job Program Enrollment Form
- Form EO-365 - Highway Contractor’s Monthly Training Report

Form EO-363 specifies the number of trainees/apprentices to be trained in each proposed classification, identifies the certified training program to be used, and specifies the starting time and anticipated prevailing wage rate for each of the classifications listed. Apprentice programs are 1000 hours in duration and compensation is to be made in accordance with applicable collective bargaining agreements.

Form EO-364 is to be completed by the Contractor providing the training and is to be submitted for Department approval prior to the start of any training. The information obtained via the EO-364 is used to

demonstrate that the proposed training will not be a repetition of training the candidate has already received and that the candidate is not already successfully employed in the training classification identified. The Contractor must also identify accurate prevailing wage rates for the training to be provided, identify how those wage rates were determined, and identify the source used to make the determination. The Prevailing Minimum Wage Rate listings applicable to the project are posted in ECMS within the "Project Development Checklist" section.

Form EO-365 is to be completed by the Contractor monthly for each trainee/apprentice employed on the project. The EO-365 is to be submitted to the Inspector-in-Charge (IIC), for the duration of each training classification, by the end of the pay period occurring prior to the 30th of the month. If the Contractor experiences difficulties with a trainee/apprentice, at any time, notify the IIC immediately. Notify the IIC regarding the termination or completion of a training program by completing an EO-365 report at that time, regardless of the calendar date. Include additional documentation setting forth the justification for a termination or for a trainee/apprentice separating from a training program. When the required hours have been completed, submit a copy of the company's formal completion certificate, along with a final EO-365.

(c) Termination or Voluntary Separation. At the time a trainee is terminated or voluntarily separates from employment indicate the date on the Trainee Monthly Report Form (EO-365) and include a justification for the termination or voluntary separation. Form EO-365 is to be submitted at the time the termination or voluntary separation occurs, in accordance with the established procedure, regardless of the calendar date.

(d) Transfers. Under the appropriate circumstances, the Department will consider a Contractor's request to transfer a trainee from one Federal-aid project to another Federal-aid or 100% State funded project that is within relatively close proximity to the original Federal-aid project and for which it is the responsible Prime Contractor. When the original project (i.e. the project for which the training program was approved) is a 100% State funded project, the Contractor may only request to transfer a trainee to another 100% State funded project it controls. Requests for transfers will be evaluated on a case-by-case basis, but generally, the transfer must be determined to be necessary because meaningful training cannot be provided on the current project due to the encountering of unusual circumstances or unforeseen site conditions that will alter the scope and/or duration of the trainee's work.

The Department will only consider transfer requests that are for the mutual benefit of both the Contractor and the trainee. The Department will not approve the transfer of any one trainee more than twice in order to complete the training commitment. When the Department determines that a transfer request is acceptable, trainee credit hours will be applied to the project to which the trainee was originally assigned. A transferred trainee will be deemed to have completed his/her training program when the aggregate number of training hours from all projects to which the trainee was assigned equals or exceeds the required number of training hours for the approved training program. If the trainee pay rate for the project to which a trainee is currently assigned differs from the trainee pay rate for the project to which the trainee is to be transferred, pay the trainee the greater of the two rates. A request to transfer a trainee must be submitted to and approved by the Department before a transfer actually takes place.

A request to transfer a trainee must be documented on Form EO-365 and submitted to the Inspector-in-Charge (IIC). The Inspector-in-Charge will review the request and acknowledge, by way of a written response summary, whether or not they concur with the justification cited in the transfer request. The IIC will then transmit the request, along with their acknowledgement, to the District Labor and Compliance Control Agent (DLCCA) for a conditional determination. The DLCCA will then transmit the transfer request package to the Department's OJT Program Administrator and request concurrence with the District's conditional determination.

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Continue to document each transferred trainee's hours, performance, and pay rate on a Monthly Training Report Form (EO-365), which is to be submitted in accordance with the established procedure until the required hours of training have been completed.

IV. MEASUREMENT AND PAYMENT - Hour

Will be paid as follows:

Except as otherwise noted below, payment will be made per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, payment will be made for training persons in excess of the number specified herein. Payment for any offsite training will only be made in situations where the trainee is concurrently employed on a Federal-aid project and the Contractor contributes to the cost of the training, provides the off-site instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment will be made due to failure to provide the training required as stated in the approved training program. Make every good faith effort to retain the trainee upon completion of the training program, if work continues to be available in that classification. It is normally expected that a trainee will begin his/her training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in the work classification or until he/she has completed the training program. It is not required that all trainees be on board for the entire length of the contract. Responsibilities will have been fulfilled under this Special Provision if acceptable training has been provided to the number of trainees specified. Determine the number trained on the basis of the total number enrolled on the contract for a significant period.

Project Specific Details:

The number of trainees to be trained under this contract as referred to in Paragraph I. is (fill in number of trainees here)

PART F

DEBARMENT CERTIFICATION

[1.] [For Development Entity]: By executing a Project Agreement (with respect to Contractors, any Contract), Development Entity 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 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; and

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 Development Entity, 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]

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

[_____]/Development Entity /Contractor/Subcontractor]

By: _____

Name:

Title:

PART G

FEDERAL NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES (All Federally assisted Contracts)

1. Equal Opportunity Clause in Federally Assisted Construction Contracts: The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PennDOT contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PennDOT contracting officer advising the labor union or workers' representatives of the contractor's commitments under this section and section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,

and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The contractor will include the immediately preceding paragraphs 1(a) through 1(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Equal Opportunity Clause in Federally Assisted Construction Contracts: The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation,

proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

d. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The contractor will include the provisions of the immediately preceding paragraphs (2)(a) through (2)(g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the contractor participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal

opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment: In accordance with 23 C.F.R. Part 633, Appendix B to Subpart B, 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:

a. Compliance with Regulations: The contractor shall comply with the provisions of 23 U.S.C. § 324 and with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter “DOT”), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices.

c. 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 shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor’s noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

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f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless except by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word “contractor” is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

PART H

AUDIT CLAUSE TO BE USED IN AGREEMENTS WITH SUBRECIPIENTS RECEIVING FEDERAL AWARDS FROM THE COMMONWEALTH

The [NAME OF SUBRECIPIENT] must comply with all applicable federal and state grant requirements including The Single Audit Act Amendments of 1996; 2 CFR Part 200 as amended; and any other applicable law or regulation, and any amendment to such other applicable law or regulation that may be enacted or promulgated by the federal government.

If the [NAME OF SUBRECIPIENT] is a local government or non-profit organization that expends \$750,000 or more in federal awards during its fiscal year, the [NAME OF SUBRECIPIENT] is required to provide the appropriate single or program specific audit in accordance with the provisions outlined in 2 CFR Part 200.501.

If the [NAME OF SUBRECIPIENT] expends total federal awards of less than the threshold established by 2 CFR 200.501, it is exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials (or designees) of the federal agency, pass-through entity, and Government Accountability Office (GAO).

If the [NAME OF SUBRECIPIENT] is a for-profit entity, it is not subject to the auditing and reporting requirements of 2 CFR Part 200, Subpart F - Audit Requirements (Subpart F). However, the pass-through commonwealth agency is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract and post-award audits. The post-award audits may be in the form of a financial audit in accordance with Government Auditing Standards, a single audit report or program-specific audit report in accordance with Subpart F. However, these post-award audits must be submitted directly to the affected commonwealth agency that provided the funding. Only single audit reports for local governmental and non-profit subrecipients are electronically submitted to the Federal Audit Clearinghouse.

