# THE PENNSYLVANIA RAPID BRIDGE REPLACEMENT PROJECT

# PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT

**[●], 2014**

**Between**

**THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**
**as the Department**

**and**

**[●]**
**as the Development Entity**

**FINAL RFP: AUGUST 12, 2014**
**ADDENDUM NO. 1: AUGUST 26, 2014**
**ADDENDUM NO. 2: SEPTEMBER 5, 2014**
**ADDENDUM NO. 3: SEPTEMBER 16, 2014**
**ADDENDUM NO. 4: SEPTEMBER 24, 2014**

ALLEN & OVERY

**Allen & Overy LLP**

**CONTENTS**


| Article | | Page |
|---|---|---|
| 1. | Definitions; Project Documents | 2 |
| 2. | Effectiveness, Conditions Precedent to Closing | 4 |
| 3. | Grant of Right | 8 |
| 4. | Review of Submittals | 11 |
| 5. | Governmental Approvals; Utilities | 14 |
| 6. | Hazardous Materials | 19 |
| 7. | Design and Construction | 21 |
| 8. | Maintenance, Renewal and Handback Work | 26 |
| 9. | Contractors and Key Personnel | 32 |
| 10. | Department and Development Entity Changes | 33 |
| 11. | Noncompliance Events | 38 |
| 12. | Supervening Events | 41 |
| 13. | Change in Law | 49 |
| 14. | Payments to the Development Entity | 50 |
| 15. | Change in Ownership | 53 |
| 16. | Financial Model Adjustments | 55 |
| 17. | Refinancing | 57 |
| 18. | Principal Development Entity Documents | 58 |
| 19. | Insurance | 60 |
| 20. | Development Entity Indemnity | 71 |
| 21. | Representations and Warranties | 73 |
| 22. | Development Entity Default | 77 |
| 23. | Department Default | 81 |
| 24. | Termination | 83 |
| 25. | Department Step-In | 88 |
| 26. | Maintenance and Inspection of Records | 90 |
| 27. | Intellectual Property | 91 |
| 28. | Federal Requirements | 93 |
| 29. | Assignment and Transfer; Fundamental Changes | 95 |
| 30. | Dispute Resolution Procedures | 95 |
| 31. | Sole Remedy and Liabilities | 99 |
| 32. | Miscellaneous | 101 |

Signatories ..... 109

**Schedules** **Page**


1. Definitions ..... 111
2. Update to the Base MAP ..... 167
3. Project Sites with Asbestos ..... 169
4. Benchmark Rates ..... 170
5. Calculation of Handback Amounts ..... 171
6. Compensation on Termination ..... 173
7. Noncompliance Points Table ..... 177
8. Payment Mechanism ..... 188
9. Insurance Coverage Requirements ..... 197
10. Disputes Review Board ..... 205
    Part 1 Form of Disputes Review Board Agreement ..... 205
    Part 2 Disputes Review Board Procedures ..... 211
11. Initial Designation of Authorized Representatives ..... 216
12. Department Financial Close Responsibilities ..... 217
13. Monthly Performance Report ..... 218
14. Certain Public Policy Requirements ..... 222
15. Additional Federal Requirements ..... 240
16. Calendar Events ..... 333
17. Karst Bridges ..... 334
18. Technical Provisions ..... 336
19. Extra Work Costs ..... 337
20. Conditions Precedent to Notices to Proceed ..... 343
    Part 1 Conditions Precedent to NTP1 ..... 343
    Part 2 Conditions Precedent to NTP2 ..... 344
    Part 3 Conditions Precedent to NTP3 ..... 345
21. Conditions Precedent to Substantial Completion and Final Acceptance ..... 346
    Part 1 Substantial Completion of a Replacement Bridge ..... 346
    Part 2 Final Acceptance of a Replacement Bridge ..... 347


**Forms**


Form 1 Form of Direct Agreement ..... 349
Form 2 Form of D&C Direct Agreement ..... 378
Form 3 Form of Financial Model ..... 389
Form 4 Form of Closing Security ..... 391
Form 5 Form of Department Legal Opinion ..... 394

**Appendix** **Page**

1. Development Entity's Proposal Commitments ..... 399
2. List of Equity Members, Qualified Investors and Related Entities ..... 400

**THE PENNSYLVANIA RAPID BRIDGE REPLACEMENT PROJECT**

**THIS PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT** dated as of [●], 2014 (this **PPA**) is entered into by and

**BETWEEN**:

(1) **THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**, an executive agency of the Commonwealth of Pennsylvania (the **Department**); and

(2) [●], a [●] (the **Development Entity**).

The Department and the Development Entity are hereinafter sometimes referred to individually as a **Party** and collectively as the **Parties**.

**BACKGROUND**:

(A) The Commonwealth of Pennsylvania (the **Commonwealth**) has the third-largest number of bridges in the United States, and has the largest number of bridges classified as "structurally deficient."

(B) The Department wishes to replace a significant number of geographically disbursed, structurally deficient, bridges across the Commonwealth, through a public-private partnership project, as contemplated herein. This project will consist of the design, construction, financing, and routine and life cycle maintenance of the Replacement Bridges, and all associated assets, work products and activities related thereto, as more fully described herein (collectively, the **Project**).

(C) On December 12, 2013, the Department issued a Request for Qualifications (collectively with all subsequently issued addenda thereto, the **RFQ**) regarding a proposed future solicitation for the Project.

(D) On March 26, 2014, pursuant to the process outlined in the RFQ, the Department selected four (4) respondents to be "Prequalified Teams" and "Proposers" that would be eligible to submit proposals in response to the Request for Proposals issued by the Department based on their respective financial and technical qualifications as detailed in their responses to the RFQ.

(E) On August 12, 2014, the Department issued to such Prequalified Teams the Request for Proposals (including a form of this PPA) and thereafter issued a series of addenda thereto (collectively, the **RFP**).

(F) On [●], 2014, the Department received responses to the RFP, including the response of [●] (the **Preferred Proposer**) on behalf of the Development Entity.

(G) On [●] 2014, pursuant to the evaluation process outlined in the RFP, the Department selected the Preferred Proposer's Proposal identifying the Development Entity as the "Preferred Proposer" under the RFP. The Department's decision was based on its overall evaluation of the proposals received from the Proposers and the Department's conclusion that the Proposal sufficiently satisfied all criteria required by the RFP and offered the best value Proposal.

(H) On September 27, 2013, the Commonwealth's Public Private Transportation Partnerships Board authorized the Department, amongst other things, to advance the implementation and delivery of the Replacement Bridges as a public-private partnership project and enter into this PPA.

**NOW, THEREFORE**, in consideration of the sums to be paid by the Department to the Development Entity, the Works to be financed and performed by the Development Entity and the covenants and agreements set out herein, the Parties hereby agree as follows:

## 1. DEFINITIONS; PROJECT DOCUMENTS

### 1.1 Definitions; Construction and Interpretation of Agreement

(a) Definitions for all capitalized terms used in this PPA are contained in Schedule 1 (Definitions) hereto. If any such terms are used in any other Project Document, unless expressly provided otherwise, they shall have the same respective meanings therein as defined herein.

(b) The language in all parts of this PPA shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this PPA has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this PPA 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 hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of this PPA, this PPA shall not be interpreted or construed against the Party preparing it, and instead the other applicable rules of interpretation and construction set out herein shall be utilized.

(c) Any references to any covenant, condition, obligation and/or undertaking **herein**, **hereunder** or **pursuant hereto** (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing in this PPA and any Exhibits, Schedules, Forms, Appendices, addenda, attachments or other documents affixed to or expressly incorporated by reference in this PPA. The words **herein**, **hereof** and **hereunder** and any other words of similar import shall be construed to refer to this PPA in its entirety and not to any particular provision of this PPA. All terms defined in this PPA shall be deemed to have the same meanings in all Exhibits, Schedules, Forms, Appendices, addenda, attachments or other documents affixed to or expressly incorporated by reference in this PPA, unless the context thereof clearly requires the contrary. All references to this PPA or any other agreement shall include all Exhibits, Schedule, Forms, Appendices, addenda, attachments or other documents affixed to or expressly incorporated herein or therein by reference. Unless expressly provided otherwise, all references to Articles, Sections, subsections, clauses, Exhibits, Schedules, Forms and Appendices refer to the Articles, Sections, subsections, clauses, Exhibits, Schedules, Forms and Appendices set out in or attached to this PPA, as applicable. Unless otherwise stated in this PPA or the other Project Documents, words which have well-known technical or construction industry meanings are used in this PPA or the other Project Documents in accordance with such recognized meanings. All references to a subsection or clause **above** or **below** refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word **including**, **includes** or **include** is used in the Project Documents, it shall be deemed to be followed by the words **without limitation**. In the computation of periods of time from a specified date to a later specified date, the word **from** means **from and including** and the words **to** and **until** mean **to and including**.

(d) As used in this PPA and as the context may require, (i) the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa; (ii) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set out herein or therein); and (iii) any reference to a Person shall be construed to include such Person's permitted successors and assigns.

(e) Portions of the Project Documents are written in active voice, imperative mood. In sentences using the imperative mood, unless otherwise specifically stated, the subject **Development Entity** is implied, and it is understood the Development Entity shall perform such work, comply with the requirements of, furnish such material, or take such action. The word **shall** is also implied, and when implied or stated, is to be considered mandatory and, unless otherwise specifically stated, to pertain to requirements or actions of the Development Entity.

(f) Unless indicated to the contrary, all determinations, consents or approvals of the Department shall not be unreasonably withheld, conditioned or delayed.

**1.2 Project Documents; Order of Precedence**

(a) In the event of any conflict, ambiguity or inconsistency between any terms or provisions of this PPA, the order of precedence, from highest to lowest, shall, except as provided otherwise in this Section 1.2 (Project Documents; Order of Precedence) be as follows:

(i) the main body of this PPA;

(ii) the Schedules to this PPA;

(iii) the Appendices to this PPA other than the Development Entity's Proposal Commitments; and

(iv) the Development Entity's Proposal Commitments,

in each case as amended or supplemented from time to time in accordance with the terms of this PPA.

(b) In the event of any conflict, ambiguity or inconsistency between or among any of the provisions in this PPA, or between two or more Project Documents having the same order of precedence, the more stringent standard will prevail.

(c) If the Development Entity's Proposal Commitments include statements, terms, concepts or designs that can reasonably be interpreted as offering to provide higher quality items than otherwise required by the other Project Documents or to perform services or meet standards in addition to or better than those otherwise required, then the Development Entity's obligations hereunder shall include compliance with all such statements, terms, concepts and designs as set out in the Development Entity's Proposal Commitments.

(d) Additional or supplemental details or requirements in a lower priority Project Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Project Document.

### 1.3 Responsibility for Related Parties

Subject to the provisions of this PPA, in respect of the Development Entity's performance or non-performance of the Project Documents, the Development Entity shall be responsible for the acts and omissions of the Development Entity-Related Entities as if they were the acts and omissions of the Development Entity. Accordingly, the fact that the Development Entity did not select any Contractor will be no defense by the Development Entity in the event that it fails to perform its obligations or incurs any liability under this PPA.

## 2. EFFECTIVENESS, CONDITIONS PRECEDENT TO CLOSING

### 2.1 Term and Effectiveness

(a) The term of this PPA shall commence on the date of this PPA and shall end on the earlier of (i) the 25th anniversary of Substantial Project Completion, and (ii) the Early Termination Date (the **Term**).

(b) All the provisions of this PPA shall come into effect on the Commercial Closing Date.

### 2.2 Conditions Precedent to the Commercial Closing Date

The occurrence of the Commercial Closing Date is subject to the fulfillment (or waiver by the non-obligated Party) of the following conditions:

(a) **Closing Security**

The Closing Security shall have been executed and delivered to the Department and shall have become fully effective in accordance with its terms.

(b) **Project Documents**

Each of the following shall have been executed by the relevant parties thereto (other than the Department, as applicable) and be in form and substance approved by the Department (such approval not to be unreasonably withheld or delayed and it being acknowledged by the Department that to the extent that a term or provision of a document is materially consistent with the form of the same document (or heads of terms relating thereto) that was submitted with the Proposal, it would be unreasonable for the Department to withhold or delay its approval of such term or provision) and a copy of each such document, certified by the Development Entity as being true, complete and accurate, shall have been delivered to the Department:

(i) the D&C Contract;

(ii) the D&C Direct Agreement; and

(iii) the Construction Security (if any).

(c) **Department Documents**

The Department shall have executed each of the documents specified in Section 2.2(b) (Project Documents) to which it is a party.

(d) **Corporate Documents**

The Development Entity shall have delivered to the Department such documents and certificates as the Department may reasonably request evidencing the organization, existence and good standing of the Development Entity, the authorization of the entry by the Development Entity into the Project Documents and any Key Contracts to which it is a party.

(e) **Development Entity Opinions**

The Development Entity shall have provided to the Department customary legal opinions, addressed to the Department, from external legal, or in respect of the opinion contemplated in Section 2.2(e)(iv) below, internal counsel as to:

(i) organization and existence of the Development Entity;

(ii) due authorization and execution of the Project Documents;

(iii) enforceability of, and no violation of law or the Development Entity's organizational documents with respect to, each Project Document and Key Contract that the Development Entity is a party to; and

(iv) the absence of material litigation.

(f) **Attorney General Ratification**

The PPA has been approved as to form and legality by the Attorney General of the Commonwealth pursuant to the act of October 15, 1980 (P.L. 950, No. 164), as amended, known as the Commonwealth Attorneys Act.

(g) **Representations and Warranties of the Development Entity**

The representations and warranties of the Development Entity set out in Section 21.1 (Development Entity Representations and Warranties) of this PPA shall be true and correct in all material respects as at the date of this PPA.

(h) **Representations and Warranties of the Department**

The representations and warranties of the Department set out in Section 21.2 (Department Representations and Warranties) of this PPA shall be true and correct in all material respects as at the date of this PPA.

(i) **Qualification to Do Business**

The Development Entity shall have provided to the Department evidence reasonably satisfactory to the Department that:

(i) the D&C Contractor, or to the extent that the D&C Contractor is a consortium, partnership, or other form of joint venture, each member of the D&C Contractor performing Construction Work, is prequalified pursuant to 67 Pa. Code Ch. 457:

(1) (x) to perform structure "S" and "T" work types or (y) as a "general highway contractor," and (2) has "unlimited financial capacity";

(ii) to the extent that the D&C Contractor is a consortium, partnership or other form of joint venture, each member of the D&C Contractor is capable of performing at least 50% of the original contract price relating to the member's responsibilities under the D&C Contract as provided in 67 Pa. Code § 457.15(c); and

(iii) the Development Entity and each Development Entity-Related Entity (excluding those contemplated in clauses (b), (e) and (f) of the definition thereof) with which contracts have been entered into prior to the Commercial Closing Date shall be a Registered Business Partner of the Commonwealth.

## 2.3 Conditions Precedent to the Financial Closing Date

The occurrence of the Financial Closing Date is subject to the fulfillment (or waiver by the non-obligated Party) of the following conditions:

(a) **Development Entity Documents**

Each of the following shall have been executed by the relevant parties thereto (other than the Department, as applicable) and be in form and substance approved by the Department (such approval not to be unreasonably withheld or delayed and it being acknowledged by the Department that to the extent that a term or provision of a document is materially consistent with the form of the same document (or heads of terms relating thereto) that was submitted with the Proposal, it would be unreasonable for the Department to withhold or delay its approval of such term or provision) and a copy of each such document, certified by the Development Entity as being true, complete and accurate, shall have been delivered to the Department:

(i) the Maintenance Contract and any guaranty provided in respect of the obligations of the Maintenance Contractor under the Maintenance Contract;

(ii) the Direct Agreement;

(iii) the Financing Documents; and

(iv) the Equity Members Funding Agreements.

(b) **Department Documents**

The Department shall have executed each of the documents specified in Section 2.3(a) (Development-Entity Documents) to which it is a party.

(c) **Financial Close**

The Development Entity shall have delivered to the Department a certificate confirming that Financial Close has occurred.

(d) **Corporate Documents**

The Development Entity shall have delivered to the Department such documents and certificates as the Department may reasonably request evidencing the good standing of the Development Entity and the authorization of the entry by the Development Entity into each of the documents specified in Section 2.3(a) (Development-Entity Documents).

(e) **Development Entity Opinions**

The Development Entity shall have provided to the Department bringdowns of the legal opinions delivered by the Development Entity in accordance with Section 2.2(e) (Development Entity Opinions).

(f) **Representations and Warranties of the Development Entity**

The representations and warranties of the Development Entity set out in Section 21.1 (Development Entity Representations and Warranties) of this PPA shall be true and correct in all material respects as at the Financial Closing Date.

(g) **Representations and Warranties of the Department**

The representations and warranties of the Department set out in Section 21.2 (Department Representations and Warranties) of this PPA shall be true and correct in all material respects as at the Financial Closing Date.

(h) **Equity Investment**

(i) The Development Entity shall have provided evidence to the Department's reasonable satisfaction that all Deferred Equity Amounts are supported by irrevocable, on-demand letter(s) of credit issued by one or more Eligible Security Issuers.

(ii) The Development Entity shall have provided evidence to the Department's reasonable satisfaction that the Construction Equity Ratio between the Financial Closing Date and the D&C Work Completion Date shall be greater than or equal to seven and one-half percent (7.5%).

(i) **Commercial Closing Date**

The Commercial Closing Date shall have occurred.

(j) **Department Financial Close Responsibilities**

The Department shall have complied with all of its responsibilities set out in Schedule 12 (Department Financial Close Responsibilities).

(k) **Department Legal Opinion**

The Department shall have provided to the Development Entity a legal opinion addressed to the parties listed therein in substantially the form attached hereto as Form 5 (Form of Department Legal Opinion).

## 2.4 Achievement of or Failure to Achieve the Financial Closing Date

(a) The Development Entity shall deliver to the Department, on the Business Day following the Financial Closing Date, unrestricted electronic versions of the Financial Model in the form attached hereto as Form 3 (Form of Financial Model), which version incorporates any amendments (if any) agreed by the Parties between the Commercial Closing Date and the Financial Closing Date (including any revision to the Base MAP pursuant to Schedule 2 (Update to the Base MAP), together with the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested by the Department to operate the Financial Model.

(b) The Development Entity shall deliver to the Department, on the Business Day following the Financial Closing Date, proposed revisions to this PPA (each a **PPA Amendment**), which PPA Amendments will reflect any adjustments or amendments required to conform this PPA with the amendments to the Financial Model referred to in Section 2.4(a), if any, including the replacement of the Financial Model attached hereto as Form 3 (Form of Financial Model) on the Commercial Closing Date (the **Preliminary Financial Model**) with the version delivered pursuant to Section 2.4(a).