ADDITIONAL POTENTIAL COMPONENTS OF THE SINGLE AUDIT REPORTING PACKAGE

In instances where a federal program-specific audit guide is available, the audit report package for a program-specific audit may be different and should be prepared in accordance with the appropriate audit guide, Government Auditing Standards, and Subpart F.

In addition to the requirements of Subpart F, commonwealth agencies may require that the single audit reporting packages include additional components in the SEFA, or supplemental schedules, as identified through the respective grant agreement.

SUBMISSION OF THE AUDIT REPORT

The [NAME OF SUBRECIPIENT] must submit an electronic copy of the audit report package to the Federal Audit Clearinghouse, which shall include the elements outlined in Subpart F.

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

SUBMISSION OF THE FEDERAL AUDIT CLEARINGHOUSE CONFIRMATION

The subrecipients must send a copy of the confirmation from the Federal Audit Clearinghouse to the resource account RA-BOASingleAudit@pa.gov .

AUDIT OVERSIGHT PROVISIONS.

The [NAME OF SUBRECIPIENT] is responsible for obtaining the necessary audit and securing the services of a certified public accountant or independent governmental auditor.

The commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by commonwealth or federal agencies. Any such additional audit work will rely on work already performed by the [NAME OF SUBRECIPIENT]'s auditor and the costs for any additional work performed by the federal or state agencies will be borne by those agencies at no additional expense to the [NAME OF SUBRECIPIENT].

Audit documentation and audit reports must be retained by the [NAME OF SUBRECIPIENT]'s auditor for a minimum of five years from the date of issuance of the audit report, unless the [NAME OF SUBRECIPIENT]'s auditor is notified in writing by the commonwealth, the cognizant federal agency for audit, or the oversight federal agency for audit to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the commonwealth, the cognizant federal agency for audit, the oversight federal agency for audit, the federal funding agency, or the GAO.

PART I

Disadvantaged Business Enterprise Requirements

The purpose of this Part I is to carry out the U.S. Department of Transportation (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted Contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted Contracts. The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR, Part 26, as amended (Part 26) apply to this agreement.

I. DEFINITIONS—

The following definitions apply to terms in this Part I of EXHIBIT 13 (Federal and State Requirements):

- A. **Commercially Useful Function (CUF).** A DBE performs a commercially useful function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, 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, installing (where applicable) and paying for the material itself.
- B. **Committee.** PennDOT's DBE Good Faith Effort Review Committee.
- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a DOT-assisted Contract related to the Project.
- D. **Days.** Calendar days. In computing any period of time described in this Special Provision, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or state holiday, the period extends to the next day that is not a Saturday, Sunday, or state holiday. Similarly, in circumstances where PennDOT's offices are closed for all or part of the last day, the period extends to the next day on which the PennDOT offices are open.
- E. **Director.** The Director of the Bureau of Equal Opportunity.
- F. **Disadvantaged business enterprise (DBE).** A small for-profit business concern that is listed at <https://paucp.dbesystem.com/> and certified by the Pennsylvania Unified Certification Program ("PAUCP") as having satisfied the DBE certification requirements.
- G. **DBE Submittal Forms.** As defined under the PDA.
- H. **DBE Participation.** Utilization of DBEs as documented and tracked by the Contractor and verified by PennDOT.
- I. **DBE Submittal Forms.** EO-380 Form DBE Participation for Federal Project-Construction and EO-385 Form DBE Participation is for Federally Funded Service Agreements, they are submitted to PennDOT for federal aid contracts
- J. **DOT.** The United States Department of Transportation, including, but not limited to, the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration).

- K. DOT-assisted Contract.** Any contract between PennDOT and a Contractor that is paid in whole or part with DOT financial assistance.
- L. Good Faith Effort (GFE).** Efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness of this objective can reasonably be expected to fulfill the program requirement.
- M. Interdisciplinary Review Team (IRT).** A team of three, including a representative from PennDOT's Bureau of Equal Opportunity, that performs the initial review of the Good Faith Effort documentation and makes the recommendation to the Director.
- N. Manufacturer.** 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.
- O. NAICS.** North American Industry Classification System.
- P. Part 26.** 49 C.F.R. Part 26.
- Q. Race-Conscious.** A means or measure focused specifically on assisting DBEs only.
- R. Race-Neutral.** A means or measure used to assist all small businesses, not only DBEs. This includes gender-neutrality.
- S. Regular Dealer.** A firm that owns, operates, or maintains 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. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. 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 above 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. Whether a DBE/SBE firm meets the criteria for being treated as a regular dealer is determined on a case-by-case basis by PennDOT.
- T. Revised DBE Participation.** Utilization of DBEs as documented and tracked by the Contractor and verified by PennDOT, which includes new DBE firm(s) not originally identified by the prime contractor.
- U. Service Provider.** A DBE/SBE that performs services that are support work on a project or A DBE/SBE that performs engineering, consulting, IT, and support services.
- V. Shortfall.** The difference between the dollar amount on the approved DBE commitment and the amount of payments to the approved DBE entities
- W. Small Business Enterprise (SBE).** A small for-profit business concern that is listed at www.dotsbe.pa.gov by PennDOT as having met the requirements of the SBE element of the DBE Program.

- X. Substitution.** Good faith effort 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 established contract goals.
- Y. Supplier.** A manufacturer, regular dealer, or transaction expeditor/broker.
- Z. Transaction Expeditor/Broker.** A DBE/SBE packager, broker, manufacturers' representatives, or other persons who arrange or expedite transactions and who arrange for material drop-shipments.

II. DBE GOAL

PennDOT has established a DBE goal for this contract, as specified in the RFP, for the utilization of firms owned and controlled by socially and economically disadvantaged individuals certified as Disadvantaged Business Enterprises (DBEs). The DBE goal specified for the PDA Work is 13.05% and remains in effect for the life of the contract.

III. REQUIRED DBE PROVISIONS

The Contractor, must include the following provisions (paragraphs a through g) in each of its subcontracts, so that such provisions will be binding not only upon the prime contractor but also upon each subcontractor, supplier, service provider and consultant.

- a. Policy for Federally-Funded Projects.** It is the policy of the U.S. Department of Transportation (DOT) and PennDOT that DBEs, as defined in 49 CFR Part 26, as amended, (Part 26) and this Exhibit, be given the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of Part 26, as amended, apply to this contract.
- b. DBE Obligation.** The Contractor shall take all necessary and reasonable steps to ensure that all DBEs have the opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of PennDOT and DOT-assisted Contracts.
- c. Failure to Comply with DBE Requirements.** The Contractor 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 the applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted Contracts. PennDOT's DBE program, as required by Part 26 and as approved by DOT, is incorporated by reference in this contract. Implementation of Part 26 is a legal obligation and 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 other such remedy as PennDOT deems appropriate, which may include, but is not limited to withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible. Failure to comply with DBE requirements may include, but is not limited to, failure to submit the DBE Submittal Forms within the time period specified, failure to exert a reasonable Good Faith Effort to meet the established DBE goal, or failure to realize the approved DBE participation level set forth by the contractor and may result in the contractor being declared ineligible for the contract. Upon notification to the Contractor of its failure to carry out its approved program, the DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18

U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- d. Required DBE Assurance.** The Contractor, sub recipient 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 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 PennDOT 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.
- e. Prompt Payment.** The PDA Entity shall submit to PennDOT a Monthly Feedback Report no later than the first day of each month during the PDA Term. PennDOT shall have 5 Days to review and approve the Monthly Feedback Form. Unless PennDOT indicates otherwise to the PDA Entity, the Monthly Feedback Report shall be deemed approved by PennDOT 5 days after submission. The PDA Entity shall pay all undisputed amounts to Contractors (with whom they have privity of contract) for goods and services provided by the Contractors within 10 Days after PennDOT's approval of the Monthly Feedback Report. Any entity, including the PDA Entity and Contractors, making payments to DBE or SBE subcontractors must also complete and submit Form EO-402.
- f. Retainage.** Withholding of retainage is not permitted under this Agreement. Each prime contractor shall pay make full and prompt payment to its subcontractor(s).
- g. Small Business Enterprise (SBE) Participation.** There is no SBE goal. However, the Contractor shall recruit and utilize certified SBEs in addition to all other equal opportunity requirements of the contract. The SBE participation shall be counted and reported the same as DBE participation.