(c) Upon the satisfaction or waiver of each of the Financial Closing Conditions Precedent and receipt of the Financial Model and PPA Amendments pursuant to Sections 2.4(a) and 2.4(b), respectively, (unless otherwise agreed by the Parties):

(i) the Department and the Development Entity shall sign a certificate specifying the Financial Closing Date;

(ii) the Department shall return the Closing Security to the Development Entity within ten (10) days thereafter; and

(iii) the contents of each PPA Amendment shall be incorporated into this PPA by way of a written amendment.

(d) In the event Financial Close does not occur by the Financial Closing Deadline, then either Party shall have the right to terminate this PPA in accordance with Section 24.6 (Termination for Failure to Achieve Financial Close).

# 3. GRANT OF RIGHT

## 3.1 Grant of Right

(a) Subject to the terms and conditions of the Project Documents, the Department hereby grants to the Development Entity the exclusive right, and the Development Entity accepts such right and acknowledges its obligation, to (i) develop, design, construct and finance the Project, and (ii) maintain the Project in accordance with the terms of the Project Documents.

(b) Without limiting the Development Entity's rights under this PPA, it is the express intent and agreement of the Parties that this PPA shall in no way be deemed to constitute a lease to the

Development Entity (whether an operating lease or a financing lease) or, except as expressly provided herein, a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, lien or mortgage), in each case, of any right, title, interest or estate in the Project, the Project Sites, or of any assets incorporated into, appurtenant to, or in any way connected with the Project. It is the express agreement and intent of the Parties that the Development Entity shall not be treated as or deemed to be the legal or equitable owner of any Project Site for any purpose. The Development Entity's rights hereunder are derived solely from its status as a Development Entity and independent contractor as described in this PPA, and not as a tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property. The payments to be received by the Development Entity under this PPA are not payments in the nature of rent, fees with respect to real property or purchase price of real property.

**3.2 Access to Project Sites**

(a) For the purposes of performing its obligations under the Project Documents only (and exercising of its rights hereunder), the Development Entity shall, subject to the terms and conditions of the Project Documents, have the right to enter onto (and engage in the activities contemplated herein on) each Project Site.

(b) The Department will, at its own cost, obtain and provide the Development Entity with Access to each Project Site in accordance with the provisions of Section 7 (Right-of-Way) of the Technical Provisions.

(c) The Department shall not in any way materially or unduly interfere with the Development Entity in the performance of its obligations (and exercising of its rights hereunder) under the Project Documents in accordance with the terms of the Project Documents (having regard always to the interactive nature of the activities of the Department and of the Development Entity and to the use of any of the Project Facilities and any other operations or activities carried out by the Department on any Project Site in order to perform its functions).

(d) The Development Entity shall, in the performance of the Work at any Project Site, coordinate with any third parties that may from time to time have access rights to such Project Site.

**3.3 Disclosed Information**

(a) The Department does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Information. The Disclosed Information is for information purposes only, and is not mandatory or binding on the Development Entity. Subject to the terms of the Project Documents, the Development Entity is not entitled to rely on the Disclosed Information as accurately describing existing conditions, presenting design, engineering or maintenance solutions or directions, or defining means or methods for complying with the requirements of the Project Documents, Governmental Approvals or Applicable Law.

(b) Subject to the terms of the Project Documents, neither the Department nor any of its agents, officers or employees shall have any liability to the Development Entity in respect of any:

(i) inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Information;

(ii) failure to make available to the Development Entity any materials, documents, drawings, plans or other information relating to the Project; or

(iii) causes of action, claims or Losses whatsoever suffered by any Development Entity-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Disclosed Information.

(c) The Development Entity shall, subject to the terms of the Project Documents, be deemed to have:

(i) satisfied itself as to the assets to which it will receive rights (including each Project Site and, where applicable, any existing structures, Utilities or work on, over or under such Project Site) and the nature and extent of the risks assumed by it under the Project Documents;

(ii) satisfied itself as to the nature of the geotechnical, climatic, hydrological, ecological, environmental and general conditions of each Project Site, the nature of the ground and subsoil, the form and nature of each Project Site, the risk of injury or damage to property near to or affecting each Project Site and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, materials, plant, machinery or equipment necessary for the purpose of carrying out its obligations under the Project Documents; and

(iii) satisfied itself as to:

(A) the access to and through each Project Site and the adequacy of the Access in respect thereof for the purpose of carrying out its obligations under the Project Documents;

(B) the precautions and times and methods of working necessary to prevent or (if it is not possible to prevent) to mitigate or reduce, any nuisance or interference, whether public or private, being caused to any third parties; and

(C) the scope of the Disclosed Information.

(d) The Development Entity acknowledges and confirms that it has not entered into this PPA on the basis of, and has not relied upon, any statement or representation (whether negligent, innocent or otherwise) or warranty or other provision (in each case whether oral, written, express or implied) made or agreed to by the Department or any of its agents or employees, except those expressly repeated or referred to in the Project Documents and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this PPA.

(e) Subject to any rights that the Development Entity has pursuant to the terms of the Project Documents, the Development Entity shall not in any way be relieved from any obligation under the Project Documents nor shall it be entitled to claim against the Department on grounds that any information, whether obtained from the Department or otherwise (including information made available by the Department), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

(f) Notwithstanding the other terms of this Section 3.3 (Disclosed Information), nothing in this Section 3.3 (Disclosed Information) shall:

(i) prejudice or qualify the Development Entity's express rights and remedies under or pursuant to the Project Documents including, without limitation, the Development Entity's rights pursuant to Article 12 (Supervening Events); or

(ii) exclude any liability which the Department or any of its agents or employees would otherwise have to the Development Entity in respect of any statements made fraudulently or in bad faith or constituting willful misconduct.

### 3.4 Collaborative Nature of the Project

Each Party agrees to cooperate, at its own expense, with the other Party in the fulfillment of the purposes and intent of this PPA. Neither Party shall be under any obligation to perform any of the other Party's obligations under the Project Documents.

## 4. REVIEW OF SUBMITTALS

### 4.1 General

The terms and procedures set out in this Article 4 (Review of Submittals) shall govern all Submittals to the Department pursuant to the Project Documents.

### 4.2 No D&C Work Prior to Review

The Development Entity shall not commence or permit the commencement of any D&C Work that is the subject of, governed by or dependent upon a Reviewable Submittal until it has submitted the relevant Reviewable Submittal to the Department and:

(a) in respect of a Discretionary Submittal, the Department has provided its approval or consent to the relevant Discretionary Submittal;

(b) in respect of a Non-Discretionary Submittal:

(i) within seven (7) days of receiving written notice from the Development Entity that the Department failed to respond to the Non-Discretionary Submittal within the initial period required under the Project Documents, the Department fails to respond to such Submittal;

(ii) the Department approves or consents to such Non-Discretionary Submittal in accordance with this Article 4 (Review of Submittals); or

(iii) if the Department comments, objects or rejects the relevant Submittal in the manner contemplated in this Article 4 (Review of Submittals), the Department approves or consents to any re-submission of that Non-Discretionary Submittal in accordance with this Article 4 (Review of Submittals) or otherwise fails to respond in respect to the same within the time period required under Section 4.4(a); or

(c) in respect of an R&C Submittal, the time period during which the Department is entitled to raise comments has expired, whether or not the Department made comments, save that in the event that the Department made comments that are disregarded by the Development Entity and it is subsequently determined that the Department's comments were permitted under Section 4.3(a), the Development Entity shall forthwith undo, modify or remove from the Project Sites and replace (in a manner complying with this PPA) the relevant parts of the Works to reflect the Department's comments.

For the avoidance of doubt, nothing in this Section 4.2 (No D&C Work Prior to Review) shall, in and of itself, require the Development Entity to have been issued NTP1 in accordance with Section 7.4 (Conditions Precedent to NTP1) prior to commencing any Design Work or taking any steps required to obtain any Governmental Approvals including, without limitation, communicating with the relevant Governmental Entities.

### 4.3 Grounds for Objection and/or Comment

(a) In respect of any Submittal that is not a Discretionary Submittal, the Department may comment on or withhold its approval or consent to that Submittal, but only to the extent that:

(i) the Work that is the subject of the Submittal fails to comply with any applicable covenant, condition, requirement, term or provision of the Project Documents;

(ii) the Work that is the subject of the relevant Submittal is not to a standard equal to or exceeding Good Industry Practice; or

(iii) the Development Entity has not provided all content or information required in respect of the Submittal; **provided**, that the Development Entity shall have an opportunity to re-submit the Submittal with the required content or information.

(b) The Development Entity shall respond to all of the Department's comments and objections to a Submittal provided in accordance with the terms hereof and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set out in this Section 4.3 (Grounds for Objection and/or Comment). The Development Entity acknowledges that the Department may provide comments and objections, which reflect concerns regarding interpretation or its preferences or which otherwise do not directly relate to grounds set out in Section 4.3(a). The Development Entity agrees to use its Reasonable Efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Article 4 (Review of Submittals). If the Development Entity does not accommodate or otherwise resolve any comment or objection, the Development Entity shall deliver to the Department within thirty (30) days after receipt of the Department's comments or objections, a written explanation as to why modifications based on such comment or objection are not required or why the relevant comment or objection in relation to the Submittal does not relate (directly or indirectly) to any of the grounds set out in Section 4.3(a) (as applicable). The explanation shall include the facts, analyses and reasons that support the conclusion.

(c) If the Development Entity fails to notify the Department within such time period, then such failure shall constitute the Development Entity's agreement to make all changes

necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes at the Development Entity's risk.

(d) If the Department disagrees with the Development Entity's explanation as to why the modifications are not required or why the relevant comment or objection in relation to the Submittal does not relate (directly or indirectly) to any of the grounds set out in Section 4.3(a) (as applicable) as provided in Section 4.3(b), the Parties shall attempt in good faith to resolve the Dispute. If they are unable to resolve the Dispute, the Dispute shall be resolved according to Article 30 (Dispute Resolution Procedures), provided, however, that the Development Entity shall not be required to implement any comments or objections that do not relate (directly or indirectly) to any of the grounds set out in Section 4.3(a).

### 4.4 Limitations on the Development Entity's Right to Rely

Nothing in this Article 4 (Review of Submittals) (including any act or omission of the Department pursuant to this Article 4 (Review of Submittals)) shall:

(a) relieve the Development Entity from the performance of its obligations under the Project Documents;

(b) constitute acceptance by the Department that the Work satisfies the requirements of the Project Documents; or

(c) subject to Section 4.6 (Substantially Similar Submittals), prevent the Department from subsequently raising an objection or comment on a Submittal in accordance with this Article 4 (Review of Submittals) if the same objection and/or comment was not made by the Department on a previous Submittal.

### 4.5 Time Periods

(a) Except as otherwise provided in this Section 4.5 (Time Periods), whenever the Department is entitled to review and comment on, or to affirmatively approve, a Submittal, the Department shall, as soon as practicable within a period of up to fourteen (14) days after the date the Department receives an accurate and complete Submittal in conformance with the Project Documents, review, comment upon, or approve, as the case may be, the Submittal. The Department's review period in respect of any re-submission of any Submittal shall, unless provided otherwise in the Project Documents, be seven (7) days and shall be limited to a review of those matters that necessitated the re-submission; provided, that this reduced period of seven (7) days for Department review of a re-submission shall not apply if the reason for the re-submission was due to a rejection in accordance with the terms hereof of a prior Submittal because it was incomplete.

(b) If any provision of the Project Documents expressly provides a longer or shorter period for the Department to act, such period shall take precedence over the time period set out in Section 4.5(a).

(c) The Development Entity shall schedule, prioritize and coordinate all Submittals to allow an efficient and orderly Submittal review process. To the extent that the Development Entity exceeds any of the limits on Submittals set out in the Technical Provisions, the

Parties shall (taking into account the number and nature of any other Submittals that the Department may concurrently be in the process of reviewing) agree in good faith to a reasonable time period for the review by the Department of the Submittals that exceed such limit.

(d) The applicable period for the Department to act on any Submittals received during an Increased Monitoring Period shall automatically be extended by ten days.

**4.6 Substantially Similar Submittals**

To the extent that a Submittal relating to a Replacement Bridge is substantially similar to a Submittal previously issued by the Development Entity in respect of another Replacement Bridge and the context and circumstances are substantially similar (such a Submittal being a **Substantially Similar Submittal**), the Department shall not raise a comment on such Submittal that is inconsistent with its previous comments in respect of the Substantially Similar Submittal (for the avoidance of doubt, if the Department did not previously raise any comment on the Substantially Similar Submittal, then any relevant comment raised in respect of such Submittal shall be deemed inconsistent for the purposes of this Section 4.6 (Substantially Similar Submittals)).

## 5. GOVERNMENTAL APPROVALS; UTILITIES

### 5.1 Governmental Approvals

(a) **Responsibility**

(i) Except in respect of Department Obtained Governmental Approvals and subject to the terms of the Project Documents, the Development Entity shall be solely responsible for securing and obtaining all Governmental Approvals (including any revision, modification, amendment, supplement, renewal or extension thereof), required in connection with its performance of this PPA.

(ii) Without prejudice to Section 5.1(b)(ii), the Department shall obtain for the Development Entity the benefit of each of the Department Obtained Governmental Approvals so as to ensure that the Development Entity shall have the use and benefit of the Department Obtained Governmental Approvals no later than March 31, 2015.

(iii) Notwithstanding Section 5.1(a)(i), other than in respect of any NEPA approval, the Development Entity shall be responsible for obtaining amendments or modifications to any Department Obtained Governmental Approval necessary to reflect the Development Entity's Final Design and/or means and methods should the Final Design in respect of an Early Completion Bridge and/or means and methods deviate from the basis upon which the Department Obtained Governmental Approval was initially granted by the Governmental Entity. In the event that any modifications are not permitted by the Governmental Entity, the Development Entity shall be responsible, at its own risk of delay and cost, for revising its Final Design in respect of the relevant Early Completion Bridge and/or means and methods as necessary to satisfy the requirements and conditions of the relevant Governmental Entity.

(iv) The Development Entity shall at all times perform its obligations under this PPA in compliance with all Governmental Approvals.

(v) The Development Entity shall promptly deliver to the Department true and complete copies of all applications for Governmental Approvals and new or amended Governmental Approvals obtained by it.

(b) **Cooperation with respect to Governmental Approvals**

(i) The Department will cooperate with the Development Entity in relation to any application by the Development Entity for a Governmental Approval and will, at the reasonable request of the Development Entity, and where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Governmental Approval:

(A) execute such documents as can only be executed by the Department;

(B) make such applications as required by Applicable Law, either in its own name or jointly with the Development Entity, as can only be made by the Department or in joint names of the Development Entity and the Department, as the case may be; and

(C) attend meetings with appropriately qualified staff and cooperate with approval bodies as reasonably requested by the Development Entity,

in each case within a reasonable period of time of being requested to do so by the Development Entity.

(ii) To the extent that the Department provides any cooperation to the Development Entity pursuant to Section 5.1(b)(i) in respect of a Department Obtained Governmental Approval, the Development Entity shall reimburse the Department in respect of its reasonable and proper costs associated with the provision of such cooperation.

(iii) The Development Entity shall cooperate with the Department in respect of the application by the Department for any Department Obtained Governmental Approvals, at the times and in the manner reasonably requested by the Department, including providing supporting drawings, data and technical information and the filing by the Development Entity of appropriate applications for the relevant Department Obtained Governmental Approvals with the relevant Governmental Entity.

**5.2 Utilities**

(a) **Development Entity's Responsibility**

(i) Subject to Sections 5.2(a)(ii) and 5.2(e) (Failure of Utility Owner to Cooperate), the Development Entity is responsible for causing, in accordance with the Technical Provisions, all Utility Relocations necessary to accommodate construction, operation, maintenance and/or use of each Replacement Bridge. All Utility Relocation Work performed by the Development Entity shall comply with the Project Documents. To the extent consistent with the Technical Provisions, the Development Entity shall coordinate,

monitor and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Relocation Work to perform such work in a timely manner, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the Project Documents. However, regardless of the arrangements made by the Development Entity with the Utility Owners, to the extent consistent with the Technical Provisions, the Development Entity shall continue to be the responsible party to the Department for timely performance of all Utility Relocation Work so that upon completion of the D&C Work, all Utilities that might impact any Replacement Bridge (whether located within or outside the relevant Project Site) are compatible with such Replacement Bridge.

(ii) Subject to Section 5.2(a)(iii), except as may be agreed otherwise between the Development Entity and any Utility Owner outside the scope of the Work, the Department or the relevant Utility Owner shall be responsible for all costs of the Utility Relocation Work and the Development Entity shall have no obligation to pay the costs of any Utility Relocation Work.

(iii) The Department shall not be responsible for the costs of:

(A) any Utility Relocation Work associated with the subsequent relocation of any Utility on an Early Completion Bridge that is required because the Development Entity's Final Design for that Early Completion Bridge deviates from the basis on which the initial Utility Relocation was performed; and

(B) with the exception of Undisclosed Utility Incorporated Work, any Utility Incorporated Work in respect of an Early Completion Bridge.

(iv) If applicable, the Development Entity is solely responsible for collecting directly from the relevant Utility Owner any payment for which the Utility Owner is responsible pursuant to any agreement for the performance of utility relocation work by the Development Entity which is outside the scope of the Work. Subject to the terms of the Project Documents, if for any reason the Development Entity is unable to collect any amounts due to the Development Entity from any Utility Owner for such out of scope utility relocation work, then:

(A) the Department shall have no liability for such amounts;

(B) the Development Entity shall have no right to collect such amounts from the Department or to offset such amounts against amounts otherwise owing from the Development Entity to the Department; and

(C) the Development Entity shall have no right to suspend the Work or to exercise any other remedies against the Department on account of such failure to pay.

(b) **Department Determinations**

The Department will make all determinations of the right to compensation of any Utility Owner related to Utility Relocation Work, except with respect to Utility Relocation Work referred to in Section 5.2(a)(iii).

(c) **Utility Enhancements**

The Development Entity shall be responsible for addressing any requests by Utility Owners that the Development Entity design and/or construct a Betterment or Utility Owner Project (collectively, **Utility Enhancement**). Any Betterment performed as part of a Utility Relocation, whether by the Development Entity or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Relocation. The Development Entity shall perform any work on a Utility Owner Project only by separate contract outside of the Work. Under no circumstances shall the Development Entity proceed with any Utility Enhancement that is incompatible with the Project or is not in compliance with Applicable Law, any Governmental Approval or the Project Documents. The Development Entity may, but is not obligated to, design and construct Utility Enhancements.

(d) **Utility Accommodation**

It is anticipated that from time to time during the Construction Period, Utility Owners will apply for additional Utility permits to install new Utilities that would cross or longitudinally occupy areas of a Project Site that are subject to the Department's permitting jurisdiction, or to modify, repair, upgrade, relocate or expand existing Utilities within such areas. For such Utility permit applications submitted prior to the Substantial Completion Date for a Replacement Bridge, the Development Entity shall use Reasonable Efforts to assist the Department in its consideration of each Utility permit application in accordance with the Project Documents. Further, the Development Entity shall use Reasonable Efforts to (i) make available upon request the most recent Project design information and/or As-Built Drawings, as applicable, to the applicants; (ii) assist each applicant with information regarding the location of other proposed and existing Utilities; and (iii) coordinate work schedules with such applicants as appropriate to avoid interference with the operation of any of the Project Facilities.

(e) **Failure of Utility Owners to Cooperate**

(i) The Development Entity shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Relocations to be performed in connection with the Work. The Development Entity shall notify the Department promptly if the Development Entity reasonably believes that:

(A) any Utility Owner would not undertake or permit a Utility Relocation in a manner consistent with the timely completion of any Replacement Bridge or in accordance with Applicable Law, any Governmental Approval or the Project Documents;

(B) any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals; or

(C) any other dispute will arise between the Development Entity and a Utility Owner with respect to the Project, despite the Development Entity's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute (including a dispute relating to a Utility Enhancement).

Such Notice may include a request that the Department assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. The Development Entity

shall provide the Department with such information as the Department requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Development Entity's Project Working Schedule. After delivering to the Department any Notice or request for assistance, the Development Entity shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

(ii) If the Development Entity requests the Department's assistance pursuant to Section 5.2(e)(i), then the following provisions shall apply:

(A) the Development Entity shall provide evidence reasonably satisfactory to the Department that:

I. the subject Utility Relocation is necessary;

II. the time for completion of the Utility Relocation in the Project Working Schedule was, at its inception, a reasonable amount of time for completion of such work;

III. the Development Entity has made diligent efforts to obtain the Utility Owner's cooperation; and

IV. the Utility Owner is not cooperating (the foregoing clauses I through IV are referred to herein as the **conditions to assistance**);

(B) following the Department's receipt of satisfactory evidence, the Department shall take such reasonable steps as the Development Entity may request to obtain the cooperation of the Utility Owner or resolve the dispute; **provided**, **however**, the Department shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under Applicable Law or existing contract unless the Department elects to do so in its sole discretion; and

(C) any assistance the Department provides shall not relieve the Development Entity of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Relocation Work, except as otherwise expressly set out herein.

(iii) If the Department objects in writing to a request for assistance pursuant to Section 5.2(e)(ii), based on the Development Entity's failure to satisfy one or both of the conditions to assistance described in clauses I and II of Section 5.2(e)(ii)(A), then the Development Entity shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter.

(iv) If the Department objects in writing to a request for assistance pursuant to Section 5.2(e)(ii) based on the Development Entity's failure to satisfy one or both of the conditions to assistance described in clauses III and IV of Section 5.2(e)(ii)(A), then the Development Entity shall take such action as the Development Entity deems advisable during the next ten (10) days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter.

(v) Notwithstanding the foregoing, no resubmittal will be accepted unless all the Department objections have been addressed in accordance with the preceding clauses (iii) and (iv). This process shall be followed until the Development Entity succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until the Department determines, based on evidence the Development Entity presents, that the conditions to assistance have been satisfied. The Development Entity shall have the right to submit the question of the reasonableness of the Department's determination for resolution according to the Dispute Resolution Procedures.

(f) **Revenue from Utilities**

To the extent, if any, that an agreement with a Utility Owner would provide revenue with respect to the use or occupation by a Utility of space in a Project Site, such revenue shall inure to the benefit of the Department and the Development Entity shall have no interest therein.

## 6. HAZARDOUS MATERIALS

### 6.1 General Obligations

(a) Subject to the terms of the Project Documents, the Development Entity will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any Hazardous Materials in, under or on each Project Site that are encountered during the carrying out of any Construction Work in respect of a Replacement Bridge, in each case to the extent required by any Applicable Law, Governmental Entity, Governmental Approvals or the Project Documents.

(b) The Department will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of any Hazardous Materials in, under or on each Project Site that are not the responsibility of the Development Entity under Section 6.1(a).

(c) Before any Remedial Action (other than with respect to a Development Entity Release of Hazardous Materials) is taken for which the Development Entity has responsibility that would inhibit the Department's ability to ascertain the nature and extent of the relevant Hazardous Environmental Condition, the Development Entity will afford the Department the reasonable opportunity to inspect areas and locations that require Remedial Action within a reasonable time period; provided, that in the case of a sudden Hazardous Materials Release, the Development Entity may take the minimum action necessary to stabilize and contain the relevant Hazardous Materials Release without prior notice or inspection, but will promptly notify the Department of the sudden Hazardous Materials Release and its location; provided, further, that nothing herein shall prevent the Development Entity from complying with Applicable Law or the requirements of any Governmental Entity.

(d) Subject to the terms of the Project Documents, the Development Entity will (without accepting or assuming responsibility under any Applicable Law) be responsible for obtaining and maintaining all Governmental Approvals relating to any Remedial Action and will be solely responsible for compliance with all Governmental Approvals and Applicable Laws concerning or relating to Hazardous Materials in respect thereof. In carrying out any Remedial Action that is the subject of a Compensation Event, the Development Entity will take such steps and actions as the Department may reasonably require in order to protect and preserve the Department's potential

claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties, provided that any such steps and actions are not inconsistent with all Applicable Laws and the requirements of the Project Documents and any relevant Governmental Entities or Governmental Approvals.

(e) Except as otherwise provided in, and subject to the terms of, the Project Documents, the Development Entity will bear all costs and expenses of complying with this Article 6 (Hazardous Materials) during the Term.

**6.2 Third Party Claims**

(a) To the extent permitted by Applicable Law, the Development Entity shall indemnify, save, protect and defend the Indemnified Parties from any claims, causes of action and Losses initiated, prosecuted, incurred or suffered by any Indemnified Party as a result of or arising out of any Hazardous Materials for which the Development Entity is deemed to be the generator or arranger pursuant to this Article 6 (Hazardous Materials).

(b) To the extent that the Department is deemed to be the generator or arranger for Hazardous Materials pursuant to this Article 6 (Hazardous Materials), the Development Entity shall be entitled to seek contribution (in an amount net of any insurance proceeds received pursuant to the Insurance Policies or any amounts which the Development Entity is deemed to have self-insured in accordance with Article 19 (Insurance) of this PPA) from the Department for any Losses arising from or in connection with or in respect of any Third-Party Claims initiated against the Development Entity or any Development Entity-Related Entity in connection with such Hazardous Materials; **provided** that:

(i) the Development Entity shall promptly notify the Department of incidents, potential claims and matters which may give rise to any such Third-Party Claim;

(ii) the Department may give written notice to the Development Entity to tender defense of any such Third-Party Claim to the Department at any time, in which case the Development Entity shall promptly tender defense of such claim and cooperate with the Department as necessary or reasonably requested by the Department to defend such claim;

(iii) unless and until the Department assumes defense of any such Third-Party Claim, the Development Entity shall keep the Department reasonably informed at all times regarding such claim; and

(iv) the Development Entity shall not enter into any agreement or settlement with respect to any such claim without the prior written approval of the Department.

**6.3 Generator Status**

(a) As between the Department and the Development Entity, the Development Entity will be deemed the sole generator and arranger under 40 CFR, Part 262 in respect of any Development Entity Release of Hazardous Materials. The Development Entity agrees that it shall be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity.

(b) As between the Department and the Development Entity, the Department will be deemed the sole generator and arranger under 40 CFR, Part 262 in respect of any Hazardous Materials for which the Development Entity is not identified as the generator and arranger in accordance with Section 6.3(a). The Department agrees to be identified as the sole generator and arranger of such Hazardous Materials on waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Entity.

## 7. DESIGN AND CONSTRUCTION

### 7.1 Obligations of the Development Entity

(a) **General Duties**

In addition to performing all other requirements of the Project Documents, the Development Entity shall:

(i) furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Project Documents expressly specify will be undertaken by the Department or other Persons) to construct the Project and to maintain it during construction and to achieve Substantial Project Completion by the Long Stop Deadline;

(ii) ensure all Construction Work is performed in accordance with Released For Construction Documents;

(iii) ensure that a suitably qualified foreman is present at each Project Site at all times during the performance of any Construction Work on that Project Site;

(iv) comply with, and require that all Contractors and other Persons performing any of the Works comply with, all requirements of all Applicable Laws;

(v) cooperate with the Department and Governmental Entities with jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of the design and construction of the Project as required by Applicable Law or required herein;

(vi) exercise Reasonable Efforts to mitigate any delay and any damages due to delay regardless of the cause of the delay, including by re-sequencing, reallocating, or redeploying the Development Entity's and its Contractors' employees to other work, as appropriate;

(vii) remove silt, debris and any other deposits and objectionable material, and clean and remove surplus and discarded material, equipment, and temporary structures, from each Project Site and any other areas used or disturbed by the Construction Work, including waste and borrow areas, and remove paint marks or spills, stains, rust marks, oil, or any other unsuitable marks caused by the Construction Work, as directed by the Department; and

(viii) remove and dispose of all existing highway structures and material which are not to remain in place or to be used in the Construction Work off the Project Site, unless otherwise directed by the Department.

(b) **Performance, Design and Construction Standards**

The Development Entity shall perform the D&C Work in accordance with (i) Good Industry Practice, (ii) the requirements, terms and conditions set out in the Project Documents, (iii) all Applicable Laws, and (iv) the requirements, terms and conditions set out in all Governmental Approvals.

(c) **NEPA Compliance**

Without prejudice to the Development Entity's obligations under Section 4 (Environmental) of the Technical Provisions:

(i) the Department shall be responsible for conducting the NEPA approval process in respect of an Early Completion Bridge (including any NEPA re-evaluation on an Early Completion Bridge that is required because the Development Entity's Final Design for that Early Completion Bridge deviates from the basis on which the initial NEPA approval was granted) and the Development Entity shall be responsible for all costs associated with any environmental mitigation action required by any NEPA approval process in respect of an Early Completion Bridge, except to the extent such costs arise as a direct result of a Compensation Event under clause (q) of the definition thereof;

(ii) to the extent that the NEPA approval process in respect of a Remaining Eligible Bridge requires environmental mitigation action (including, without limitation, wetland replacement, Phase III archaeology data recovery excavation, associated interpretive materials, recordation of historic bridge and/or associated historic district, and context sensitive design elements) to be taken in respect of that Replacement Bridge, a Compensation Event will occur for the purposes of this PPA, in which case the Department shall reimburse the Development Entity in respect of any reasonable and proper additional costs (representing a reasonable public expenditure after considering the impacts of the action) that it incurs as a direct result of such Compensation Event; **provided** that such environmental mitigation action is not specifically identified pursuant to the Technical Provisions or otherwise disclosed in the Disclosed Information;

(iii) to the extent that a Replacement Bridge is not eligible for a Bridge and Roadway Programmatic Agreement, a CE1 or a CE2, a Compensation Event will occur for the purposes of this PPA;

(iv) to the extent that either the Department or FHWA determines not to construct a Replacement Bridge for any reason related to NEPA, a Compensation Event will occur for the purposes of this PPA; and

(v) at any time during the term of this PPA, the Department may (for whatever reason) elect to remove a Replacement Bridge from the Project, but only to the extent that the Department simultaneously introduces another bridge to the Project. Any such action by the Department will constitute a Department Change for the purposes of Article 10 (Department and Development Entity Changes).

## 7.2 Nonconforming and Defective Work

(a) The Development Entity shall be responsible for the rectification of all Nonconforming Work and Defects, including, to the extent necessary, through removal and/or replacement, whether discovered by the Development Entity or by the Department. For the avoidance of doubt, performance of any Required Actions in accordance with Section 25.3 (Action by Department) shall not in any respect diminish or derogate from the Development Entity's obligations under this Section 7.2 (Nonconforming and Defective Work).

(b) Subject to Section 31.2 (Consequential Losses), nothing contained in the Project Documents shall in any way limit the right of the Department to assert claims for damages resulting from Defects in the Works for the period of limitations prescribed by Applicable Law, and the foregoing shall be in addition to any other rights or remedies the Department may have hereunder or under Applicable Law.

## 7.3 Safety Compliance

### (a) Safety Compliance Orders

(i) The Department shall use good faith efforts to inform the Development Entity at the earliest practicable time of any circumstance or information relating to the Project which in the Department's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of an Emergency, the Department shall consult with the Development Entity prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, and cost impacts.

(ii) Subject to conducting such prior consultation, the Department may issue Safety Compliance Orders to the Development Entity at any time from and after the Commercial Closing Date.

### (b) Duty to Comply

(i) Subject to Section 7.3(a) (Safety Compliance Orders), the Development Entity shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. The Development Entity shall diligently perform the work necessary to achieve such Safety Compliance until completion.

(ii) The Development Entity shall perform all work required to implement Safety Compliance.

(iii) The Development Entity shall undertake Reasonable Efforts to overcome any inability to comply with any Safety Compliance Order caused by a Relief Event.

## 7.4 Conditions Precedent to NTP1

No later than ten (10) days following satisfaction of the conditions set out in Part 1 (Conditions Precedent to NTP1) of Schedule 20 (Conditions Precedent to Notices to Proceed), the Department shall issue a notice (**NTP1**) to the Development Entity authorizing commencement of the Preliminary Work.

### 7.5 Conditions Precedent to NTP2

No later than ten (10) days following satisfaction of the conditions set out in Part 2 (Conditions Precedent to NTP2) of Schedule 20 (Conditions Precedent to Notices to Proceed), the Department shall issue a notice (**NTP2**) to the Development Entity authorizing commencement of the Interim Work.

### 7.6 Conditions Precedent to NTP3

No later than ten (10) days following satisfaction of the conditions set out in Part 3 (Conditions Precedent to NTP3) of Schedule 20 (Conditions Precedent to Notices to Proceed), the Department shall issue a notice (**NTP3**) to the Development Entity authorizing commencement of the Remaining Work in respect of the relevant Replacement Bridges.

### 7.7 Substantial Completion of Replacement Bridges

(a) The Department will promptly issue a written certificate that the Development Entity has achieved Substantial Completion in respect of a Replacement Bridge (the **Certificate of Substantial Completion**) upon satisfaction of all of the Substantial Completion Conditions.

(b) Approximately twenty (20) days prior to the date on which the Development Entity expects to achieve all of the Substantial Completion Conditions in respect of a Replacement Bridge, the Development Entity shall provide written notice to the Department so as to allow the Department to commence its review of those Substantial Completion Conditions amenable to being reviewed at the time of such notice. Notification shall include a list of all requirements that will be achieved to allow the Department's issuance of the relevant Certificate of Substantial Completion.

(c) Fifteen (15) days prior to satisfying all Substantial Completion Conditions in respect of a Replacement Bridge, the Development Entity shall meet and confer with the Department to confirm that the list of requirements provided for in Section 7.7(b) is in accordance with the Project Documents. Subsequent to this initial meeting, the Development Entity and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the relevant Replacement Bridge, review of the Final Design Documents and final Construction Documents in respect of that Replacement Bridge and determination of whether the Development Entity has satisfied all of the Substantial Completion Conditions.

(d) The Development Entity shall thereafter provide written notification of the day it has satisfied all requirements for the Department's issuance of a Certificate of Substantial Completion. Within five (5) days of receipt of the Development Entity's written notification and all required conditions and submittals per the Project Documents, the Department shall conduct an inspection of the relevant Replacement Bridge and its components, a review of the Final Design Documents, Construction Documents, other Submittals and such other investigation as may be necessary to evaluate whether Substantial Completion has been achieved with respect to the relevant Replacement Bridge.

(e) Within the period referred to in Section 7.7(d), the Department shall either: (i) issue the Certificate of Substantial Completion, effective as of the date that all of the Substantial Completion Conditions for the relevant Replacement Bridge were actually satisfied; or (ii) notify the Development Entity in writing of the reasons why Substantial Completion has not been

achieved provided that, in the event that any Substantial Completion Condition has not been satisfied, the Development Entity shall be entitled to resubmit the notification provided pursuant to Section 7.7(d) once the relevant Substantial Completion Condition has been satisfied, whereupon the Department shall promptly issue a Certificate of Substantial Completion in respect of the relevant Replacement Bridge in accordance with this Section 7.7(e). If the Department and the Development Entity cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures provided, however, that with respect to any such Dispute, the Parties may proceed directly to the relevant Disputes Review Board.

(f) In connection with the Department's issuance of the Certificate of Substantial Completion for the relevant Replacement Bridge, the Department shall have the right in its reasonable discretion to add or remove items to or from the Punch List. Any Dispute regarding whether an item added by the Department is appropriately included on the Punch List shall be resolved according to the Dispute Resolution Procedures provided, however, that with respect to any such Dispute, the Parties may proceed directly to the relevant Disputes Review Board.

**7.8 Final Acceptance**

(a) The Department will promptly issue a written certificate that the Development Entity has achieved Final Acceptance in respect of a Replacement Bridge (the **Certificate of Final Acceptance**) upon satisfaction of all of the conditions set out in Part 2 (Final Acceptance of a Replacement Bridge) of Schedule 21 (Conditions Precedent to Substantial Completion and Final Acceptance).

(b) Within twenty (20) days prior to the date on which the Development Entity expects to achieve all of the conditions of Final Acceptance in respect of a Replacement Bridge, the Development Entity shall provide written notice to the Department so as to allow the Department to commence its review of those conditions amenable to being reviewed at the time of such notice. Notification shall include a list of all requirements that will be achieved to allow the Department to issue the relevant Certificate of Final Acceptance.

(c) Fifteen (15) days prior to the anticipated date of satisfying all conditions of Final Acceptance in respect of a Replacement Bridge, the Development Entity shall meet and confer with the Department to confirm that the list of requirements provided for in Section 7.8(b) is in accordance with the Project Documents. Subsequent to this initial meeting, the Development Entity and the Department shall meet, confer and exchange information on a regular basis as necessary with the goal being to facilitate the Department's timely inspection of the relevant Replacement Bridge and determination of whether the Development Entity has satisfied all of the conditions required for the Department's issuance of a Certificate of Final Acceptance for the relevant Replacement Bridge.