IV. COUNTING DBE PARTICIPATION

The Contractor's utilization of certified DBEs is in addition to all other equal opportunity requirements of this Agreement.

The Contractor's DBE participation toward meeting the DBE goal set for the DOT-assisted Contract is as follows: If a firm is a certified DBE Contractor or subcontractor at the time that submission that the DBE Submittal Forms are due, the total dollar value of the contract awarded to the certified DBE is counted toward the applicable DBE goal for the PDA Work. Any services to be performed by a DBE are required to be readily identifiable to the project.

a. Construction.

- 1. Prime Contractor.** A DBE prime contractor will receive credit for all work performed with its own forces. PennDOT strongly encourages DBE prime contractors to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.

2. **Subcontractor.** When a DBE participates in a contract directly as a subcontractor, only the value of the work actually performed by the DBE will be counted toward the DBE goal.

Furthermore, the entire amount of the portion of a construction contract that is performed by the DBE's own forces counts toward the DBE goal, which includes the cost of supplies and materials obtained by the DBE for the work of the subcontract, 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).

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.

Expenditures to a DBE contractor will be counted toward a DBE goal only if the DBE is performing a CUF on that contract. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

b. Materials and Supplies.

The amount of credit awarded to a firm for the provisions of materials and supplies will be determined on a contract-by-contract basis. The expenditures with DBEs for materials or supplies will be counted toward DBE goals as follows:

1. **DBE Manufacturer.** If the materials or supplies are obtained from a DBE Manufacturer, 100% of the cost of the materials or supplies is counted toward the DBE goal.
2. **DBE Regular Dealer.** If the materials or supplies are purchased from a DBE Regular Dealer, 60% of the cost of the materials or supplies is counted toward the DBE goal. There is no NAICS code for Regular Dealer.
3. **DBE Transaction Expeditor/Broker.** If the materials or supplies are purchased from a DBE, which is neither a Manufacturer nor a 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, is counted toward the DBE goal, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves will be counted toward the DBE goal.

- c. **Service Providers.** 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, is 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.

- d. **Specialty Items.** In cases where specialty items and DBE involvement overlap, the Contractor shall consult with PennDOT for guidance.

- e. Trucking Firms.** The value of trucking costs will be counted if the DBE trucking company is performing a CUF, as determined by PennDOT, in accordance with the following factors:
1. the DBE must be responsible for the management and supervision of the entire trucking operation for which it is 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 is 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 provides on the contract;
 5. the DBE may also lease trucks from a non-DBE firm, including an owner-operator. If the DBE leases trucks from a non-DBE, only the fee or commission it paid as a result of the lease arrangement will be counted toward the DBE goal; the total value of the transportation services provided by the lessee, will not be counted toward the DBE goal because these services are not provided by a DBE;
 6. for purposes of this section (e), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from being used for work 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 the name and identification number of the DBE; and
 7. joint ventures between DBEs and non-DBEs as subcontractors will be counted toward the DBE goal in proportion to the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces. The joint venture agreement is subject to approval by PennDOT and a copy of which is to be furnished by the Contractor before execution of the contract.

VI. ACTIONS REQUIRED BY THE PROPOSER DURING THE PROCUREMENT AND PRIOR TO AWARD FOR PROJECTS WITH A DBE GOAL

- a. Submission Preparation.** The PDA Entity is obligated to obtain and to provide all applicable NAICS codes for each type of work that the DBE firms quotes and intends to perform on the contract. All federally funded projects require a scope of work that will be performed by a DBE which corresponds to the DBE firm's NAICS Code, which can be found at <https://paucp.dbesystem.com/>. A NAICS Code is a federally recognized standard of business by economic activity.
- b. Submission Requirements.** When the DBE goal established by PennDOT is met or exceeded, the selected proposer is required to electronically submit evidence of such commitments with the proposal. DBE Submittal Forms and acknowledgements may be submitted within five (5) calendar days of the proposal acceptance by PennDOT. The DBE

Submittal Forms must include the applicable NAICS code(s) for each proposed DBE and type of work that it will perform on the contract. DBE Submittal Forms indicating commitments to certified DBEs will become part of the project file.

Failure to submit DBE Submittal Forms including all GFE documentation for consideration, within five Days of the proposal due date, may result in rejection of the proposal.

A good faith effort to subcontract is required for all federal aid projects. If assistance with the DBE submission is needed, please contact the Designated Agency Official (P3 Office) at rapdp3majorbridges@pa.gov or BEO for technical assistance at penndotdbegoal@pa.gov.

When the DBE goal established by PennDOT is not met (PennDOT will not round up), the proposer must demonstrate a Good Faith Effort to meet the established DBE goal. The proposer shall demonstrate that the efforts made were those that a proposer seeking to meet the DBE goal established by PennDOT would make, given all relevant circumstances. All submissions must include, as a part of the GFE documentation, copies of each DBE and non-DBE subcontractor quote when a non-DBE subcontractor was selected over a DBE subcontractor for work on the contract when the DBE's quote was too high or unreasonable. Also, the proposer shall indicate on the DBE Submittal Forms that the Good Faith Effort is being submitted for consideration.

The proposer shall email the GFE documentation to penndotdbegoal@pa.gov, so that it is received by the time specified above for consideration.

- c. Good Faith Effort Requirements.** The demonstration of GFEs is accomplished by seeking out DBE participation in the project given all relevant circumstances considering the quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer has made, based on Part 26. Accordingly, PennDOT will evaluate Good Faith Effort requirements in accordance with Part 26.

For additional guidance concerning Good Faith Efforts, please refer to Appendix A to Part 26. Additionally, the proposer can use the services of PennDOT's DBE Supportive Services Center; services of PennDOT's SBE Supportive Services Center; 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.

VII. ACTIONS TO BE TAKEN BY PENNDOT BEFORE AWARD

- a. Approval.** If the apparent selected proposer submits the DBE Submittal Forms by the deadline and meets the contract DBE goal and all other contract requirements, PennDOT will approve the submission.
- b. Good Faith Effort Review.** If the apparent successful proposer fails to meet the DBE goal established for the contract, PennDOT will review the Good Faith Effort documentation. If, during the review of the apparent successful proposer's Good Faith Effort documentation, the reviewers have questions, the proposer may be contacted for clarification. PennDOT's Good Faith Effort review steps are as follows:
 - 1. IRT reviews the information provided by the Contractor and makes a recommendation to the Director.