(d) Thereafter, the Development Entity shall provide written notification of the date it has satisfied all requirements for the Department's issuance of a Certificate of Final Acceptance. Within five (5) days of receipt of the Development Entity's written notification and all required conditions and submittals per the Project Documents, the Department shall conduct an inspection of the Punch List items for the relevant Replacement Bridge, a review of the As-Built Drawings and such other investigation as may be necessary to evaluate whether the Development Entity has satisfied all of the conditions to achieve Final Acceptance with respect to the relevant Replacement Bridge.

(e) Within the period referred to in Section 7.8(d), the Department shall either: (i) issue a Certificate of Final Acceptance effective as of the date that the conditions to Final Acceptance were actually satisfied; or (ii) notify the Development Entity in writing of the reasons why Final Acceptance for the relevant Bridge has not been achieved provided that, in the event that any condition has not been satisfied, the Development Entity shall be entitled to resubmit the notification provided pursuant to Section 7.8(d) once the relevant condition has been satisfied, whereupon the Department shall promptly issue a Certificate of Final Acceptance in accordance with this Section 7.8(e). If the Department and the Development Entity cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the Dispute Resolution Procedures; provided, however, that with respect to any such Dispute, the Parties may proceed directly to the relevant Disputes Review Board.

### 7.9 Suspension of Construction Work

(a) The Department shall at any time have the right and authority to suspend, in whole or in part, the Construction Work by written order to the Development Entity. Any such written order will be supported by the Department's reasons for the required suspension of the Construction Work.

(b) Except where any suspension of the Construction Work by the Department pursuant to this Section 7.9 (Suspension of Construction Work) is made in response to:

(i) any failure by the Development Entity to comply with any Applicable Law or Governmental Approval (including failure to handle, preserve and protect archaeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with Applicable Laws and Governmental Approvals); or

(ii) the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance, but only to the extent that such condition does not arise as a direct result of a Compensation Event or Relief Event,

any such suspension order shall constitute a Compensation Event and any suspension order made in response to matters referred to in Sections 7.9(b)(i) or 7.9(b)(ii) shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the Department.

## 8. MAINTENANCE, RENEWAL AND HANDBACK WORK

### 8.1 Commencement of Routine Maintenance and Renewal Work

The Development Entity shall carry out Routine Maintenance and Renewal Work on each Replacement Bridge from the Substantial Completion Date for the relevant Replacement Bridge until the relevant Handback Date.

### 8.2 Routine Maintenance and Renewal Work Standards and Requirements

(a) **General Obligations**

(i) The Development Entity shall carry out the Routine Maintenance and Renewal Work within the applicable Maintenance Limits in accordance with:

(A) Good Industry Practice, as it evolves from time to time;

(B) the requirements, terms and conditions set out in the Project Documents;

(C) all Applicable Laws; and

(D) the requirements, terms and conditions set out in all Governmental Approvals.

(ii) The Development Entity shall at all times undertake sufficient Routine Maintenance and Renewal Work to ensure ongoing compliance with the Maintenance Performance Requirements.

(b) **Utility Accommodation**

(i) It is anticipated that from time to time during the Maintenance Period, Utility Owners will apply for additional Utility permits to install new Utilities that would cross or longitudinally occupy areas of a Project Site that are subject to the Department's permitting jurisdiction, or to modify, repair, upgrade, relocate or expand existing Utilities within such areas. For such Utility permit applications submitted after the Substantial Completion Date for a Replacement Bridge, the Development Entity shall use Reasonable Efforts to assist the Department in its consideration of each Utility permit application in accordance with the Project Documents. Further, the Development Entity shall use Reasonable Efforts to:

(A) make available upon request the most recent Project design information and/or As-Built Drawings, as applicable, to the Department for forwarding to the applicants;

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

(C) coordinate work schedules with such applicants as appropriate to avoid interference with the operation of any of the Project Facilities.

(ii) Throughout the performance of the Routine Maintenance and Renewal Work, the Development Entity shall use Reasonable Efforts to obtain the cooperation of each Utility Owner having Utilities within the Project Sites in accordance with the Project Documents.

**8.3 Department Operations and Maintenance Responsibilities**

(a) Without prejudice to the Development Entity's obligations pursuant to Section 8.2 (Routine Maintenance and Renewal Work Standards and Requirements), the Department is responsible for performing the Department-Retained O&M Work within the Maintenance Limits to at least the same applicable standards of operation and maintenance achieved on Comparable Facilities from time to time throughout the Maintenance Period.

(b) The Department or the relevant third party shall pay the cost of electric power for any lighting, signals or other constructed Elements as part of the Work requiring the use of electric power

during the Maintenance Period; **provided**, that the Development Entity shall be responsible, at its own cost and expense, for paying the cost of all electric power:

(i) related to any Work undertaken in respect of Replacement Bridges; and

(ii) associated with any facility that the Development Entity uses as part of its performance of its obligations under this PPA (including, but not limited to, warehouses, office space or prefabrication facilities).

**8.4 Police Services**

(a) The Development Entity acknowledges that any Governmental Entity empowered to enforce all Applicable Laws is free to enter the Project at any and all times to carry out its law enforcement duties. No provision of this PPA is intended to surrender, waive or limit any police powers of any Governmental Entity, and all such police powers are hereby expressly reserved.

(b) The Department and the Development Entity shall not have any liability or obligation to each other resulting from, arising out of or relating to the failure of a public law enforcement agency to provide services, or its negligence or misconduct in providing services; provided, that no failure by a law enforcement agency to provide services shall excuse the Development Entity from performance of any of its obligations under this PPA.

**8.5 Maintenance Management Plan**

At the Department's request, the Development Entity and its Maintenance Contractor(s), if any, shall promptly meet and confer with the Department to review and discuss any Maintenance Management Plan submitted to the Department pursuant to Section 17 (Maintenance Work) of the Technical Provisions.

**8.6 Handback Requirements**

(a) The Development Entity shall ensure that as at each Handback Date, each Handback Bridge meets all of the requirements set out in Section 17.8 (Handback Requirements) of the Technical Provisions (collectively, the **Handback Requirements**).

(b) In the event of Early Termination, the Development Entity shall only be required to comply with the requirements of this Section 8.6 (Handback Requirements) to the extent that any Renewal Work under the Handback Requirements was scheduled to have been performed prior to the Early Termination Date.

**8.7 Handback Reserve Account**

(a) **Establishment and Security**

(i) No later than the first Business Day of the Handback Period, the Development Entity shall establish a reserve account (the **Handback Reserve Account**) to be held and controlled by a third party (the **Escrow Agent**) to be agreed between the Parties. Within three (3) Business Days of establishing the Handback Reserve Account, the Development Entity shall provide to the Department the details regarding the Handback Reserve

Account, including the name, address and contact information for the depository institution and the account number.

(ii) The Parties agree that:

(A) withdrawals from the Handback Reserve Account will be controlled by the operation of an account control agreement to be agreed between and entered into by the Parties no later than the first Business Day of the Handback Period; and

(B) any withdrawal from the Handback Reserve Account will require the prior written approval of the Department, such approval to be provided in accordance with this Section 8.7 (Handback Reserve Account).

(iii) Except to the extent granted pursuant to the Security Documents, the Development Entity shall not grant any security interest to any third party in relation to the Handback Reserve Account or any amounts standing to the credit of it.

(b) **Funding**

(i) No later than sixty (60) days prior to the commencement of the Handback Period and each 12-month anniversary thereof (each a **Handback Year**), the Development Entity shall deliver to the Department a report setting out its calculations of the Handback Reserve Amount in accordance with Schedule 5 (Calculation of Handback Amounts). Within thirty (30) days of any such report being delivered to the Department, the Parties shall seek to agree upon the Handback Reserve Amount, and in the absence of agreement, the Handback Reserve Amount shall be finally determined pursuant to the Dispute Resolution Procedures.

(ii) To the extent that the aggregate of the balance standing to the credit of the Handback Reserve Account, and the undrawn value of any letter of credit delivered pursuant to Section 8.7(d) (Handback Letters of Credit) is not, on the date five (5) Business Days following each date of agreement or determination of the Handback Reserve Amount (but not earlier than five (5) Business Days prior to the commencement of the Handback Period or each anniversary thereof), at least equal to the Handback Reserve Amount, the Department shall, until such time as the aggregate of the balance standing to the credit of the Handback Reserve Account and the undrawn value of any letter of credit delivered pursuant to Section 8.7(d) (Handback Letters of Credit) is equal to the Handback Reserve Amount then required, make deductions from subsequent Monthly Disbursements, and pay such amounts into the Handback Reserve Account.

(iii) To the extent that the aggregate of the balance standing to the credit of the Handback Reserve Account and the undrawn value of any letter of credit delivered pursuant to Section 8.7(d) (Handback Letters of Credit), on any date of agreement or determination of the Handback Reserve Amount, exceeds the Handback Reserve Amount, such excess shall (at the request of the Development Entity) be paid by the Escrow Agent to the Development Entity in accordance with the account control agreement entered into pursuant to Section 8.7(a)(ii) above.

(c) **Withdrawal from Handback Reserve Account**

(i) Subject to Section 8.7(c)(ii), the Development Entity shall be entitled to withdraw funds from the Handback Reserve Account in such amounts and at such times as needed only to pay for Renewal Work that was taken into account in the calculation of the Handback Reserve Amount.

(ii) Prior to drawing funds from the Handback Reserve Account, the Development Entity shall give written notice to the Department of the amount to be drawn and the purpose for which funds will be used, together with such other supporting information as the Department may reasonably require. Within ten (10) Business Days from the date of the receipt of such notice, the Department shall either approve or withhold its approval to the Development Entity's proposed withdrawal. The Department may only withhold its approval to any proposed withdrawal from the Handback Reserve Account to the extent that:

(A) the Development Entity is unable to demonstrate to the reasonable satisfaction of the Department that the proposed withdrawal amount will be used to meet costs incurred by the Development Entity in undertaking any Renewal Work that was taken into account in the calculation of the Handback Reserve Amount; or

(B) the aggregate of (1) the balance standing to the credit of the Handback Reserve Account, (2) the undrawn value of any letter of credit delivered pursuant to Section 8.7(d) (Handback Letters of Credit), and (3) the aggregate amount of all withdrawals made from the Handback Reserve Account since the Total Handback Amount was most recently agreed is less than the Total Handback Amount,

**provided**, that if the Department fails to respond within such ten (10) Business Day period, the Department will be deemed to have given its approval to such withdrawal request.

(iii) On the Termination Date, the Escrow Agent shall pay any amounts standing to the credit of the Handback Reserve Account to the Parties in the following order of priority:

(A) first, an amount equal to that required to undertake any Renewal Work that is required to be undertaken in order to ensure that each Replacement Bridges meets the Handback Requirements as at the Termination Date, shall be paid by the Escrow Agent to the Department; and

(B) second, the remaining balance standing to the credit of the Handback Reserve Account shall be paid by the Escrow Agent to the Development Entity.

(d) **Handback Letters of Credit**

In lieu of the establishment or ongoing funding of the Handback Reserve Account, the Development Entity may deliver to the Department one or more letters of credit (each in a form and from an issuer reasonably acceptable to the Department and on the basis that the Department shall be the sole beneficiary) with aggregate value equal to the ongoing Handback Reserve Amount, whereupon (to the extent that the Handback Reserve Account has already been

established) the Escrow Agent shall pay all amounts standing to the credit of the Handback Reserve Account to the Development Entity.

**8.8 Repairing Damage to Replacement Bridges**

(a) To the extent that any Person (other than a Development Entity-Related Entity or an Indemnified Party) causes damage to a Replacement Bridge, the Development Entity may, subject to the prior consent of the Department (such consent to be at the sole discretion of the Department), pursue such Person in respect of recovery of any costs incurred in the reinstatement of such damage. To the extent that the Department withholds its consent to the Development Entity pursuing any aforementioned Person, the Department shall reimburse the Development Entity in respect of its reasonable and proper costs associated with the reinstatement of such damage reasonably likely to have been caused by such Person.

(b) In the event it is determined that the Development Entity has no legal standing to pursue a claim against any Person that causes or is responsible for damage to a Replacement Bridge, the Development Entity may request in writing that the Department make such a claim. Upon the receipt of such a request, the Department will assess the merits of the requested action including whether it can be maintained in good faith, whether the Department has standing and whether pursuing the claim would be consistent with Department and Commonwealth policies governing such matters. If the Department determines that pursuit of the claim is warranted it will do so for the benefit of the Development Entity in accordance with policies and procedures for recouping the cost of damages and repairs to Commonwealth-owned facilities. The Department reserves the right, in its sole discretion, to discontinue collection efforts in the event that it is determined that such collection efforts are no longer cost effective.

**8.9 Poor Maintenance Performance**

To the extent that Poor Maintenance Performance occurs at any time, the Department may request the Development Entity to take such actions as may reasonably be required in order to ensure that the reasons for the relevant Closures or Noncompliance Events are adequately mitigated with a view to ensuring that in the reasonably foreseeable future, there is no reasonable prospect of a Closure or Noncompliance Event occurring for the same reasons.

**8.10 Suspension of Maintenance Work**

(a) The Department shall at any time have the right and authority to suspend, in whole or in part, the Maintenance Work by written order to the Development Entity. Any such written order will be supported by the Department's reasons for the required suspension of the Maintenance Work.

(b) Except where any suspension of the Maintenance Work by the Department pursuant to this Section 8.10 (Suspension of Maintenance Work) is made in response to:

(i) any failure by the Development Entity to comply with any Applicable Law or Governmental Approval (including failure to handle Hazardous Materials in accordance with Applicable Laws and Governmental Approvals); or

(ii) the existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety

Compliance, but only to the extent that such condition does not arise as a direct result of a Compensation Event or Relief Event,

any such suspension order shall constitute a Compensation Event and any suspension order made in response to matters referred to in Sections 8.10(b)(i) or 8.10(b)(ii) shall cease to apply as soon as the relevant matter has been rectified or remedied to the reasonable satisfaction of the Department.

## 9. CONTRACTORS AND KEY PERSONNEL

### 9.1 Relationship with Contractors

(a) Nothing in this PPA will create any contractual relationship between the Department and any Contractor. No Contract entered into by or under the Development Entity shall impose any obligation or liability upon the Department to any Contractor or any of its employees.

(b) The retention of Contractors by the Development Entity will not relieve the Development Entity of its obligations under the Project Documents and the Development Entity will at all times be held fully responsible under the Project Documents for the acts and omissions of all Contractors performing Work, in relation to the Project and the obligations of the Development Entity hereunder, as if they were the acts and omissions of the Development Entity.

(c) Any Contractor carrying out Work that is not (where relevant) "prequalified" in accordance with 67 Pa. Code Ch. 457 shall be promptly suspended from carrying out Work by the Development Entity.

### 9.2 Key Personnel

(a) The Development Entity shall (or shall procure that the relevant Key Contractor shall) retain, employ and utilize (including through secondment of such Key Personnel from an Equity Member) the individuals specifically listed as Key Personnel in Appendix 1 (Development Entity's Proposal Commitments) or in the Project Management Plan to fill the corresponding positions until such time as all relevant activities have been completed. The Development Entity shall not, prior to D&C Work Completion, change or substitute any such individuals, except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment or with the prior consent of the Department (such consent not to be unreasonably withheld, delayed or conditioned if the proposed substitute individual possesses equal or greater experience, skill, knowledge and professional expertise in the relevant fields than the individual being replaced).

(b) The Development Entity shall notify the Department in writing of any proposed replacement for any Key Personnel position. The Department shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) as set out in Section 2 (Project Management) of the Technical Provisions and to approve or disapprove (acting reasonably) use of such individual in such position prior to the commencement of any Works by such individual in accordance with Section 9.2(a) above.

(c) The Development Entity shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work.

(d) The Development Entity shall provide the Department with phone and cell phone numbers as well as e-mail addresses for all Key Personnel. The Development Entity shall provide to the Department two (2) personnel and a minimum of three (3) Key Personnel (two (2) from the D&C Contractor and one (1) from the Construction Manager or Maintenance Manager, as applicable) who the Department can contact twenty-four (24) hours per Day, seven (7) days per week as required, and who will be able to, in turn, contact the other Key Personnel promptly thereafter.

### 9.3 Certain Public Policy Requirements

The Development Entity shall comply with the requirements set out in Schedule 14 (Certain Public Policy Requirements).

## 10. DEPARTMENT AND DEVELOPMENT ENTITY CHANGES

### 10.1 Department Changes

(a) The Department has the right to propose Department Changes in accordance with this Article 10 (Department and Development Entity Changes).

(b) In order to request a Department Change, the Department shall deliver to the Development Entity a document setting forth (each, a **Department Change Request**):

(i) the Department's requirements for a change in the Work or a change to the terms and conditions of the Technical Provisions (including a change in the standards applicable to the Work), in sufficient detail to enable the Development Entity to calculate and provide the Development Entity's Estimate in accordance with Section 10.3 (Development Entity's Estimate of Department Change Requests); and

(ii) the method of compensation for the change.

(c) The Development Entity shall be entitled to refuse a Department Change Request which:

(i) requires the Works to be performed in a way that infringes Applicable Law or is inconsistent with Good Industry Practice;

(ii) would adversely affect the health and safety of any person;

(iii) involves the removal of a Replacement Bridge from the Project, except to the extent that the Department proposes to simultaneously introduce another bridge to the Project as part of the same Department Change Request;

(iv) would, if implemented, materially and adversely change the nature of the Development Entity's obligations or rights under this PPA; or

(v) would, if implemented, cause any Governmental Approval then in full force and effect to be revoked.

### 10.2 Directive Letter

Subject to Section 10.1(c) and for so long as a Department Change Request has not been finally agreed between the parties, the Department may in its sole discretion deliver to the Development

Entity a Directive Letter, directing the Development Entity to proceed with the performance of the Extra Work envisioned in a Department Change Request. The Directive Letter shall also set out the kind, character, and limits of the work. Upon receipt of the Directive Letter, the Development Entity shall implement and perform the work in question as directed by the Department and in accordance with any relevant procedures set out in Schedule 19 (Extra Work Costs).

**10.3 Development Entity's Estimate of Department Change Requests**

(a) As soon as practicable and in any event within fifteen (15) Business Days after having received a Department Change Request, the Development Entity shall deliver to the Department an estimate of costs and expenses and other matters with respect to such Department Change Request (a **Development Entity's Estimate**), or confirmation as to when a Development Entity's Estimate is to be provided to the Department (**provided**, that the Development Entity shall use all Reasonable Efforts to prepare its Development Entity's Estimate within thirty (30) Business Days after having received the Department Change Request, unless further extended by the Department acting reasonably). A Development Entity's Estimate shall include the following:

(i) whether relief from compliance with its obligations under this PPA is required during the implementation or as a result of the Department Change;

(ii) any impact on the provision of the Works, including any potential cost impact on future Maintenance Work and whether the proposed change is in contravention of Section 10.1 (Department Changes);

(iii) any amendment required to this PPA as a result of the Department Change;

(iv) any amounts that the Development Entity would propose to claim in respect of the Department Change pursuant to Section 12.2 (Compensation Events);

(v) any consents or permits which are required;

(vi) the proposed method of certification of any construction aspects of the Extra Work required by the proposed Department Change if not covered by the procedures set out in this PPA;

(vii) a scope of work, which shall be described in sufficient detail and broken down into suitable components and activities to enable pricing. The work breakdown shall include all activities associated with the proposed modification, including a description of additions, deletions and modifications to the Technical Provisions;

(viii) a cost estimate that will enable the Department to review and evaluate the reasonableness of the Development Entity's Estimate. The Development Entity's cost estimate shall identify a "base amount" representing the amount established based on estimated quantities and unit rates presented according to line or pay items typically included on construction project bid sheets by the Department and separated by labor, materials and equipment. The cost estimate shall include a pricing form identifying which Work items have been priced based on estimated quantities and unit rates and which items have been priced on another basis, with reasons;

(ix) to the extent that the Development Entity believes that the relevant Department Change would result in a delay to the Work, a Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management) of the Technical Provisions) demonstrating that the proposed Department Change will result in an identifiable and measurable disruption to the Work;

(x) acceleration costs, but only when the Department requires the Development Entity pricing to accommodate an acceleration in any D&C Work; and

(xi) such other supporting documentation as may be reasonably required by the Department.

(b) The Development Entity's Estimate shall be accompanied by a certification by the Development Entity stating that: (i) to the best of the Development Entity's knowledge, the amount of time and/or compensation requested is justified as to entitlement and amount, (ii) the amount of time and/or compensation requested includes all known and anticipated impacts or amount, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to the proposed change, and (iii) the cost and pricing data is complete, accurate and current.

(c) The Development Entity's requested compensation for the Department Change in a Development Entity's Estimate shall be subject to audit review by the Department in accordance with Section 26.2 (Audits).

**10.4 Review and Evaluation of the Development Entity's Estimate**

(a) As soon as practicable after the Department receives the Development Entity's Estimate, the Development Entity shall meet with the Department to review, discuss and agree on the Development Entity's Estimate. During such discussions, the Department may modify the Department Change Request, and may (to the extent practicable, given the nature of the Extra Work) require the Development Entity to seek and evaluate competitive tenders for the relevant capital works in connection with such Department Change, as applicable. In each case the Development Entity shall, within fifteen (15) Business Days or such longer period as may be mutually agreed to by the Parties, after receipt of such modification, notify the Department of any consequential changes to the Development Entity's Estimate.

(b) Within twenty-one (21) days from the date of meetings, or the date additional information is received, pursuant to Section 10.4(a) above, the Department shall:

(i) confirm in writing to the Development Entity the Development Entity's Estimate (as may be modified); or

(ii) withdraw the Department Change Request.

(c) If the Department confirms the Development Entity's Estimate (as may be modified), the implementation of the relevant Extra Work shall be commenced on the later of five (5) Business Days of the Department's written confirmation and the date set out in the Development Entity's Estimate and the Development Entity may claim for a Compensation Event in accordance with and subject to the provisions of Article 12 (Supervening Events). Within this period, the Parties shall consult and agree on the remaining details as soon as practicable and shall enter into an appropriate change order to give effect to the relevant Department Change Request.

(d) In the event that a Department Change Request is withdrawn, the Department will reimburse the Development Entity for all reasonable and documented costs incurred by the Development Entity in connection with such Department Change Request.

**10.5 Funding**

Where a Department Change involves estimated Capital Expenditures or other costs agreed by the Parties or an adjustment in Availability Payments or any other payments, then:

(a) the Department and the Development Entity shall agree upon a payment schedule in respect of the payment of such sums; and

(b) the Department shall make a payment to the Development Entity within thirty (30) days of receipt by the Department of invoices presented to the Department (complete in all material respects) in accordance with the agreed payment schedule accompanied by the relevant evidence (where applicable) that the relevant part of the Department Change has been carried out.

**10.6 Development Entity Changes**

(a) If the Development Entity wishes to introduce a change in the Work (a **Development Entity Change**), it must deliver written notice (the **Development Entity Change Request**) to the Department setting out the following:

(i) the proposed change to the Works in sufficient detail to enable the Department to evaluate it in full;

(ii) the Development Entity's reasons for proposing the change to the Works;

(iii) a request to the Department to consult with the Development Entity with a view to deciding whether to agree to the change to the Works and, if so, what consequential changes the Department requires due to the Development Entity Change;

(iv) any implications of the change to the Works;

(v) details regarding proposed variations to the Availability Payment, if any (and, if so, giving a detailed cost estimate of such proposed change);

(vi) any dates by which a decision by the Department is critical; and

(vii) all of the information enumerated above in Section 10.3(a).

(b) The Department shall evaluate the Development Entity Change Request in good faith, taking into account all relevant issues, including whether:

(i) a change in the Availability Payments will occur;

(ii) the change affects the quality of the Works or the likelihood of successful delivery of the Works;

(iii) the change will adversely interfere with the relationship of the Department with third parties;

(iv) the financial strength of the Development Entity is sufficient to perform the changed Work;

(v) the residual value of the Project is reduced; or

(vi) the change materially affects the risk or costs to which the Department is exposed.

(c) As soon as practicable after receiving the Development Entity Change Request, the Parties shall meet and discuss the matters referred to in it. During their discussions the Department may propose modifications or, subject to Section 10.6(g), approve or reject the Development Entity Change Request. Upon receipt of a Development Entity Change Request, the Department shall issue a response to the Development Entity as soon as practicable and in no event later than fifteen (15) days.

(d) If the Department approves the Development Entity Change Request (with or without modification), the implementation of the relevant change to the Works shall be commenced within five (5) Business Days of the Department's acceptance. Within this period, the Parties shall consult and agree on the remaining details and shall enter into an appropriate change order to give effect to the relevant Development Entity Change Request.

(e) If the Department rejects the Development Entity Change Request, it shall not be obliged to give its reasons for such a rejection.

(f) Unless the Department's acceptance specifically agrees to an increase in the Availability Payments there shall be no increase in the Availability Payments as a result of a change to the Works proposed by the Development Entity.

(g) The Department shall not be entitled to reject a Development Entity Change Request, which is required in order to conform to a Change in Law. The costs of introducing a change to the Work resulting from a Qualifying Change in Law (including any resulting variation in the Availability Payments) shall be calculated and paid in accordance with Article 13 (Change in Law), and to the extent such costs are not compensable pursuant to Article 13 (Change in Law), they shall be borne by the Development Entity.

**10.7 No Cost Change Order**

Changes in the Work, which have no net effect on the amount of compensation due to the Development Entity may be approved in writing by the Department and shall be processed as a no cost change order.

**10.8 Commencement of Extra Work**

Other than when the Development Entity is in receipt of a Directive Letter, the Development Entity shall not be entitled or required to commence any Extra Work described in a Department Change Request prior to the Department confirming the Development Entity's Estimate in accordance with Section 10.4(b) and as set out therein.

### 10.9 Decreased Costs

(a) If a Development Entity Change Request results in a decrease in the Development Entity's costs, then any payment due from the Department under this PPA may be adjusted downwards (or a credit may be owed in the future) in accordance with Article 16 (Financial Model Adjustments) to reflect the sharing in the decrease in costs 50:50 as to the Department and the Development Entity, respectively.

(b) If a Department Change Request results in a decrease in the Development Entity's costs, then any payment due from the Department under this PPA may be adjusted downwards (or a credit may be owed in the future) in accordance with Article 16 (Financial Model Adjustments) to reflect such reduction in the Development Entity's costs.

### 10.10 Performance

The Development Entity shall not suspend performance of the Work during the negotiation of any Department Change Request or Development Entity Change Request, except:

(a) as may be otherwise directed by the Department in accordance with Section 7.9 (Suspension of Construction Work); or

(b) to the extent that such suspensions are otherwise permitted under the terms of this PPA.

## 11. NONCOMPLIANCE EVENTS

### 11.1 Noncompliance Points System

(a) Tables 7.1 (Noncompliance Events Relating to D&C Work) and 7.2 (Noncompliance Events Relating to Maintenance Work) in Schedule 7 (Noncompliance Points Table) identify certain Development Entity breaches or failures in performance of obligations under the Project Documents (each, a **Noncompliance Event**).

(b) The Noncompliance Events in Table 7.1 (Noncompliance Events Relating to D&C Work) of Schedule 7 (Noncompliance Points Table) shall apply to the D&C Work. The Noncompliance Events in Table 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table) shall apply to the Maintenance Work.

(c) During the period between the Commercial Closing Date and D&C Work Completion Date, the Development Entity may, subject to Section 11.3(a)(iv), concurrently accrue Noncompliance Points in respect of Noncompliance Events listed in both Tables 7.1 (Noncompliance Events Relating to D&C Work) and 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table), but not in respect of the same Replacement Bridge.

### 11.2 Notification of Noncompliance Events

(a) **Notification Initiated by the Development Entity**

(i) The Development Entity shall notify the Department in writing of the date of the occurrence of any Noncompliance Event as soon as reasonably practicable, and in any event within forty-eight (48) hours after the earlier of the time the Development Entity

first obtains knowledge of or first should have reasonably known of the occurrence of the Noncompliance Event. The notice shall provide reasonable detail of the circumstances of the Noncompliance Event and shall identify the Noncompliance Event and Cure Period that is applicable to the relevant Noncompliance Event.

(ii) The Development Entity shall notify the Department in writing of the occurrence of any Noncompliance Start Date and any Noncompliance Rectification Date (together with a detailed description of the manner in which the Noncompliance Event was cured and measures taken by the Development Entity to prevent the reoccurrence of the Noncompliance Event).

(b) **Notification Initiated by the Department**

If the Department believes any Noncompliance Event has occurred, or receives notice from any Patron that any Noncompliance Event has occurred, for which the Department has not received notification from the Development Entity in accordance with Section 11.2(a)(i), the Department may deliver to the Development Entity a written notice setting forth the Department's determination of the occurrence of a Noncompliance Event, the relevant Noncompliance Start Date, any applicable Cure Period and the number of Noncompliance Points to be assessed with respect thereto in accordance with Schedule 7 (Noncompliance Points Table).

**11.3 Assessment of Noncompliance Points**

(a) Each Noncompliance Event shall accrue Noncompliance Points in accordance with the following principles:

(i) In respect of a Noncompliance Event that has a Cure Period, the Noncompliance Event shall accrue the number of Noncompliance Points set out against that Noncompliance Event in Schedule 7 (Noncompliance Points Table):

(A) in the case of a Noncompliance Event notified to the Department pursuant to Section 11.2(a)(i) and a Noncompliance Event which arises as a direct result of an Emergency or an Incident, or which is attributable to graffiti, vandalism, or impact damage, for each full or part Interval of Recurrence arising after the end of the Cure Period between the Noncompliance Start Date and the Noncompliance Rectification Date;

(B) in the case of a Noncompliance Event (other than a Noncompliance Event which arises as a direct result of an Emergency or an Incident, or which is attributable to graffiti, vandalism, or impact damage) notified to the Development Entity by the Department pursuant to Section 11.2(b) (Notification Initiated by the Department) (other than as a result of notification by a Patron), for the full or part Cure Period and for each full or part Interval of Recurrence arising after the end of the Cure Period arising between the Noncompliance Start Date and the Noncompliance Rectification Date; and

(C) in the case of a Noncompliance Event (other than a Noncompliance Event which arises as a direct result of an Emergency or an Incident, or which is attributable to graffiti, vandalism, or impact damage) notified to the Development Entity by the Department pursuant to Section 11.2(b) (Notification Initiated by the

Department) as a result of notification by a Patron, for the part Cure Period arising after the midpoint of the Cure Period and for each full or part Interval of Recurrence arising after the end of the Cure Period between the Noncompliance Start Date and the Noncompliance Rectification Date.

(ii) All Noncompliance Points in respect of a Cure Period or Interval of Recurrence shall be deemed to accrue in the month that the relevant Cure Period or Interval of Recurrence ends (whichever is later).

(iii) In respect of a Noncompliance Event that has no Cure Period, that Noncompliance Event shall accrue the number of Noncompliance Points set out against that Noncompliance Event in Schedule 7 (Noncompliance Points Table) for each full or part Interval of Recurrence arising between the Noncompliance Start Date and the Noncompliance Rectification Date.

(iv) To the extent that any breach or failure to perform obligations under the Project Documents would cause simultaneous occurrence of more than one Noncompliance Event in respect of the same Replacement Bridge, Noncompliance Points shall only accrue in respect of the Noncompliance Event that accrues the highest number of Noncompliance Points (such accrual of Noncompliance Points for Noncompliance Events with a Cure Period applying up until the Noncompliance Rectification Date) and each other Noncompliance Event that simultaneously occurred as a result of the same breach or failure to perform obligations under the Project Documents shall be deemed to have not occurred.

(v) Nothing in this PPA shall prevent the accrual of Noncompliance Points for both the occurrence of a Noncompliance Event and the failure to notify the Department of the same Noncompliance Event in accordance with this PPA.

(vi) To the extent that both an Unavailability Event and a Noncompliance Event simultaneously occur in respect of the same Replacement Bridge as a direct result of the same breach of or failure to perform obligations under the Project Documents, the relevant Noncompliance Event will be deemed not to have occurred for the purposes of this PPA.

(vii) To the extent that any Noncompliance Event arises as a direct result of a Relief Event, an Emergency or an Incident and such Relief Event, Emergency or Incident is not attributable to any breach of this PPA or any negligent act or negligent omission of a Development Entity-Related Party, the relevant Noncompliance Event will be deemed not to have occurred for the purposes of this PPA.

(b) The Development Entity is responsible for keeping and providing the Department with current records of all Noncompliance Events that it is required to have notified the Department about pursuant to the terms hereof and the number of Noncompliance Points assessed for all such Noncompliance Events, the date of each assessment, and each Noncompliance Start Date and Noncompliance Rectification Date.

## 12. SUPERVENING EVENTS

### 12.1 Delays

(a) **Notice**

If at any time the Development Entity becomes aware that there will be or is likely to be a delay in the Works such that:

(i) commencement of the Construction Work will not occur by the Construction Commencement Deadline or (following the Construction Commencement Deadline) suffer further delay in the commencement of the Construction Work; and/or

(ii) Substantial Completion of a Replacement Bridge will not occur by the relevant Substantial Completion Deadline or (following the relevant Substantial Completion Deadline) suffer further delay in the achievement of Substantial Completion of the relevant Replacement Bridge,

the Development Entity shall as soon as reasonably practicable and in any event within ten (10) Business Days of becoming aware of the likely delay give notice to the Department to that effect specifying:

(A) the reason for the delay or likely delay; and

(B) an estimate of the likely effect on the most recent Project Working Schedule of the delay in commencement of the Construction Work or achieving Substantial Completion of the relevant Replacement Bridge taking into account any measures that the Development Entity proposes to adopt to mitigate the consequences of the delay in accordance with Section 12.1(c) (Duty to Mitigate).

(b) **Supply of Information**

Following delivery of a notice by the Development Entity pursuant to Section 12.1(a) (Notice), the Development Entity shall promptly supply to the Department any further information relating to the delay which:

(i) is received by the Development Entity; or

(ii) is reasonably requested by the Department.

(c) **Duty to Mitigate**

The Development Entity shall use Reasonable Efforts to mitigate the delay and consequences of any delay, which is the subject of a notice pursuant to Section 12.1(a) (Notice), including all reasonable steps requested by the Department.

### 12.2 Compensation Events

(a) If, as a direct result of the occurrence of a Compensation Event, the Development Entity becomes aware that the Compensation Event has caused or is likely to cause the Development Entity to:

(i) fail to commence the Construction Work by the Construction Commencement Deadline or (following the Construction Commencement Deadline) suffer further delay in the commencement of the Construction Work; and/or

(ii) fail to achieve Substantial Project Completion by the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) suffer further delay in the achievement of Substantial Project Completion; and/or

(iii) fail to comply with its obligations under this PPA; and/or

(iv) incur costs or lose revenue,

then the Development Entity is entitled to claim:

(A) an extension to the Construction Commencement Deadline and/or the Substantial Project Completion Deadline and/or (following the Substantial Project Completion Deadline) the Long Stop Deadline (as relevant); and/or

(B) relief from compliance with its obligations under this PPA; and/or

(C) compensation for any Change in Costs that the Development Entity will incur or suffer (as relevant) as a direct result of such Compensation Event, in each case in accordance with this Article 12 (Supervening Events); and/or

(D) compensation for any additional financing costs that the Development Entity will incur as a direct result of Milestone Payments and/or Availability Payments being received later than they otherwise would have been had it not been for the occurrence of such Compensation Event.

(b) **Procedure for Relief and Compensation**

Subject to Section 12.2(d) (Late Provision of Notice or Information), any claim made by the Development Entity pursuant to Section 12.2(a) must:

(i) be submitted to the Department as soon as practicable, and in any event within twenty (20) Business Days of the Development Entity first becoming aware that the relevant Compensation Event would have the effect that is the subject of the Development Entity's claim;

(ii) as soon as is reasonably practicable following receipt by the Department of the claim referred to in Section 12.2(b)(i), give full details of the relevant Compensation Event (as available to it having made due enquiry) and the extension of time and/or relief from its obligations under this PPA and/or any Change in Costs or additional financing costs claimed or reasonably likely to be claimed, including:

(A) subject to Section 12.2(g) (Float and Deductible), to the extent the Development Entity believes that the relevant Compensation Event would result in a delay to the achievement of Substantial Project Completion, a Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management) of the Technical Provisions) demonstrating that the

relevant Compensation Event will result in an identifiable and measurable disruption to the Work, which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve commencement of the Construction Work, or achievement of Substantial Project Completion);

(B) evidence demonstrating that no other concurrent unrelated delay to a Critical Path activity that is the Development Entity's responsibility has occurred that has contributed to the delay for which relief is being sought; and

(C) evidence demonstrating that such event could not reasonably be avoided by the Development Entity without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other Replacement Bridges; and

(iii) provide evidence to the Department demonstrating that:

(A) the Compensation Event was the direct cause or is reasonably likely to be the direct cause of:

I. Change in Costs or additional financing costs; and/or

II. any failure to commence the Construction Work by the Construction Commencement Deadline or (following the Construction Commencement Deadline) further delay in the commencement of the Construction Work; and/or

III. a delay in achieving Substantial Project Completion by the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) further delay in the achievement of Substantial Project Completion; and/or

IV. the Development Entity failing to comply with its obligations under this PPA; and

(B) the Change in Costs, additional financing costs, extension of time and/or relief from the obligations under this PPA claimed, could not reasonably be expected to be mitigated or recovered by the Development Entity acting in accordance with Good Industry Practice or resequencing, reallocation or redeploying its forces to other Replacement Bridges.