2. The Director:
 - a. approves the recommendation that the Good Faith Effort was met and the DBE Participation and Commitment will be approved; or
 - b. recommends that the Committee make a determination.
3. If the Director recommends that the Committee make a determination, the Committee meets and makes a final determination. If the Committee determines that the apparent successful proposer made Good Faith Efforts, the DBE Participation and Commitment will be approved. If the Committee determines that the apparent successful proposer has failed to make Good Faith Efforts, the proposal will be rejected and the apparent successful proposer will be notified of the rejection.

VIII. ACTION TO BE TAKEN BY PENNDOT DURING PERFORMANCE OF THIS AGREEMENT

- a. **Review of Performance.** To ensure that all obligations awarded to DBEs under this Agreement are met, PennDOT will review the Contractor's DBE involvement efforts during the performance of the project whether or not the DBE is listed on the approved DBE Submittal Forms submitted by the Contractor. The review will include a CUF review and the Contractor must complete the DBE Reporting Forms (EO-354 or EO-354OS) for consultant work at least once for each DBE within five Days of the DBE commencing Work, subject to any time extension granted by PennDOT.
- b. **Sanctions.** Upon completion of the work, PennDOT will review the actual DBE participation and make a determination regarding the Contractor's compliance with the applicable requirements. Sanctions may be imposed for noncompliance or unwarranted shortfalls in the approved DBE goal.

IX. ACTIONS REQUIRED TO BE TAKEN BY THE CONTRACTOR DURING THE PERFORMANCE OF THIS AGREEMENT

- a. **DBE Participation.** When the Contractor meets the DBE contract goal on the DBE Submittal Form, the Contractor shall ensure that the commitment is attained throughout the life of the project. The Contractor shall submit Form EO-402 monthly to PennDOT at rapdp3majorbridges@pa.gov and penndotdbegoal@pa.gov, to track DBE utilization in the contract.
- b. **Good Faith Efforts.** The Contractor must continue to make GFEs for the life of the project and ensure that the commitment is attained. Proof of attainment is provided by payments to DBEs and documented in Form EO-402.
- c. **DBE Subcontractor Approval.** DBEs listed on the DBE Submittal Forms are not to commence work until they submit a signed acknowledgement confirming the information on the applicable DBE Submittal Forms is accurate for their firm.

Furthermore, all firms listed on the approved DBE Submittal Forms must be submitted for subcontractor approval by PennDOT after the contract is executed and approved before DBEs actual performance of work. The subcontractor request must be equal to or greater than the committed amount. The Contractor shall submit for subcontractor approval any other DBE whether or not they are listed on the approved DBE Submittal Forms. When

submitting request for subcontractor approval, the Contractor shall attach (1) a copy of the DBE subcontract or agreement or (2) a copy of the executed signature page, DBE owner and selected offer, a copy of the description of the scope of work, NAICS and a copy of amount being paid as it appears in the DBE's subcontract or agreement.

- d. Termination or Substitution of DBEs.** A Contractor shall not terminate an approved DBE subcontractor or DBE as listed on the approved DBE Submittal Forms without PennDOT's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Furthermore, unless PennDOT's consent is provided as stated herein, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Contractor shall obtain approval before substituting a DBE or making any change to the DBE participation of an approved DBE subcontractor or as listed on the approved DBE Submittal Forms.

If the Contractor is requesting termination or substitution of a DBE subcontractor, the prime contractor shall first give notice in writing to the DBE subcontractor, with a copy to the PDA Entity of its intent to request to terminate and/or substitute, and the reason for the request. The prime contractor shall give the DBE five (5) days to respond to the prime contractor's notice and advise PennDOT and the DBE subcontractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why PennDOT should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), PennDOT may provide a response period shorter than five days.

If the Contractor is requesting termination or substitution of a DBE subcontractor, the Contractor shall promptly make a written request to PennDOT at rapdp3majorbridges@pa.gov. The request must include documentation supporting the substitution and written agreement from the DBE to the change. The Contractor shall include proof that a certified letter giving the DBE five (5) days to respond with acceptance or to notify PennDOT of non-acceptance and demonstrate that every effort has been made to allow the DBE to perform.

1. Agreement on Substitution or Termination. If the DBE and Contractor agree on the arrangement to replace the DBE, the documentation should be as follows:

i. The Contractor shall make Good Faith Efforts to subcontract the work with another DBE, or subcontract other work items to DBE firms to make up for the DBE shortfall. 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 established by PennDOT. The Good Faith Efforts shall be documented by the Contractor.

A. A prime contractor's inability to find a replacement DBE at the contract price is not, in and of itself, adequate to support a finding that Good Faith Efforts have been made to replace the original DBE.

B. The fact that the prime contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the prime contractor of the

obligation to make Good Faith Efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote

ii. When the substitution results in meeting the DBE goal, the Contractor shall within five Days shall provide a copy of the DBE subcontract or agreement, including a copy of the executed signature page signed by the DBE owner and Contractor; a description of the scope of work and NAICS; and the amount being paid as it appears in the DBE's subcontract or agreement.

iii. If the projected DBE participation on approved DBE Submittal Forms meets or exceeds the DBE goal amount for the Contract without replacing the DBE, then no contract shortfall exists.

iv. If the substituted DBE performed on the project prior to PennDOT approval, the revised DBE Submittal Forms should include the total amount paid to the DBE before the DBE substitution.

v. When the substitution does not result in meeting the DBE goal, the Contractor must complete revised DBE Minority Participation and Commitment forms with DBE acknowledgement within five (5) days of a revision and provide additional GFE documentation to PennDOT, including (1) a statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, addresses, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and DBE was not reached.

Good Faith Effort Review for Substitutions. PennDOT will review the GFE documentation for substitution and may contact the Contractor for clarification. The GFE steps are as follows:

a. The Director reviews and, if acceptable, approves the GFE and DBE revision or recommends that the IRT make the determination.

b. The IRT makes a final determination and either:

- Approves the recommendation that the GFE was met, and approves the revised DBE Submittal Forms, or
- Disapproves the GFE resulting in a shortfall requiring the Contractor to continue GFEs.
- If a DBE does not agree with to be replaced, the Contractor shall not perform the DBE work without prior approval from PennDOT. The IRT will review and make a determination. PennDOT will notify both the Contractor and the DBE of the decision. The Contractor or the DBE may request a meeting with PennDOT.

vi. The Contractor shall not perform any of the DBE work included in the substitution request without prior approval from PennDOT.

2. No Agreement on Substitution or Termination. If the DBE and Contractor do not agree on the arrangement to replace the DBE, neither the Contractor nor the DBE shall

perform the DBE work without prior approval from PennDOT. The IRT will review the substitution request and make a determination. PennDOT will notify both the contractor and the DBE of the decision. Contractor or the DBE may request a meeting with PennDOT.