(c) **Giving of Relief and Compensation**

In the event that the Development Entity has complied with its obligations under Section 12.2(b) (Procedure for Relief and Compensation), then:

(i) in the case of a delay as demonstrated pursuant to Section 12.2(b) (Procedure for Relief and Compensation):

(A) the Construction Commencement Deadline; and/or

(B) the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) the Long Stop Deadline,

shall, subject to Section 12.2(g) (Float and Deductible), be extended by such time as shall be reasonable for such a Compensation Event, but only to the extent that the Development Entity demonstrates to the Department by way of Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management) of the Technical Provisions) that the relevant Compensation Event will result in an identifiable and measurable disruption to the Work, which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve commencement of Construction Work or achievement of Substantial Project Completion);

(ii) in the case of:

(A) Capital Expenditure incurred by the Development Entity at any time; or

(B) any other Change in Costs arising prior to Substantial Project Completion,

then, subject to clause (ix) below, the Department shall, within twenty (20) Business Days of its receipt of a written demand by the Development Entity (supported by all relevant information), compensate the Development Entity for the relevant Capital Expenditure or Change in Costs (each as adjusted to reflect the actual Capital Expenditure or Change in Costs incurred by the Development Entity) that the Development Entity incurs as a direct result of the relevant Compensation Event;

(iii) in the case of any delay in the receipt by the Development Entity of any Milestone Payment or Availability Payment, the Department shall compensate the Development Entity for its financing costs in accordance with Section 12.2(f) (Delays in Receipt of Availability Payments);

(iv) to the extent that any Noncompliance Event or Closure would, but for the occurrence of the Compensation Event, have not occurred, such Noncompliance Event or Closure shall, for the purposes of this PPA, be deemed to have not occurred;

(v) in the case of any Change in Costs that are not the subject of Section 12.2(c)(ii), the Department shall compensate the Development Entity in accordance with Article 16 (Financial Model Adjustments) or in such other manner as the Parties may agree (acting reasonably);

(vi) in the case of any categories of Change in Costs that are subject to Schedule 19 (Extra Work Costs), such Change in Costs shall be calculated in accordance with Schedule 19 (Extra Work Costs);

(vii) to the extent that any Development Entity Default or breach of any Project Document would, but for the occurrence of the Compensation Event, have not occurred, such Development Entity Default or breach shall, for the purposes of this PPA, be deemed to have not occurred;

(viii) the Department shall give the Development Entity such relief from its ongoing obligations under this PPA as is reasonable given the nature of both the Compensation Event and the Development Entity's ongoing obligations; and

(ix) in the case of any Change in Costs claimed by the Development Entity in respect of any Compensation Event set out in clause (o) of the definition thereof, the Department shall not be required to compensate the Development Entity in respect of any Change in Costs other than costs associated with additional pile driving, which shall be compensated at an all-inclusive rate equal to $70 for each linear foot that the Total Driven Pile Length exceeds the Assumed Driven Pile Length.

(d) **Late Provision of Notice or Information**

To the extent that information is not provided to the Department in accordance with the requirements of Section 12.2(b) (Procedure for Relief and Compensation), the Development Entity shall not be entitled to any extension of time, compensation or relief from its obligations under this PPA with respect to the relevant Compensation Event.

(e) **Failure to Agree**

If the Parties cannot agree on the extent of any compensation, delay incurred, relief from the Development Entity's obligations under this PPA, or the Department disagrees that a Compensation Event has occurred (or as to its consequences), or that the Development Entity is entitled to relief under this Article 12 (Supervening Events), the Parties shall resolve the matter in accordance with the Dispute Resolution Procedures.

(f) **Delays in Receipt of Availability Payments**

(i) To the extent that Substantial Completion of a Replacement Bridge has not occurred by the relevant Baseline Substantial Completion Date as a direct result of a Compensation Event or (following the relevant Baseline Substantial Completion Date) Substantial Completion of the relevant Replacement Bridge is further delayed as a direct result of a Compensation Event, the Parties shall determine the aggregate number of days (the **Department Substantial Completion Delay Period**) beyond the relevant Baseline Substantial Completion Date that Substantial Completion of the relevant Replacement Bridge will be delayed as a direct result of the occurrence and subsistence of any Compensation Event(s), subject to a maximum number of days equivalent to the period up until the Baseline Project Completion Date.

(ii) To the extent that Substantial Project Completion has not occurred by the Baseline Project Completion Date as a direct result of a Compensation Event, the Parties shall determine the aggregate number of days (the **Department Project Completion Delay Period**) beyond the Baseline Project Completion Date that Substantial Completion of all relevant Replacement Bridges will be delayed as a direct result of the occurrence and subsistence of any Compensation Event(s).

(iii) To the extent that any Department Delay Period is agreed or finally determined, the Department shall pay to the Development Entity an amount equal to the Delay Rate, such amount to be included in the next Invoice to be issued to the Department by the

Development Entity in accordance with Section 14.3 (Invoicing and Monthly Performance Reports).

(iv) No later than twenty (20) Business Days after Substantial Project Completion, the Parties shall calculate, in accordance with Article 16 (Financial Model Adjustments), the extent to which the Development Entity was left in a better or worse position as a result of each Department Delay Period, taking into account the payments made to the Development Entity by the Department pursuant to Section 12.2(f)(iii) and, to the extent that the Development Entity was left in a better or worse position, the Development Entity or the Department (as relevant) shall pay to the other Party a one-off lump-sum payment, so as to ensure that the Development Entity is left in a no better and no worse position, such amount to be included in the next Invoice to be issued to the Department by the Development Entity in accordance with Section 14.3 (Invoicing and Monthly Performance Reports).

(v) Notwithstanding the foregoing,

the calculation referred to in Section 12.2(f)(iv) above shall take into account:

(A) the financial benefit to the Development Entity of the Availability Payments in respect of any Replacement Bridge commencing earlier than the date that the Financial Model assumed the Availability Payment in respect of such Replacement Bridge would commence;

(B) the proceeds from any related delayed start up or business interruption insurance policy; and

(C) any avoidable costs.

(g) **Float and Deductible**

Notwithstanding anything to the contrary in the foregoing, float shall not be available to the Department to absorb, and the ten (10) Business Day deductible in Section 12.2(f)(v)(A) shall not be applicable to, delays caused by the Compensation Events set out in clauses (a), (b), (d), (h), (i), (k), (q), (r) (solely in respect of Hazardous Materials released by the Department), (u), (w), (x), (z), (aa) and (bb) of the definition thereof.

(h) **Sole Remedy**

As between the Development Entity and the Department, the Development Entity's sole remedy in relation to any Compensation Event shall be the operation of this Section 12.2 (Compensation Events).

**12.3 Relief Events**

(a) If, as a direct result of the occurrence of a Relief Event, the Development Entity becomes aware that the Relief Event has caused or is likely to cause the Development Entity to fail to:

(i) commence the Construction Work by the Construction Commencement Deadline or (following the Construction Commencement Deadline), suffer further delay in the commencement of Construction Work; and/or

(ii) achieve Substantial Project Completion by the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) suffer further delay in the achievement of Substantial Project Completion; and/or

(iii) comply with any of its obligations under this PPA,

then the Development Entity is entitled to request an extension to the Construction Commencement Deadline and/or the Substantial Project Completion Deadline and/or relief from any rights of the Department arising under Section 24.5 (Termination for Development Entity Default), in each case in accordance with this Article 12 (Supervening Events).

(b) **Procedure for Relief**

Subject to Section 12.3(d) (Late Provision of Notice or Information), any request for relief made by the Development Entity pursuant to Section 12.3(a) must:

(i) be submitted to the Department as soon as practicable, and in any event within twenty (20) Business Days of the Development Entity first becoming aware that the relevant Relief Event would have the effect that is the subject of the Development Entity's request for relief;

(ii) as soon as is reasonably practicable following receipt by the Department of the request referred to in Section 12.3(b)(i), give full details of the relevant Relief Event (as available to it having made due enquiry), the extension of time and/or relief requested, including:

(A) to the extent the Development Entity believes that the relevant Relief Event would result in a delay to the achievement of Substantial Project Completion, a Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management) of the Technical Provisions) demonstrating that the relevant Relief Event will result in an identifiable and measurable disruption to the Work, which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve commencement of the Construction Work or achievement of Substantial Project Completion);

(B) evidence demonstrating that no other concurrent unrelated delay to a Critical Path activity that is the Development Entity's responsibility has occurred that has contributed to the delay for which relief is being sought; and

(C) evidence demonstrating that such event could not reasonably be avoided by the Development Entity without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work.

(iii) provide evidence the Department demonstrating that:

(A) the Development Entity and its Key Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

(B) the Relief Event was the direct cause of or is reasonably likely to be the direct cause of:

I. any failure to commence the Construction Work by the Construction Commencement Deadline or (following the Construction Commencement Deadline) further delay in the commencement of Construction Work;

II. a delay in achieving Substantial Project Completion by the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) further delay in the achievement of Substantial Project Completion; and/or

III. the Development Entity failing to comply with its obligations under this PPA;

(C) the extension of time and/or relief from the obligations under this PPA requested could not reasonably be expected to be mitigated or recovered by the Development Entity acting in accordance with Good Industry Practice; and

(D) the Development Entity is using Reasonable Efforts to perform its obligations under this PPA.

(c) **Giving of Relief**

In the event that the Development Entity has complied with its obligations under Section 12.3(b) (Procedure for Relief), then:

(i) in the case of a delay demonstrated pursuant to Section 12.3(b) (Procedure for Relief):

(A) the Construction Commencement Deadline; and/or

(B) the Substantial Project Completion Deadline or (following the Substantial Project Completion Deadline) the Long Stop Deadline,

shall be extended by such time as shall be reasonable for such a Relief Event, but only to the extent that the Development Entity demonstrates to the Department by way of Time Impact Analysis (based on the Project Working Schedule most recently agreed pursuant to Section 2 (Project Management) of the Technical Provisions) that the relevant Relief Event will result in an identifiable and measurable disruption to the Work, which will impact a Critical Path activity (i.e., would consume all available float and would extend the time required to achieve commencement of Construction Work or Substantial Project Completion);

(ii) subject to Section 12.3(c)(iii) below, to the extent that any Development Entity Default or breach of any Project Document would, but for the occurrence of any Relief Event, have

not occurred, such Development Entity Default or breach shall, for the purposes of this PPA, be deemed not to have occurred; and

(iii) nothing in this Section 12.3 (Relief Events) shall affect the accrual of any Unavailability Events during the period in which the Relief Event is subsisting; **provided**, that any such Unavailability Events shall be disregarded for the purposes of determining whether or not a Persistent Closure or Poor Maintenance Performance has occurred.

(d) **Late Provision of Notice or Information**

In the event that information is provided after the dates referred to in Section 12.3(b) (Procedure for Relief) then the Development Entity shall not be entitled to any extension of time or relief from termination with respect to the period between the date on which the relevant information is required to have been provided pursuant to the terms hereof and the date on which the relevant information is provided.

(e) **Failure to Agree**

If the Parties cannot agree on the extent of any delay incurred or relief from the Development Entity's obligations under this PPA, or the Department disagrees that a Relief Event has occurred (or as to its consequences), or that the Development Entity is entitled to relief under this Article 12 (Supervening Events), the Parties shall resolve the matter in accordance with the Dispute Resolution Procedures.

## 13. CHANGE IN LAW

### 13.1 Occurrence

The Development Entity shall take all steps necessary to ensure that the Works are performed in accordance with the terms of this PPA following any Change in Law.

(a) **Notification**

If a Change in Law (other than a Qualifying Change in Law) occurs or is shortly to occur, then either Party may notify the other to express an opinion on its likely effects, giving details of its opinion of:

(i) any necessary change to the Works; and

(ii) whether any amendments are required to the terms of this PPA to deal with the Change in Law,

in each case giving in full detail the procedure for implementing the change in the Works.

(b) As soon as practicable after receipt of any notice from either Party under Section 13.1 (Occurrence), the Parties shall discuss and agree on the issues referred to in Section 13.1 (Occurrence) and any ways in which the Development Entity can mitigate the effect of the relevant Change in Law.

### 13.2 Qualifying Changes in Law

The provisions of Section 12.2 (Compensation Events) shall apply in respect of any Qualifying Change in Law.

## 14. PAYMENTS TO THE DEVELOPMENT ENTITY

### 14.1 Mobilization Fund and Milestone Payments

(a) **Operation of Mobilization Fund**

(i) The Development Entity shall establish an account, for and on behalf of the Department (the **Mobilization Fund**), to be held and controlled by a third party (the **Mobilization Fund Agent**) to be agreed between the Parties, and the Parties, together with the Mobilization Fund Agent, shall work in good faith with each other to execute an account control agreement relating thereto no later than five (5) Business Days prior to the issuance of NTP1. Within three (3) Business Days of establishing the Mobilization Fund, for and on behalf of the Department, the Development Entity shall provide to the Department the details regarding the Mobilization Fund, including the name, address and contact information for the depository institution and the account number.

(ii) Within five (5) Business Days of the issuance of NTP1 by the Department (subject to the execution of the account control agreement referred to in clause (i) above), the Department shall make a payment into the Mobilization Fund in an amount equal to $15,000,000.

(iii) The Parties agree that each payment from the Mobilization Fund will be controlled by the operation of the account control agreement referred to in clause (i) above.

(iv) The Development Entity shall be entitled to withdraw funds from the Mobilization Fund no more than once per month and in such amounts as it may need for the purposes of making payment to the D&C Contractor (in accordance with the terms of the D&C Contract) in respect of Preliminary Work or such other reasonable and proper costs (subject to a $500,000 cap) incurred by the Development Entity, **provided** that:

(A) prior to any payment being made from the Mobilization Fund, the Development Entity shall give written notice to the Department of the amount to be paid from the Mobilization Fund and the purpose for which such funds will be used, together with such other supporting information as the Department may reasonably require;

(B) within ten (10) Business Days from the date of the receipt of such notice, the Department shall approve the proposed payment, such approval only to be withheld by the Department to the extent that the Development Entity is unable to demonstrate to the reasonable satisfaction of the Department that the proposed payment amount will be used to make payments to the D&C Contractor (in accordance with the terms of the D&C Contract) for costs incurred by it in respect of Preliminary Work or such other reasonable and proper costs (subject to a $500,000 cap in the aggregate) incurred by the Development Entity (as relevant); and

(C) if the Department fails to respond within such ten (10) Business Day period, the Department will be deemed to have given its approval to such payment request.

(v) On the Termination Date, the Mobilization Fund Agent shall pay any amounts standing to the credit of the Mobilization Fund to the Department.

(b) **Milestone Payments**

Within thirty (30) days of the occurrence of each Milestone, the Department shall, subject to the receipt of a proper Invoice in the relevant month in accordance with Section 14.3 (Invoicing and Monthly Performance Reports), pay to the Development Entity the relevant Milestone Payment.

**14.2 Availability Payments Calculation**

Availability Payments shall be calculated and earned by the Development Entity according to the methodology set out in Schedule 8 (Payment Mechanism).

**14.3 Invoicing and Monthly Performance Reports**

Upon receipt by the Department of a monthly invoice for a Milestone Payment and/or any Availability Payments due in such month (an **Invoice**), the Department shall pay the Development Entity such Milestone Payment and/or Availability Payments within thirty (30) days of the receipt of such Invoice. Notwithstanding the foregoing, the Department has no obligation to pay any Milestone Payment or Availability Payment until the Development Entity submits a proper Invoice in respect of the relevant amount and a Monthly Performance Report for the relevant month in accordance with the following provisions of this Section 14.3 (Invoicing and Monthly Performance Reports):

(a) The Development Entity shall submit an Invoice and a Monthly Performance Report no later than the fifteenth day of each month following the Commercial Closing Date; **provided**, however, that if the Development Entity submits the invoice after the fifteenth day in a particular month, such Invoice shall be processed by the Department as soon as is reasonably practicable, and in no event later than the fifteenth day of the month following that in which such Invoice is submitted.

(b) The Invoice must set out the amount and calculation of any Milestone Payment and/or Availability Payment invoiced in the relevant Invoice. The Department shall return any Invoices that are incomplete and/or incorrect in any material respect to the Development Entity for correction and resubmission.

(c) The Monthly Performance Report shall contain the information required by Schedule 13 (Monthly Performance Report).

(d) In the event that the Development Entity has failed to file a Monthly Performance Report required to be filed for a month in the form set out in Schedule 13 (Monthly Performance Report), the Department shall be required to pay only the amounts due less the maximum possible Monthly Maintenance Payment Deduction applicable under such circumstances. If it is determined that any Monthly Performance Report submitted by the Development Entity is found to be inaccurate, which, had it been accurate, would have revealed that an event resulting in a Monthly Maintenance Payment Deduction had occurred, then the

Department shall be required to pay only the amounts due less the maximum possible Monthly Maintenance Payment Deduction applicable under such circumstances, unless and until a revised Monthly Performance Report, which is accurate to the reasonable satisfaction of the Department is subsequently submitted to the Department. Once the required or revised Monthly Performance Report is filed, the Department shall process the Invoice for payment. In no event shall the Department be obligated to pay interest on any late payments arising due to delayed or resubmitted Monthly Performance Reports pursuant to this Section 14.3(d).

(e) With respect to the final Monthly Disbursement to be made under this PPA, the Department may delay payment of such Monthly Disbursement for an additional thirty (30) days in order to verify the Monthly Performance Report in respect of such final Monthly Disbursement.

**14.4 Disputed Amounts**

(a) Both the Development Entity and the Department shall have the right to dispute, in good faith, any amount specified in an Invoice or Monthly Performance Report submitted pursuant to Section 14.3(a). The Party disputing any such amount will pay the amount of the Invoice in question that is not in dispute and will be entitled to withhold the balance pending resolution of the Dispute.

(b) Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within thirty (30) days following resolution of the Dispute.

**14.5 Set Off Right in respect of Commonwealth Liability**

The Development Entity agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Development Entity or its subsidiaries to the Commonwealth against any payments due to the Development Entity under this PPA.