- e. **SBE Participation.** The SBE must be submitted for subcontractor approval after the contract is executed and approved and before the SBE performs work -- SBE firms shall not commence work until PennDOT approves the SBE Firm.
- f. **Additional Work.** When additional work is required for any classification of work which is identified on the DBE Submittal Forms to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that it cannot perform the work due to its own limitations.
- g. **Progress Payments.** The Contractor shall make payments in accordance with 49 CFR Part 26.29 (b) to the DBE/SBE subcontractors. The Contractor shall document payments on the monthly DBE Submittal Forms.
- h. **Prompt Payment.** The PDA Entity shall submit to PennDOT a Monthly Feedback Report no later than the first day of each month during the PDA Term. PennDOT shall have 5 Days to review and approve the Monthly Feedback Form. Unless PennDOT indicates otherwise to the PDA Entity, the Monthly Feedback Report shall be deemed approved by PennDOT 5 days after submission. The PDA Entity shall pay all undisputed amounts to Contractors (with whom they have privity of contract) for goods and services provided by the Contractors within 10 Days after PennDOT's approval of the Monthly Feedback Report. Any entity, including the PDA Entity and Contractors, making payments to DBE or SBE subcontractors must also complete and submit Form EO-402.
- i. **Retainage.** Withholding of retainage is not permitted under this Agreement. The PDA Entity and each Contractor shall pay make full and prompt payment to its subcontractor(s).
- j. **Records and Reports.**

The Contractor must submit Form EO-402 monthly to PennDOT. In addition, Contractor must keep such project records as are necessary to determine compliance with DBE Requirements. These records can be used as GFE documentation. The records must indicate:

- i. The number of disadvantaged and non-disadvantaged subcontractors, small businesses, consultants, and service providers, suppliers and the type of work or services performed on or materials incorporated in this project.
- ii. The progress and efforts made in seeking out DBE and SBE contractor organizations and individual DBEs and SBEs for work on this project.
- iii. Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs and SBEs for this project. The Contractor shall submit reports, as required by PennDOT. The Contractor shall certify that the amounts were actually paid to the DBE and SBE for work performed on the project and keep cancelled checks on file in the home office to reflect payment for the specific project and for inspection and audit by PennDOT. Additionally, the Contractor shall enter the payment information on Form EO-402 within 5 Business Days after the end of the month and include the following:

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

- The number of contracts awarded to DBEs and SBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.
- The amount paid to each DBE and SBE during the month and the amount paid to date. If no payments are made to a DBE/SBE during the month, enter a zero (\$0.00) payment.
- Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's and SBEs work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.
- If DBE credit is being claimed for material costs included in a DBE subcontract or agreement, submit purchase orders for the material to PennDOT on a monthly basis.

X. CONTINUING OBLIGATIONS OF THE CONTRACTOR

The Contractor shall maintain all records required under 49 CFR Part 26 and this Exhibit for a period of three (3) years following acceptance of final payment from PennDOT. The Contractor shall make the records available for inspection by PennDOT and the FHWA at any time during the term of this Agreement and for the three-years following final payment from PennDOT.

APPENDIX 1 – DBE CUF REPORT (CONSTRUCTION)

EO-354 (1-18)



**DBE COMMERCIALY USEFUL FUNCTION REPORT
(for Federally Funded Projects Only)**

ECMS Project Number	District	SR	Sec.
Prime Contractor:			
DBE Firm:		Date DBE began work	
Date CUF Review Conducted by District		Review type: <input type="checkbox"/> Initial <input type="checkbox"/> Follow-Up	
Work type (e.g., Earthwork –Clearing and Grubbing)			

****Please note that not all questions apply to all work items. If the question is not applicable simply check 'N/A.'**

	YES	NO	N/A
1. Was the DBE firm that performed the work the same firm originally committed to in ECMS for this work item?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
2. Were materials drop shipped?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
3. Were materials delivered after hours?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
4. If materials shipped to the project site by a third party, was lease agreement provided?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
5. Did the DBE provide necessary paperwork (e.g., certifications, delivery tickets, permits, etc.) as required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
6. Did the DBE have a superintendent or other representative assigned to the project who was responsible for ensuring effective control of the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
7. Did you observe the DBE firm using any equipment or tools that appeared to be the property of another company (e.g., magnetic signs, stamps, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
8. Was the DBE's work suspended, in whole or in part, because the firm failed to comply with specifications or with the provisions of the contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
9. Did the DBE's employees appear to be knowledgeable of the necessary construction methods related to this item of work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
10. Is the DBE self-performing work without assistance from the prime or another subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			

11. Based on your observations, did the DBE demonstrate that it was responsible for execution of the work of the contract and carried out its responsibilities by actually performing, managing, and supervising the work involved?

If no, explain in 'Comments' below:

COMMENTS (As appropriate, explain any steps taken to resolve any issue(s) identified above at the project level. Also, indicate whether resolution was achieved.)

*(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH A SEPARATE SHEET)

Inspector-in-Charge Only

Print Name Phone Number Date

1. Did any work committed to the DBE get eliminated and if so, were appropriate adjustments made to the commitment in FCMS? YES NO N/A

If no, briefly explain _____

2. If this DBE firm was a replacement, was the required documentation received?

If no, briefly explain _____

3. If a shortfall exists, describe any steps taken to avoid or minimize it.
 Briefly explain _____

4. Based on your review of the above information, did the DBE demonstrate that it was responsible for execution of the work of the contract and carried out its responsibilities by actually performing, managing, and supervising the work involved?

If no, explain in 'Comments' below:

COMMENTS

ACE (or designee) Only

Print Name Phone Number Date

BEO Only

Based on our review of this CUF Report:
 Concur Do not concur

Comment: _____

 Signature Date
 _____ (717) 888-9999

 Print Name Phone Number

GUIDANCE FOR COMPLETING THE CUF FORM

The guidance below is included to assist you in identifying situations that may indicate that a Disadvantaged Business Enterprise (DBE) is not performing a Commercially Useful Function (CUF) as required under Section 26.55 of Title 49 Code of Federal Regulations Part 26 (Part 26). Federal DBE regulations provide that a DBE is performing a CUF when it is responsible for execution of the work it committed to perform under a contract with the prime and is, in fact, carrying out its contractual responsibilities by performing, managing, and supervising the work. CUF is evaluated under the portion of Part 26 that indicates when DBE participation can be counted towards the project goal (that section is included as an attachment to this document). If it is determined that a DBE is not performing a CUF on some or all of the work subcontracted to them, the prime contractor will lose DBE credit.

Things to remember:

Failure of a DBE to perform a CUF is significant. Please keep in mind the following:

1. A DBE firm's activity in relation to its contractual obligations does not end with the completion of one CUF form. Accordingly, it may be necessary to review a DBE's performance multiple times and file multiple CUF forms throughout the life of a project.
2. Complete a new CUF form at least once in a construction season, and anytime a DBE performs a new or different scope of work, or if there are issues identified with the DBE's performance. Also, complete a new CUF form every time a DBE performs a new or different item of work on the project, e.g., furnish and install to supply only. A CUF form must be completed for all DBEs performing on any federally funded highway project, regardless if they are being used to meet the DBE project goal.
3. A DBE firm's performance should be reviewed in light of what it is contractually obligated to do. It is important to be familiar with the work the DBE has contractually committed to do. The identification of "red flags" during a review may not mean that a CUF issue exist. Accordingly, it is important to document what you observe for further evaluation.

A CUF form must be completed either on paper or through the PPCC. If your project has not been placed in the PPCC, please continue to maintain the completed CUF form(s) in the project field office, while also remembering to email a copy of the form to BEO for approval. As stated above, complete a new CUF form at least once in a construction season, and anytime a DBE performs a new or different scope of work. This must be done regardless if the DBE is being used to meet the project goal or not. If all supporting documentation is not yet available, complete the CUF form to the fullest extent, indicating in the 'Comments Box' any items that are still needed for review.

Once a CUF form has been completed, continue to monitor the DBE firm to ensure that Commercially Useful Function requirements are being met during the life of the project. When in doubt, contact the Bureau of Equal Opportunity (BEO) at 717-787-5891 or 1-800-468-4201 or via the email resource account at: penndotcuf@pa.gov for additional guidance and/or assistance.