**14.6 Appropriations and Source of Funds**

(a) **Appropriations**

(i) The Department hereby covenants and agrees to:

(A) include in its budgetary request, which the Department shall submit to the Commonwealth's Office of the Budget no later than November 1 each calendar year during the Term, a request for appropriation (including executive authorization) of funds sufficient to pay the amounts due and owing or scheduled to become due and owing from the Department to the Development Entity during the succeeding fiscal year; and

(B) use its best efforts to cause the General Assembly of the Commonwealth to appropriate (and the Governor of the Commonwealth to implement executive authorization of) amounts that will be sufficient to enable the Department to pay all such amounts to the Development Entity under this PPA, including exhausting all available reviews and appeals and doing all other things lawfully within its power to do if such amounts are not appropriated.

(ii) The obligation of the Department to pay all amounts due and owing or scheduled to become due and owing from the Department to the Development Entity hereunder is a contractual commitment of the Commonwealth and does not constitute a debt or pledge of the Commonwealth or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The Department has no taxing power. The Development Entity has no right to have taxes levied or compel appropriations by the General Assembly of the Commonwealth for any payment of any amounts due and owing or scheduled to become due and owing from the Department to the Development Entity hereunder.

(b) **Source of Funds**

(i) Except with respect to those sources of funds, if any, that are available for payments required to be made by the Department hereunder that as a matter of law are not subject to appropriations, the Parties acknowledge that:

(A) the source of funds for payment of all amounts due and owing or scheduled to become due and owing from the Department to the Development Entity hereunder is subject to the availability of funds appropriated to the Department 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

(B) the Department's obligations to provide funding under this PPA 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) and the certification of the availability of such funds by the Commonwealth's Office of the Budget pursuant to Section 327 of the Commonwealth Procurement Code, 62 Pa.C.S. §327.

(ii) The Department shall notify the Development Entity in writing promptly upon becoming aware of any failure of (i) the Governor of the Commonwealth to approve such appropriation, or (ii) the Commonwealth's Office of the Budget to certify as to the availability of such funds.

(iii) Notwithstanding anything to the contrary set out herein, the obligations of the Department under this PPA will survive any failure to appropriate sufficient amounts to pay the amounts due and owing or scheduled to become due and owing from the Department to the Development Entity under this PPA and any expiration or termination of this PPA and such obligations shall not be impaired, reduced or otherwise affected by any such failure.

## 15. CHANGE IN OWNERSHIP

### 15.1 Restricted Changes in Ownership

(a) A **Restricted Change in Ownership** shall arise if:

(i) prior to the second anniversary of Final Acceptance in respect of 99% of all Replacement Bridges, without the prior written consent of the Department, any Qualified Investor ceases to own (directly or indirectly) the same percentage of the issued share capital or membership interests in the Development Entity that it owned (directly or indirectly) at the date of this PPA, other than as a result of an Additional Equity Investment;

(ii) any Change in Ownership occurs which involves the transfer of any shares or membership interests to a Prohibited Person; or

(iii) any Change in Ownership occurs which would be reasonably likely to have a material adverse effect on the Development Entity's ability to perform its obligations under the Project Documents in respect of the Maintenance Work, taking into account the financial strength and integrity of the transferee, compared to that of the transferor.

(b) Any Restricted Change in Ownership will constitute a Development Entity Default for the purposes of Section 22.1 (Development Entity Default).

(c) A Restricted Change in Ownership shall not arise pursuant to Section 15.1(a) as a direct result of:

(i) the grant or enforcement of security in favor of the Lenders over or in relation to any shares or membership interests in the Development Entity under a Security Document;

(ii) a change in legal or beneficial ownership of any shares that are listed on a recognized stock exchange, including without limitation such transactions involving any initial public offering; and

(iii) a transfer of interests between managed funds that are under common ownership or control or between the general partner, manager or the parent company of such general partner or manager and any managed funds under common ownership or control with such general partner or manager (or parent company of such general partner or manager), provided that the relevant funds and the general partner or manager of such funds (or the parent company of such general partner or manager) have been approved by the Department in writing prior to the date of this PPA.[1]

(d) For the purposes of this Section 15.1 (Restricted Changes in Ownership), a person will only be deemed to own shares or membership interests in another person if such person owns the legal, beneficial and equitable interest in the relevant shares or membership interests of that other person.

**15.2 Notification of Changes in Ownership**

(a) The Development Entity shall provide the Department with at least twenty (20) Business Days' prior written notice of any Change in Ownership.

(b) For the purposes of this Section 15.2 (Notification of Changes in Ownership), any change in legal or beneficial ownership of any shares that are listed on a recognized investment exchange shall be disregarded.

[1] The Department is willing to permit transfers of equity interests between affiliated funds or corporate entities that are identified to (and approved by) the Department prior to contract signature.

(c) The Development Entity agrees to reimburse the Department for all reasonable out-of-pocket expenses (including, without limitation, reasonable and proper fees of consultants and legal counsel) incurred by the Department in connection with its review of any Change in Ownership notified to it in accordance with Section 15.2(a).

## 16. FINANCIAL MODEL ADJUSTMENTS

### 16.1 General

Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this PPA or where the Parties mutually agree otherwise) be determined in accordance with this Article 16 (Financial Model Adjustments). Where for the purposes of this Article 16 (Financial Model Adjustments) the Financial Model is to be adjusted by reference to a Relevant Event, this shall be carried out by the Development Entity, in consultation with the Department, to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In assessing the adjustments to be made to the Financial Model arising from the Relevant Event, the Development Entity shall not be entitled to take into account the financial impact up to or after the date of the Relevant Event of those risks which the Development Entity expressly bears under the terms of this PPA, including (to the extent so expressly borne by the Development Entity under this PPA) changes in taxation rates, inflation and the impact of any deductions made by the Department pursuant to Schedule 8 (Payment Mechanism).

### 16.2 Application to the Financial Model

Where, pursuant to this PPA, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Financial Model (with the exception of payment of the Department's share of any Refinancing Gain to which Article 17 (Refinancing) shall apply), the adjustment or credits to the payments between the Parties hereunder shall be that required to ensure that, by reference to the Financial Model adjusted under this Article 16 (Financial Model Adjustments), the Development Entity is left in a no better and no worse position than under the version of the Financial Model applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment or credits to the payments between the Parties hereunder required to maintain the Development Entity in the financial position it would have been in under the version of the Financial Model applicable immediately prior to the relevant adjustment.

### 16.3 No Better and No Worse

Any reference in this PPA to "no better and no worse" or to leaving the Development Entity in a "no better and no worse position" shall be construed by reference to the Development Entity's:

(a) rights, duties and liabilities under or arising pursuant to performance of this PPA, the Financing Documents and the Key Contracts; and

(b) ability to perform its obligations and exercise its rights under this PPA, the Financing Documents and the Key Contracts, so as to ensure that:

(i) the Development Entity is left in a position which is no better and no worse in relation to the Key Ratios and the Equity IRR by reference to the version of the

Financial Model applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

(ii) the ability of the Development Entity to comply with this PPA is not adversely affected or improved as a consequence of the Relevant Event.

**16.4 Replacement of Financial Model**

Any Financial Model produced following adjustments in accordance with this Article 16 (Financial Model Adjustments) shall, when it is approved by the Department (such approval not to be unreasonably withheld), become the Financial Model for the purposes of this PPA until its further amendment in accordance with this PPA.

**16.5 Amendments to Logic and/or Formulae**

(a) Where it is necessary to amend the logic or formulae incorporated in the Financial Model to permit adjustments to be made, this shall be done to the extent necessary, following mutual agreement between the Parties.

(b) If any amendment is to be made to the logic or formulae incorporated in the Financial Model, the Financial Model shall first be run immediately prior to the making of any such amendment to ensure that the Key Ratios from the Financial Model are maintained at levels that are neither lower nor higher than the Key Ratios existing immediately after making such amendment, and the difference in the Equity IRR after and immediately prior to making such amendment does not differ by more than one (1) basis point (being zero point zero one percent (0.01%) as shown in the resulting figure).

**16.6 Financial Model Audits; Accuracy**

(a) In connection with any amendments to the logic or formulae incorporated in the Financial Model under Section 16.5 (Amendments to Logic and/or Formulae), and as a condition to providing approval for any version of the Financial Model amended in such manner, the Development Entity shall (at its own cost) deliver to the Department an audit of such amended version of the Financial Model from an independent audit firm with nationally recognized reputation.

(b) The Development Entity shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation or other relief from the Department in relation to any loss or damage that it suffers as a result of such error or omission.

**16.7 Copies of the Revised Financial Model**

Following any adjustment to the Financial Model under the provisions of this Article 16 (Financial Model Adjustments), the Development Entity shall promptly deliver a copy of the revised Financial Model to the Department in the same form as the versions delivered pursuant to Section 2.4 (Achievement of or Failure to Achieve the Financial Closing Date) prior to Financial Close or in such other form as may be agreed between the Parties.

## 17. REFINANCING

### 17.1 Requirement for Department Consent

The Development Entity shall obtain the Department's prior written consent to any Qualifying Refinancing.

### 17.2 Share of Gain

The Department shall be entitled to receive a fifty percent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing; **provided**, that the Department shall not withhold or delay its consent to a Qualifying Refinancing in order to obtain a greater than fifty percent (50%) share of the Refinancing Gain.

### 17.3 Development Entity Details

The Development Entity shall promptly provide the Department with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Department shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether the Refinancing is a Qualifying Refinancing or not.

### 17.4 Receipt of Gain

The Department shall have the right to elect to receive its share of any Refinancing Gain as either:

(a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

(b) a reduction in the Availability Payment over the remainder of the Term; or

(c) a combination of the choices in Sections 17.4(a) and 17.4(b).

### 17.5 Method of Calculation

Following the Development Entity's delivery of the details regarding a proposed Qualifying Refinancing pursuant to Section 17.3 (Development Entity Details), the Department and the Development Entity will agree on the amount of the Refinancing Gain resulting from such Qualifying Refinancing and negotiate in good faith to agree on the basis of payment of the Department's share of the Refinancing Gain (taking into account how the Department has elected to receive its share of the Refinancing Gain under Section 17.4 (Receipt of Gain)). If the Development Entity and the Department fail to agree the determination of the Refinancing Gain or the payment of the Department's share, the Dispute shall be determined in accordance with the Dispute Resolution Procedures.

### 17.6 Costs

The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Department will be paid to the Department by the Development Entity within twenty (20) Business Days of any Qualifying Refinancing.

### 17.7 Notifiable Financings

Without prejudice to the other provisions of this Article 17 (Refinancing), the Development Entity shall notify the Department of any Refinancing that is not a Qualifying Refinancing (a **Notifiable Financing)** on becoming aware of the same and again when they are entered into and provide full details of the same within twenty (20) Business Days of the date a Notifiable Financing is entered into by the parties thereto.

### 17.8 Construction Equity Ratio

At all times during the period between the Financial Closing Date and the D&C Work Completion Date, the Development Entity shall ensure that the Construction Equity Ratio is greater than or equal to seven and one-half percent (7.5%).

### 17.9 Department Assistance for Exempt and Qualifying Refinancings

The Department will reasonably assist the Development Entity in undertaking any Exempt Refinancing or any Qualifying Refinancing in respect of which the Department shall have provided its prior written consent pursuant to Section 17.1 (Requirement for Department Consent), including through the provision of documents within its possession or control that are required to comply with any disclosure requirements under Applicable Law in connection with the issuance of any PABs or other capital markets issuance, as well as the delivery of information, legal opinions and continuing disclosure undertakings, as applicable. The Development Entity shall reimburse the Department for all of the Department's reasonable and proper costs incurred in connection with the assistance of such refinancing and for which the Department shall deliver to the Development Entity a written invoice and demand prior to the scheduled date of closing of such refinancing. If for any reason such refinancing does not close, the Development Entity shall reimburse the Department's reasonable and proper costs within ten (10) days after the Department delivers to the Development Entity a written invoice and demand therefor.

## 18. PRINCIPAL DEVELOPMENT ENTITY DOCUMENTS

### 18.1 Key Contracts

The Development Entity shall perform its obligations under, and observe all of the provisions of, the Key Contracts and shall not, without the prior written consent of the Department:

(a) terminate or agree to termination of all or any part of any Key Contract;

(b) amend or vary any Key Contract;

(c) in any material respect, depart from its obligations (or waive or allow to lapse any rights it may have in a material respect) or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Key Contract; or

(d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Key Contract,

if in each case the proposed course of action may reasonably be expected to have a material adverse effect on the ability of the Development Entity to perform its obligations under the Project Documents.

**18.2 Delivery of Changed Principal Development Entity Documents**

At any time an amendment is made to any Principal Development Entity Document or the Development Entity enters into a new Principal Development Entity Document (or any agreement, which affects the interpretation or application of any Principal Development Entity Document), the Development Entity shall deliver to the Department a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be) certified as a true copy by an officer of the Development Entity.

**18.3 No Increased Termination Liabilities**

No amendment, waiver or exercise of a right under any Principal Development Entity Document shall have the effect of increasing the amount of the Department's liabilities on Early Termination, unless the Development Entity has obtained the prior written consent of the Department to such increased liability for the purposes of this Section 18.3 (No Increased Termination Liabilities). In the event of any conflict between the provisions of this Section 18.3 (No Increased Termination Liabilities) and any other provision of this PPA, the provisions of this Section 18.3 (No Increased Termination Liabilities) shall prevail. For the avoidance of doubt, nothing in this Section 18.3 (No Increased Termination Liabilities) shall have the effect of precluding prepayment costs, make-whole amounts or breakage costs agreed to by the Development Entity (and approved by the Department) under the Financing Documents delivered as at the Financial Closing Date from being included in the amount of the Department's liabilities on Early Termination in accordance with Schedule 6 (Compensation on Termination) of this PPA.

**18.4 Replacement of Key Contractors**

(a) Nothing in this PPA shall prohibit the Development Entity from providing or procuring the provision of the Works from any Key Contractor that the Development Entity demonstrates to the Department has the legal capacity, power and authority to become a party to and perform the obligations of the relevant Key Contract and employs persons having appropriate qualifications, experience, integrity and technical competence and has the resources available to it, which are sufficient to enable it to perform the obligations of the Key Contractor under the relevant Key Contract, and otherwise comply with the requirements of this PPA. By entering into this PPA, the Department approves each of the Key Contractors appointed by the Development Entity as at the date of this PPA.

(b) The Development Entity shall not enter into any D&C Contract without first delivering to the Department a D&C Direct Agreement duly executed by the Development Entity and the relevant D&C Contractor.

## 19. INSURANCE

### 19.1 Insurance Policies and Coverage

The Development Entity shall procure and maintain, or cause to be procured or maintained, the Insurance Policies identified in this Article 19 (Insurance) and in Schedule 9 (Insurance Coverage Requirements) strictly in accordance with the minimum coverage requirements and terms of coverage as set out in this Article 19 (Insurance) and in Schedule 9 (Insurance Coverage Requirements).

### 19.2 General Insurance Requirements

(a) **Insurers**

All insurance required hereunder shall be procured from insurers that at the time coverage commences have a current financial strength and financial size category rating of not less than "A-/VIII" according to A.M. Best's Insurance Reports Key Rating Guide (or an equivalent rating issued by Standard and Poor's), except as approved in writing by the Department in its reasonable discretion.

(b) **Deductibles and Self-Insured Retentions**

Except to the extent expressly provided otherwise in the Project Documents, the Development Entity or its Contractor, as the case may be, shall be responsible for paying all insurance deductibles and self-insurance retentions and the Department shall have no liability for deductibles, self-insured retentions and/or claim amounts in excess of the required coverage.

(c) **Primary Coverage**

Each insurance policy required herein shall provide that the coverage thereof is primary and noncontributory with respect to all named and additional insureds and/or loss payees as their interests may appear, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this PPA that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

(d) **Authorization**

All Insurance Policies shall be issued by insurers authorized to do business in the Commonwealth.

(e) **Verification of Coverage**

(i) At each time the Development Entity is required to initially obtain or cause to be obtained each Insurance Policy, and thereafter not less than five (5) Business Days prior to the expiration date of each Insurance Policy, the Development Entity shall deliver to the Department a written certificate(s) of insurance. The certificate of insurance shall be

on the most recent ACORD form consistent with the required coverage. Each certificate must be in standard form, state the identity of all insurers, named insureds and additional insureds, state the type and limits of coverage, include as attachments all additional insured endorsements, and be signed by an authorized representative of the insurance company shown on the binder, including its licensed agent or broker.

(ii) In addition, as soon as they become available, but not to exceed 120 days from the effectiveness of each Insurance Policy, the Development Entity shall deliver to the Department (A) a true and complete certified copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto and (B) evidence of payment of any premium then due that is satisfactory to the Department (acting reasonably).

(iii) If the Development Entity has not provided the Department with the foregoing proof of coverage via certificate of insurance and payment within ten (10) days after receipt of written request therefor, or otherwise fails or refuses to obtain or maintain in force the insurance required by this Article 19 (Insurance) and Schedule 9 (Insurance Coverage Requirements), the Department may, upon three (3) Business Days' written notice to the Development Entity, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, obtain such an Insurance Policy; and the Development Entity shall reimburse the Department for the cost thereof upon demand. In addition, the Department shall have the right, without obligation or liability, to suspend all or any portion of Work during any time that such proofs of coverage, in compliance with this Article 19 (Insurance), have not been provided as required herein.

(f) **Contractor Insurance Requirements**

The Development Entity shall cause each Contractor to obtain (prior to commencing any Work) and maintain all insurance that is required by Schedule 9 (Insurance Coverage Requirements), to the extent that such Contractor is not covered by the Development Entity-provided liability insurance. The Development Entity shall cause each such Contractor to include the additional insureds specified in the applicable insurance policies as required under Schedule 9 (Insurance Coverage Requirements). The Development Entity shall cause each such Contractor to require that its insurer agree to waive any subrogation rights the insurers may have against such additional insureds. If requested by the Department, the Development Entity shall promptly provide certificates of insurance evidencing coverage for each Contractor.

(g) **Project-Specific Insurance**

All insurance coverage required to be provided by the Development Entity, the D&C Contractor, Lead Engineering Firm and Lead Maintenance Firm, shall be procured in accordance with the requirements of Schedule 9 (Insurance Coverage Requirements).