Red Flags

The following are examples of some of the more common red flag occurrences:

PERFORMANCE

- Employee(s) working for both the Prime and the DBE. (Note: This could be the result of union agreements and therefore must be examined closely.)
- Equipment used by DBE belongs to the Prime Contractor
- Equipment signs and markings cover another contractor's identity, with no formal lease agreement
- Equipment used by DBE belongs to another contractor with no formal lease agreement
- Equipment has another contractor's name on it
- All or a portion of the DBE's work is being done by the Prime Contractor or jointly with another contractor

RECORDS/DOCUMENTS

- Certified payrolls
- Equipment ownership, rental, or lease documents (recommend District require copy along with subcontract submittal)
- Subcontract Agreement or Purchase Order

HAULING FIRMS

RED FLAGS

- Trucks used by DBE belong to the Prime Contractor.
- Trucks used by DBE belong to another contractor with no formal lease agreement
- Truck signs and markings conceal another contractor's identity
- Trucks have another contractor's name on them
- Operator(s) working for both the Prime and DBE
- Use of operator(s) for leased trucks is not specified in the lease agreement and operator(s) is not an/are not employee(s) of the DBE
- Haul tickets and/or bills of lading have a firm other than the DBE listed

RECORDS/DOCUMENTS

- Certified payrolls
- Truck ownership/vehicle registration, purchase orders, rental, or lease documents (recommend District require copy along with subcontract submittal)

MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS

RED FLAGS

- Invoices do not indicate that DBE is the customer
- A Prime Contractor's employee is listed as the contact person on invoices
- Materials are ordered, billed to, and/or paid, by the Prime Contractor
- Drop shipped materials are addressed to the Prime Contractor
- Materials for DBE credited work are delivered by the Prime Contractor
- Evidence that the DBE supplier is not actually supplying material
- Evidence that the DBE manufacturer is not actually manufacturing material
- Two Party checks or joint checks sent by the Prime to the supplier or manufacturer
- DBE owner or superintendent does not come to project site to verify the adequacy of drop shipped materials (quality and quantity)

RECORDS/DOCUMENTS

- Invoices/Purchase Orders
- Copies of cancelled checks, electronic bill transfers, bank statements, credit card statement, etc.
- Bills of Lading

SUPERVISION

RED FLAGS

- Prime Contractor or another subcontractor is completely supervising or directing the DBE's work
- The DBE's employees are being supervised or otherwise receiving a large amount of direction on the performance of their work from Prime Contractor or another subcontractor
- The DBE provides little or no supervision of work
- The DBE supervisor is not a full-time employee of the DBE

RECORDS/DOCUMENTS

- Document communication with DBE owner or Superintendent (recommend note in field inspector's diary/PSA)
- Certified Payrolls
- Photos

DBE REGULATIONS REGARDING COMMERCIALLY USEFUL FUNCTION (CUF)

49 Code of Federal Regulations Part 26 Section 55 as edited for conformity with Pennsylvania Department of Transportation requirements

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its 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. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its 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, you must presume that it 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. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- (1) The DDC must be responsible for the management and supervision of the entire trucking operation for which it is 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 is 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 provides on the contract.
- (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
- (6) For purposes above, a lease must indicate that 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 the name and identification number of the DBE.

APPENDIX 2 – DBE CUF REPORT (NON-CONSTRUCTION)

EO-3540S (1-21)



**DBE COMMERCIALY USEFUL FUNCTION (CUF)
REPORT FOR NON-ECMS PROJECTS**

Project Number	County	SR
Project Name:		
Prime Contractor:		
Prime Project Manager:		
DBE Firm:	Description of Work:	

A DBE performs a Commercially Useful Function when it is responsible for execution of the work of the agreement/contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

1. Is the DBE firm accomplishing the work with its own work force? YES NO N/A

Provide Details:

2. Were any employees used that were not on the payroll, to satisfy the DBE goal? YES NO N/A

Provide Details:

Maintain completed CUF form with project files and continue to monitor the DBE firm to ensure that Commercially Useful Function requirements are being met throughout the life of the project. For any unsatisfactory responses, notify the Project Manager, and forward this form to the Bureau of Office Services immediately.

PROJECT MANAGER

<input type="text"/>	<input type="text"/>	<input type="text"/>
Signature	Phone Number	Date

BOS CONCURRENCE YES NO

<input type="text"/>	<input type="text"/>	<input type="text"/>
Signature	Phone Number	Date

APPENDIX 3 – DBE SUBMITTAL FORM (CONSTRUCTION)

EO-380 (11-14)



DBE PARTICIPATION FOR FEDERAL PROJECTS

Page of

Original () or Revision # Letting Date/BID Date: (mm/dd/yyyy)

Date: Project Owner:

CONTRACT NUMBER	PROJECT	FEDERAL NUMBER	COUNTY	DBE GOAL
BID AMOUNT	PRIME CONTRACTOR			
CONTACT PERSON			PHONE NUMBER	
COMPLETE THIS SECTION FOR DBE FIRM				
DBE FIRM			DBE CERTIFICATE NUMBER	
CONTACT PERSON			PHONE NUMBER	
TOTAL AGREEMENT \$ <input type="text"/> <small>(Include Mobilization)</small>	MOBILIZATION \$ <input type="text"/>			
CREDIT @ 60% \$ <input type="text"/> <small>(Regular Dealer Only)</small>				
STARTING DATE: <input type="text"/> <small>(mm/dd/yyyy)</small>	COMPLETION DATE: <input type="text"/> <small>(mm/dd/yyyy)</small>			
CHECK THE APPROPRIATE BLOCK: <input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> REGULAR DEALER <input type="checkbox"/> SERVICE				
<input type="checkbox"/> MANUFACTURER <input type="checkbox"/> CONSULTANT <input type="checkbox"/> OTHER <input type="text"/>				
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Identify the North American Industrial Classification System Code(s) that correspond(s) to the work to be performed by the DBE firm. NAICS Code: <input type="text"/>				
Description of work for all item numbers; including partial items: <input type="text"/>				
I am a DBE certified by the Pennsylvania Unified Certification Program (PA UCP). I hereby certify that as a DBE, I quoted the above price and type of work.				
Signature of DBE: <input type="text"/>			Date: <input type="text"/>	
<small>(Signature and Title of Company Official)</small>			<small>(mm/dd/yyyy)</small>	
I hereby certify, on behalf of, and intending to bind, the Bidder, that the information contained herein is true and correct to the best of my knowledge, information and belief.				
Signature of PRIME: <input type="text"/>			Date: <input type="text"/>	
<small>(Signature and Title of Company Official)</small>			<small>(mm/dd/yyyy)</small>	
PENNDOT USE ONLY				
<input type="checkbox"/> Approved <input type="checkbox"/> Conditional Approval (Prequalification only) <input type="checkbox"/> Disapproved				
Condition: <input type="text"/>				
By: <input type="text"/>			Date: <input type="text"/>	

Note: Complete one form for each DBE on the project

APPENDIX 4 – DBE SUBMITTAL FORM (NON-CONSTRUCTION/SERVICE)



DBE PARTICIPATION FOR FEDERALLY FUNDED SERVICE AGREEMENTS

Form of

Complete this form for each DBE who will perform on the project.

BID/CONTRACT NUMBER	DBE GOAL %
FIRM NAME OF BIDDER/OFFEROR	

COMPLETE THIS SECTION FOR DBE FIRM

DBE FIRM NAME	
ADDRESS	
CONTACT PERSON	PHONE NUMBER
DESCRIPTION OF WORK TO BE PERFORMED BY THE DBE	
DBE PERFORMING AS (CHECK ONLY ONE): <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Service Provider <input type="checkbox"/> Trucking Firm <input type="checkbox"/> Supplier	
<i>If supplier you must check one of the following:</i> <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Transaction Expeditor/Broker	
NAICS CODE(S)	% OF TOTAL PRIME BID COMMITTED TO DBE FIRM

I am a DBE certified by the Pennsylvania Unified Certification Program with the NAICS code noted above. I hereby certify that I intend to enter into a subcontract for this project if the bidder/offeree is successful.

Signature of DBE: _____ Date: _____
(Signature and Title of Company Official) (mm/dd/yyyy)

I hereby certify, on behalf of, and intending to bind, the bidder/offeree, that the information contained herein is true and correct to the best of my knowledge.

Signature of Bidder/Offeree: _____ Date: _____
(Signature and Title of Company Official) (mm/dd/yyyy)

PENNDOT USE ONLY	
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved	
Signature of Reviewer: _____	Date: _____ <small>(mm/dd/yyyy)</small>

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

Instructions for Completion of EO-385, DBE Participation for Federally Funded Service Agreements

General Information

- Bid/Contract Number:** Indicate the bid/contract number for which the form is being completed.
- DBE Goal %:** Indicate the DBE goal established for the contract.
- Firm Name of Bidder/Offorer:** Indicate the name of your firm.
-

DBE Information

1. For each DBE firm you are committing to use on the contract you must provide the following:
 - a. **DBE FIRM NAME:** Indicate the name of the DBE firm be committed to for the project.
 - b. **ADDRESS:** Provide the address information (street, city, and state) for the DBE firm.
 - c. **CONTACT PERSON:** Identify the contact person for the DBE firm.
 - d. **PHONE NUMBER:** Provide a phone number for the DBE firm.
 - e. **DESCRIPTION OF WORK TO BE PERFORMED BY THE DBE:** Provide a detailed narrative description of the work to be performed by the DBE on the contract.
 - f. **DBE PERFORMING AS:** Indicate a DBE's role on the project for counting purposes. Refer to the 'DBE Requirements Appendix' for more detailed information regarding DBE crediting potential.
 - g. **NAICS:** Provide the North American Industry Classification System (NAICS) code(s) that correspond(s) to the work to be performed by the DBE firm.
 - h. **% OF TOTAL PRIME BID COMMITTED TO DBE FIRM:** Indicate the percentage of the total bid to be contractually allocated to the DBE firm.

2. Once the form is complete it needs to be signed and dated by an authorized official of the DBE firm as acknowledgement that they intend to work on the project if the bidder/offorer is successful.

3. Once the form has been signed and dated by the DBE firm, the bidder/offorer must sign and date certifying that information on the form is true and accurate.

Should you have any questions or concerns in completing this report you may contact the Bureau of Equal Opportunity for guidance. The Bureau can be reached via the email resource account, PennDOTDBEGoal@pa.gov or via telephone at 717-787-5891.

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Instructions for Completion of EO-402, Monthly DBE/SBE Status Report

General Information

Report No: Indicate the Report Number. Report numbers are sequential starting with "1".
Final: This box should only be checked if this is the final monthly report for the contract.
Reporting Month: Indicate the month the reporting period covers.
Reporting Year: Indicate the year the reporting period covers.

Contract Information

1. For each active contract (which contains federal funds) you must complete the following:
 - a. **CONTRACT NUMBER:** Indicate the contract number assigned by the Department.
 - b. **COUNTY:** Indicate the County of work where the contract or project will be performed. If the contract is not specific to a particular County, indicate the applicable PennDOT Engineering District where the work will be performed or Commonwealth wide as appropriate.
 - c. **PROJECT NUMBER:** If a project number is assigned by the Department, which is different from the contract number noted above, list that here.
 - d. **FEDERAL NUMBER:** Indicate the federal project number for the contract, if applicable.
 - e. **PRIME CONTRACTOR:** Indicate the firm name of the vendor awarded the contract (prime).
 - f. **DBE GOAL:** List the DBE Goal percentage assigned to the contract. If no DBE goal is assigned, list 0%.
 - g. **ORIGINAL CONTRACT AMOUNT:** Provide the total dollar amount of the prime contract at time of award.
 - h. **CURRENT CONTRACT AMOUNT:** Provide the current total dollar amount of the prime contract. This should take into account work or change orders issued since the original contract was awarded.

2. The remainder of the report should reflect the utilization of all DBE and SBE firms during the reporting period. Even if no DBEs or SBEs were utilized during the reporting month, you must still submit a report indicating no activity and any progress made from previous reporting periods.
 - a. **DBE/SBE FIRM NAME:** Indicate the name of the DBE/SBE firm being used on the contract.
 - b. **DBE OR SBE:** Indicate whether the firm is a DBE or an SBE. (While all DBEs also qualify as SBEs, for the sake of this report they should be considered DBEs.)
 - c. **WHETHER LISTED ON DBE COMMITMENT:** If a DBE firm is being used to meet the contract's DBE goal, mark 'Yes'. If not mark 'No'. For SBE firms leave this field blank or mark 'N/A'.
 - d. **AMOUNT AS LISTED ON DBE COMMITMENT:** Provide the dollar amount the prime contractor committed to the DBE firm to meet the DBE goal. If the DBE firms was not listed on the DBE commitment leave the field blank or mark 'N/A'. For SBE firms leave this field blank or mark 'N/A'.
 - e. **DATE OF EXECUTED SUBCONTRACT:** State the date a subcontract was executed between the prime contractor and the DBE or SBE firm.
 - f. **DOLLAR AMOUNT OF EXECUTED SUBCONTRACT:** Provide the dollar amount of the executed subcontract between the prime contract and the DBE or SBE firm.
 - g. **DOLLAR AMOUNT PAID THIS MONTH:** Provide the dollar amount paid during the reporting month to the DBE or SBE firm in support of the prime contract.
 - h. **CHECK NUMBER:** Provide the check number(s) for payments made to a DBE or SBE firm during the reporting month in support of the prime contract.
 - i. **DOLLAR AMOUNT PAID TO DATE:** Provide the total dollar amount paid to date to DBE or SBE firms in support of the prime contract.

3. Once the report is complete the individual responsible should complete the following:
 - a. **COMPANY OFFICIAL'S SIGNATURE:** The completed report should be printed and signed by an official of the prime contractor certifying that the information on subcontracts and amounts paid to DBE and SBE firms are accurate and in accordance with contractual obligations.
 - b. **DATE:** State the date the report was completed and signed by the official of
 - c. **TELEPHONE NUMBER:** Provide a telephone number where the company official can be reached should questions arise regarding the completed report.

Should you have any questions or concerns in completing this report you may contact the Bureau of Equal Opportunity for guidance. The Bureau can be reached via the email resource account, PennDOTDBEGoal@pa.gov or via telephone at 717-787-5891.

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APPENDIX 6 – MONTHLY FEEDBACK REPORT

Project Name	Notice To Proceed	Total Current Contract Amt	Total Amt of Contract Paid	% of Contract Completed	Amt Committed to DBE	% Committed to DBE	Amt Paid to DBE	% of Contract Paid to DBE	Project Goal	DBE Goal Status	Current Completion Date	Comments

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APPENDIX 7 – UNIFORM REPORT

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS										
Please refer to the instruction sheet for directions on filling out this form										
1 Submitted to (check only one) <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA - Recipient ID Number										
2 AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):										
3 Federal Fiscal year in which reporting					4. Date This Report Submitte					
5 Reporting Period <input type="checkbox"/> Report due June 2 (for period Oct 1-Mar 31) <input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30) <input type="checkbox"/> FAA annual report due Dec 1										
6 Name and address of Recipient: Pennsylvania Department of Transportation										
7 Annual DBE Goal(s): Race Conscious Projection: Race Neutral Projection: OVERALL Goal:										
Awards/Commitments this Reporting Period										
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts committed during this reporting period)	A	B	C	D	E	F	G	H	I
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8 Prime contracts awarded this period		\$ -	0	\$ -	0			\$ -	0	#DIV/0!
9 Subcontracts awarded/committed this period				\$ -	0			\$ -	0	#DIV/0!
10 TOTAL				\$ -	0	\$ -		0	\$ -	0
BREAKDOWN BY ETHNICITY & GENDER										
B	BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F			
		Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total			
11 Black American				\$ -				0		
12 Hispanic American				\$ -				0		
13 Native American				\$ -				0		
14 Asian-Pacific American				\$ -				0		
15 Subcontinent Asian Americans				\$ -				0		
17 Non-Minority				\$ -				0		
17 TOTAL		\$ -	\$ -	\$ -	0	0		0		
Payments Made this Period										
C	PAYMENTS ON ONGOING CONTRACTS	A	B	C	D	E	F			
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs			
18 Prime and subcontracts currently in progress								#DIV/0!		
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E				
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs				
19 Race Conscious			\$ -	\$ -			#DIV/0!			
20 Race Neutral			\$ -	\$ -			#DIV/0!			
21 Totals		0	\$ -	\$ -			#DIV/0!			
22 Submitted by:				23. Signature:			24. Phone Number:			

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PART J

Title VI Assurances

[see attached executed copy from PDA Proposal]

FORM M

TITLE VI ASSURANCES

**The United States Department of Transportation (USDOT)
Standard Title VI/Non-Discrimination Assurances
DOT Order No. 1050.2A**

The Subrecipient (herein referred to as the "Recipient"), **hereby agrees that**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), is subject to and will comply with the following:

Statutory/Regulatory 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);
- 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. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); and
- 49 C.F.R. part 303 (FMCSA's Title VI/Nondiscrimination Regulation).

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including, but not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic and Safety Administration, and the FMCSA."

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program that is the subject of this Agreement.

Pennsylvania Department of Transportation
Request for Proposals
Pathways Major Bridge P3 Initiative
DMFIRM #43832745 v15

M-1
213

Instructions to Proposers
December 15, 2021

PART K

OTHER FEDERAL AND STATE REQUIREMENTS

1. NON-DISCRIMINATION

In accordance with applicable law, the PDA Entity shall:

- (a) prohibit discrimination in any manner against an employee or applicant for employment because of sex, race, age, color, creed, or national origin;
- (b) require Contractors to include a similar clause in every contract except a subcontract for standard commercial supplies or raw materials; and
- (c) require each contractor or subcontractor that is subject to this provision to post conspicuously a notice that sets forth the provisions of this provision in a place that is available to employees and applicants for employment.

2. TRAFFICKING IN PERSONS

- (a) To the extent applicable, the PDA Entity agrees to comply with, and assures the compliance of each Contractor with, the requirements of §106(g) of the Trafficking Victims Protection Act of 2000 (“TVPA”), as amended, 22 U.S.C. §7104(g), and the provisions of said subsection (g) consistent with U.S. OMB guidance, “Award Term for Trafficking in Persons”, 2 C.F.R. Part 175.
- (b) For the purposes of this Section 2 (Trafficking in Persons), the PDA Entity agrees that:
 - (i) **“Employee”** an individual who is employed by the PDA Entity or any Contractor (including subcontractors) under this Agreement;
 - (ii) **“Forced labor”** means labor the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery;
 - (iii) **“Private entity”** means:
 - (A) any entity other than a State government of the United States, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25; and
 - (B) includes a for-profit organization, and also a non-profit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - (iv) **“Severe forms of trafficking in persons”** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. §7102(9).
 - (v) **“Commercial sex act”** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(4).

- (vi) **“Coercion”** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(3).
- (c) The PDA Entity agrees:
 - (i) to inform PennDOT immediately of any information it receives from any source alleging a violation of a prohibition in 22 U.S.C. §7104(g);
 - (ii) that PennDOT may terminate this Agreement if the PDA Entity, a Contractor, or other participant at any tier, or an employee of any of them, violates the provisions of 22 U.S.C. §7104(g);
 - (iii) that neither it, its Contractors, or other participants at any tier, or the employees of them, will engage in “severe forms of trafficking in persons” during the period of time that this Agreement is in effect;
 - (iv) that neither it, its Contractors, or other participants at any tier, or the employees of any of them, will procure a “commercial sex act” during the period of time that this Agreement is in effect;
 - (v) that neither it, its Contractors, or other participants at any tier, or the employees of any of them, will use “forced labor” in the performance of this Agreement or any Contract; and
 - (vi) that the provisions of this Section 2 (Trafficking in Persons) will be included in all Contracts and any other arrangement under this Agreement at any tier.

PART L

PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 *et seq.*, the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.

2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor’s failure to comply with the provisions of paragraph 1.

PART M

Contractor Responsibility Provisions

(December 2020)

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

PART N

January 14, 2015

CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- a.** “**Affiliate**” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b.** “**Consent**” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- c.** “**Contractor**” means the individual or entity that has entered into this contract with the Commonwealth.
- d.** “**Contractor Related Parties**” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e.** “**Financial Interest**” means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f.** “**Gratuity**” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor’s Code of Conduct, Executive Order 1980-18](#), the *4 Pa. Code §7.153(b)*, shall apply.
- g.** “**Non-bid Basis**” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

- a.** Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or

regulations or any other Laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

- b.** Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c.** Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d.** Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e.** Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1)** been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2)** been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3)** had any business license or professional license suspended or revoked;
 - (4)** had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5)** been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing

if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f.** Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g.** When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth Contract Manager or the Office of the State Inspector General in writing.
- h.** Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i.** Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

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PART O

Reserved

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for solicitation, evaluation, negotiation, and award of a public-private partnership agreement.

PART P

Lobbying Certification

[executed certification inserted from PDA Proposal]



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM



A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

		October 5, 2022
Signature		Date
Sarah Schick	Lucas Lahitou	
Name (Printed)		
Project Director	Deputy Project Director	
Title of Certifying Official (Printed)		
Bridging Pennsylvania Partners LLC		
Contractor/Grantee Name (Printed)		



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

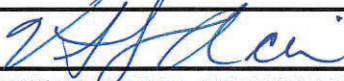
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	10-05-2022
Signature	Date
Vincent J. Acri	
Name (Printed)	
Corporate Secretary, Shikun & Binui - America Inc.	
Title of Certifying Official (Printed)	
Shikun & Binui - America Inc.	
Contractor/Grantee Name (Printed)	



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

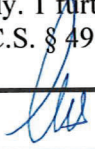
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	10/04/2022
Signature	Date
ENRIQVE MARITJON CASTRO	
Name (Printed)	
EX VP NORTH AMERICA FCC	
Title of Certifying Official (Printed)	
FCC CONSTRUCCION S.A.	
Contractor/Grantee Name (Printed)	