(h) **Endorsements and Waivers**

All Insurance Policies the Development Entity is required to provide hereunder shall contain or be endorsed to comply with all requirements specified in the Project Documents, as well as the following provisions; **provided**, that for the workers' compensation and professional liability policies, only Sections 19.2(h)(iii) and (viii) below shall be applicable:

(i) 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 Project or the Development Entity's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Project consultants);

(ii) the commercial general liability insurance and excess liability insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iii) each policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, lapsed, modified or 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) except after thirty (30) days' (or for non-payment of premium, ten (10) days') prior written notice by registered or certified mail, return receipt requested, has been given to the Department. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;

(iv) endorsements adding additional insureds to required policies for both on-going operations and completed operations shall be ISO endorsement CG 20 10 11 85 or equivalent, or in the alternative CG 20 33 10 01 and GC 20 37 04 13 or their equivalent (to ensure coverage for both operations and completed operations), shall contain no additional limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage;

(v) the certificate of insurance and liability policy(ies) must contain the following endorsement for the above liability coverages:

"***The insurer(s) shall not, without obtaining the express advance written permission from the Office of Chief Counsel of the Pennsylvania Department of Transportation (the Department), raise any defense involving in any way the jurisdiction of a Tribunal over the person of the Department, the immunity of the Department, its officers, agents or employees, the governmental nature of the Department, or the provisions of any statutes respecting suits against the Department***."';

(vi) the commercial general liability policy shall cover liability arising out of the acts or omissions of the Development Entity's employees and employees of Contractors engaged in the Work on the terms and to the extent the Development Entity or relevant Contractor is provided coverage under such liability policy;

(vii) the automobile liability insurance policy shall 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; and

(viii) unless specified otherwise in Schedule 9 (Insurance Coverage Requirements), each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis.

(i) **Waivers of Subrogation**

The Department and the Development Entity waive all rights against each other, against each of their agents, employees and Project consultants, and against Contractors and their respective members, directors, officers, employees, subcontractors, consultants and agents for any claims to the extent covered and paid by insurance obtained pursuant to this Article 19 (Insurance), except such rights as they may have to the proceeds of such insurance. The Development Entity shall require all Contractors to provide similar waivers in writing each in favor of all other parties specified above. Each policy for which the Development Entity is required to provide coverage for the additional insureds shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and Project consultants).

(j) **No Recourse**

There shall be no recourse against the Department for payment of premiums or other amounts with respect to the insurance the Development Entity is required to provide hereunder.

(k) **Support of Indemnifications**

The insurance coverage the Development Entity is required to provide hereunder shall support but is not intended to limit the Development Entity's indemnification obligations otherwise set out under the Project Documents.

**19.3 Uninsurable Risks**

(a) If a risk usually covered by construction all risks, third party liability, all risks property or statutory insurances, in each case required under this PPA, becomes an Uninsurable Risk then the Development Entity shall notify the Department as soon as reasonably practicable and in any event within fifteen (15) Business Days of the earlier of:

(i) the Development Entity becoming aware that the risk is likely to be an Uninsurable Risk; and

(ii) the risk becoming an Uninsurable Risk,

and in any event at least five Business Days before expiration or cancellation of any existing insurance in respect of that risk (in each case irrespective of the reason for the same). The Development Entity shall provide the Department with such information as the Department reasonably requests regarding the Uninsurable Risk.

(b) If both Parties agree, or it is determined pursuant to the Dispute Resolution Procedures, that the risk is an Uninsurable Risk the Department and the Development Entity shall consider in good faith alternative insurance packages and programs that provide coverage as comparable to that contemplated in this Article 19 (Insurance) as is possible under then-existing insurance market conditions and other means by which the risk should be managed or shared (including considering the issue of self-insurance by either party).

(c) If the Department and the Development Entity are not able to reach an agreement as to how to manage or share the relevant Uninsurable Risk within five (5) Business Days of the date on which

the Development Entity provides notice under Section 19.3(a), the Department may refer the matter to a mediator acceptable to the Department and the Development Entity.

**19.4 Consequences of a risk becoming an Uninsurable Risk**

(a) If:

(i) both Parties agree, or it is determined pursuant to the Dispute Resolution Procedures, that the risk is an Uninsurable Risk in accordance with Section 19.3(b) and the parties cannot agree how to manage or share the relevant Uninsurable Risk within twenty (20) Business Days of the date on which the Development Entity provides notice under Section 19.3(a) (irrespective of whether the matter has been referred to mediation under Section 19.3(c) in that period); and

(ii) both parties agree or it is determined pursuant to the Dispute Resolution Procedures that the risk being an Uninsurable Risk is not caused by the actions, breaches, omissions or defaults of:

(A) the Development Entity, other than the making of any claim in relation to the Insurance Policies by the Development Entity or any inadvertent acts of the Development Entity (provided that the Development Entity has used best endeavors to remedy, overcome or otherwise mitigate the effect of any such inadvertent acts); or

(B) a sub-contractor, unless the Development Entity has used best endeavors to remedy, overcome or otherwise mitigate the effect of the sub-contractor's action, breach, omission or default,

then the Department shall (at the Department's option) either:

(iii) pay to the Development Entity an amount equal to the amount calculated in accordance with Section 24.4(e) (Consequences of Termination) and this PPA will terminate; or

(iv) elect to allow this PPA to continue, in which case this PPA shall continue and on the occurrence of the risk (but only for as long as such risk remains an Uninsurable Risk) the Department shall (at the Department's option) either (i) pay to the Development Entity an amount equal to the Insurance Proceeds that would have been payable had the relevant insurance continued to be available (subject to the limitations, conditions and exclusions set out in the certificates and policies of insurance relating to such coverage previously provided by the Development Entity and provided that the Development Entity shall remain responsible for the deductibles referred to in Schedule 9 (Insurance Coverage Requirements) (the **Relevant Insurance Amount**) and this PPA will continue, or (2) an amount equal to the amount calculated in accordance with Section 24.4(e) (Consequences of Termination) plus (in relation to third party liability insurance only) the Relevant Insurance Amount for that third party liability insurance, whereupon this PPA will terminate. To the extent the Department assumes any Uninsurable Risk in accordance with this Section 19.4(a)(iv), the Department shall provide a full waiver of subrogation to the Development Entity.

(b) If pursuant to Section 19.4(a)(iv) this PPA continues:

(i) the Development Entity's obligations in this Article 19 (Insurance) and/or Schedule 9 (Insurance Coverage Requirements) to maintain insurance in respect of the Uninsurable Risk are waived and the Development Entity shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this PPA as a result of the failure to maintain insurance in respect of such Uninsurable Risk for so long as the risk is an Uninsurable Risk (and for such time as is required for the Development Entity to take out insurance as required under Section 19.4(b)(ii));

(ii) the Development Entity must be vigilant in reviewing the insurance market generally, to ascertain whether an Uninsurable Risk has become insurable and in any event shall approach (or require its insurance brokers to approach) the insurance market at least once every twelve (12) months to establish whether the risk remains an Uninsurable Risk. Promptly upon the Development Entity becoming aware that the risk is no longer an Uninsurable Risk, the Development Entity shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this PPA; and

(iii) the Department shall be entitled to deduct from the Availability Payments an amount equal to one-twelfth of the annual premium most recently paid (or which would have been paid) by the Development Entity in respect of the relevant risk prior to it becoming an Uninsurable Risk (using a reasonable estimate of such amount where a precise figure is not available) and indexed from the date that the Uninsurable Risk first arose in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism) from the date on which the risk became an Uninsurable Risk.

### 19.5 Unavailability of Insurance Terms

If, upon the initial placement or renewal of any insurance which the Development Entity is required to maintain or to procure the maintenance of pursuant to this PPA:

(a) any Insurance Term (as opposed to the relevant insurance policy as a whole) is not available to the Development Entity in the worldwide insurance market with reputable insurers of good standing; and/or

(b) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in North America,

(in either case the relevant Insurance Term being an **Unavailable Term**), then:

(c) the Development Entity shall notify the Department as soon as reasonably practicable and in any event within fifteen (15) Business Days of the earlier of:

(i) the Development Entity becoming aware that the Insurance Term is likely to be an Unavailable Term; and

(ii) the Insurance Term becoming an Unavailable Term,

and in any event at least five Business Days before expiration or cancellation of any existing insurance in respect of that risk (in each case irrespective of the reason for the same). The Development Entity shall provide the Department with such information as the Department reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable;

(d) subject to Section 19.6 (Alternative Insurance Terms), if both Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedures, that the Insurance Term is an Unavailable Term, the Development Entity's obligations in this Article 19 (Insurance) and/or Schedule 9 (Insurance Coverage Requirements) in respect of that particular Insurance Term are waived and the Development Entity shall not be considered in breach of its obligations regarding the maintenance of insurance incorporating the Unavailable Term for so long as the Insurance Term is an Unavailable Term (and for such time as is required for the Development Entity to take out insurance as required under Section 19.5(e)), unless the Insurance Term is an Unavailable Term by reason of the actions, breaches, omissions or defaults of the Development Entity or a Contractor (except where caused by the making of any claim in relation to the relevant Insurance Policy by the Development Entity or any inadvertent acts of the Development Entity or a Contractor, provided that the Development Entity has used best endeavors to remedy, overcome or otherwise mitigate the effect of any such inadvertent acts); and

(e) the Development Entity must be vigilant in reviewing the insurance market generally, to ascertain whether an Insurance Term is no longer an Unavailable Term and in any event shall approach (or require its insurance brokers to approach) the insurance market at least once every twelve (12) months to establish whether the Insurance Term remains an Unavailable Term. Promptly upon the Development Entity becoming aware that the Insurance Term is no longer an Unavailable Term, the Development Entity shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this PPA.

### 19.6 Alternative Insurance Terms

If an alternative or replacement term and/or condition of insurance is available to the Development Entity in the worldwide insurance and reinsurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Development Entity's inability to maintain or procure insurance including the Unavailable Term, at a cost which contractors in North America are (at such time) generally prepared to pay, the Development Entity shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.

### 19.7 Defense Costs

Unless otherwise agreed to in writing by the Department in its reasonable discretion, no defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of professional liability, contractor's pollution and environmental impairment liability policies.

### 19.8 Contesting Denial of Coverage

If any insurer under an Insurance Policy described in this Article 19 (Insurance) denies coverage with respect to any claims reported to such insurer, the Development Entity and the Department shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of the Department or the denial is the result of the Development Entity's failure to comply with an insurance requirement, then the Development Entity shall bear all costs of contesting the denial of coverage.

### 19.9 Lender Insurance Requirements

If under the terms of any Funding Agreement or Security Document the Development Entity is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this PPA, the Development Entity's provision of such insurance shall satisfy the applicable requirements of this PPA provided such policy meets all the other applicable requirements of this Article 19 (Insurance). If the Development Entity carries insurance coverage in addition to that required under this PPA, then (except with respect to directors and officers' liability insurance) the Development Entity shall include the Department and its respective members, directors, officers, employees, agents and Project consultants as additional insureds thereunder and under additional insured endorsements as described in Section 19.2(h)(iv), and shall provide to the Department the proofs of coverage and copy of the policy described in Section 19.2(e) (Verification of Coverage). If, however, the Development Entity demonstrates to the Department that inclusion of such Persons as additional insureds will increase the premium, the Department shall elect either to pay the increase in premium or forgo additional insured status.

### 19.10 Prosecution of Claims

(a) Unless otherwise directed by the Department in writing with respect to the Department's insurance claims, the Development Entity shall be responsible for reporting and processing all potential claims by the Department or the Development Entity against the Insurance Policies required to be provided by the Development Entity hereunder. The Development Entity agrees to report timely to the insurer(s) under such policies any and all matters which may give rise to an insurance claim by the Development Entity or the Department and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. The Development Entity shall enforce all legal rights against the insurer under the applicable Insurance Policies and Applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that the Development Entity shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means or, in relation to the pursuit of litigation, if there is no reasonable likelihood of success for the litigation. The Development Entity and their insurer(s) shall not, without obtaining the advance written consent from the General Counsel of the Department, raise any defense involving in any way the jurisdiction of a Tribunal over the person of Department, the immunity of Department, its Commissioners, Directors, officers, agents or employees, the governmental nature of Department, or the provisions of any statutes respecting suits against Department.

(b) The Department agrees to promptly notify the Development Entity of the Department's incidents, potential claims, and matters which may give rise to a Department insurance claim, to tender to

the insurer the Department's defense of the claim under such Insurance Policies, and to cooperate with the Development Entity as necessary for the Development Entity to fulfill its duties hereunder.

(c) If in any instance the Development Entity has not performed its obligations respecting insurance coverage set out in this PPA or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining the Development Entity's liability and the limits thereon or determining reductions in compensation due from the Department to the Development Entity on account of available insurance, the Development Entity shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had the Development Entity performed such obligations. Nothing in this Section 19.10 (Prosecution of Claims) or elsewhere in Article 19 (Insurance) shall be construed to treat the Development Entity as electing to self-insure where the Development Entity is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set out in Section 19.2(a) (Insurers).

(d) In the event that an insurer providing any of the Insurance Policies required by this PPA becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, the Development Entity shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Article 19 (Insurance) so as to avoid any lapse in insurance coverage.

(e) If in any instance the Development Entity has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by the Department, then the Department may, but is not obligated to, report the claim directly to the insurer and thereafter process the claim.

**19.11 Notices**

The Development Entity shall provide the Department with the following written notices:

(a) within thirty (30) days of the occurrence thereof, any claim made by the Development Entity or any other party under any insurance obtained in connection with the Project; and

(b) the expiration of any Insurance Policy at least ten (10) days (if due to non-payment of premium) or thirty (30) days (if by its terms or otherwise) prior to such expiration, including notification of the date of such expiration.

**19.12 Compliance with Insurance Policies**

The Development Entity shall:

(a) comply with the terms, conditions and requirements of all Insurance Policies; and

(b) not do or omit to do anything, or permit (insofar as it is within its power) any other person to do or omit to do anything, on or with respect to the Project Sites or the Project or with respect to the Work that results in or could reasonably be expected to result in the

cancellation of any Insurance Policies or that would entitle any insurer to refuse to pay any claim under any Insurance Policy (in whole or in part) or that would otherwise prejudice an Insurance Policy or claim under any Insurance Policy.

**19.13 Benchmarking of Insurance Costs**

(a) This procedure shall be used to determine whether the Department shall bear any increase or benefit from any decrease in the cost of Benchmarked Insurances.

(b) The Insurance Broker shall prepare a report on behalf of both the Development Entity and the Department in relation to each Insurance Review Period (the **Joint Insurance Cost Report**). The Joint Insurance Cost Report is to be prepared at the Development Entity's expense and should, as a minimum, contain the following information for the relevant Insurance Review Period:

(i) a full breakdown of the Actual Benchmarked Insurance Cost;

(ii) a full breakdown of the Base Benchmarked Insurance Cost;

(iii) a spreadsheet detailing separately:

(A) the sum(s) insure/limit of indemnity (i.e., rateable factor) for each of the Benchmarked Insurances;

(B) the premium rate for each of the Benchmarked Insurances;

(C) the premium paid (or to be paid) for each of the Benchmarked Insurances (i.e., excluding both insurance premium tax and broker's fees and commissions);

(D) the deductible(s) for each of the Benchmarked Insurances; and

(E) except with respect to the initial Insurance Review Period, details of all claims paid or reserved (including incident date, type and amount);

(iv) an assessment and quantification of each Project Insurance Change together with reasons therefor;

(v) complete details of any Portfolio Cost Savings;

(vi) any other reasons that the Development Entity believes may have caused a change (by way of increase or decrease by reference to the Base Benchmarked Insurance Cost) in the Actual Benchmarked Insurance Cost;

(vii) an opinion of the Insurance Broker as to the reasons why the Actual Benchmarked Insurance Cost has varied from the Base Benchmarked Insurance Cost, specifying the impact of each of the factors therefor and quantifying the amount attributable to each factor specified;

(viii) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from such calculation; and

(ix) evidence in form and substance satisfactory to the Department (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Markets that are claimed to account for the Insurance Cost Differential.

(c) The Development Entity shall ensure that the Insurance Broker, no later than the date which is ten (10) Business Days after the commencement of an Insurance Review Period, delivers to each of the Department and the Development Entity simultaneously at least two (2) copies of the Joint Insurance Cost Report in respect of the Insurance Review Period (if any) that just ended. The Department, at its sole discretion, may independently assess the accuracy of the information in the Joint Insurance Cost Report and retains the right to perform its own independent insurance review, which may include retaining advisors or performing its own assessment as to the impact of claims history on renewal costs. If the Department, in its sole discretion, elects to retain an insurance advisor to analyze the extent of eligible premium increases, the Development Entity shall cooperate in good faith with any reasonable requests for additional information from the Department's insurance advisor.

(d) No later than thirty (30) Days after the Development Entity's submission of the Joint Insurance Cost Report, the Department shall make its determination of the amounts subject to the risk allocation described in clauses (e) and (f) below. In the event of a Dispute, the Department's determination shall be subject to the Dispute Resolution Procedures.

(e) If, following the completion of the Insurance Premium Benchmarking Procedure, it is agreed or determined that there is an Exceptional Cost, the Department shall within thirty (30) Business Days of completion of the Insurance Premium Benchmarking Procedure make a one-off lump-sum payment to the Development Entity equal to eighty-five percent (85%) of the Exceptional Cost.

(f) If, following the completion of the Insurance Premium Benchmarking Procedure, it is agreed or determined that there is an Exceptional Saving, the Development Entity shall within thirty (30) Business Days of completion of the Insurance Premium Benchmarking Procedure make a one-off lump-sum payment to the Department equal to eighty-five percent (85%) of the Exceptional Saving.

(g) Following the completion of the Insurance Premium Benchmarking Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Development Entity.

**19.14 Reinstatement Work**

(a) To the extent that any Replacement Bridge suffers material damage that will require the Development Entity to incur in excess of $10,000 (subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism)) to repair or reinstate, the Development Entity shall deliver to the Department as soon as is reasonably practicable and in any event within twenty (20) Business Days after the occurrence of the damage a plan prepared by the Development Entity for the carrying out of the repairs and or reinstatement works necessary (the **Reinstatement Works**) to repair, reinstate or replace (the **Reinstatement Outline**) the Replacement Bridge.

(b) The Reinstatement Outline shall set out the proposed schedule for undertaking the Reinstatement Works, which should be put together with the intent of ensuring the relevant Replacement Bridge is fully operational as soon as is reasonably practicable.

(c) The Department shall, as soon as is reasonably practicable and in any event within ten (10) Business Days of receipt of the Reinstatement Outline, notify the Development Entity in writing whether or not it approves the Reinstatement Outline, such approval not to be unreasonably withheld or delayed (it being understood that the only grounds upon which the Department can reasonably withhold its approval being in circumstances where the Reinstatement Outline will not ensure that the relevant Replacement Bridge will be fully operation again as soon as is reasonably practicable), together with its reasons for any non-approval of the Reinstatement Outline in sufficient detail to enable the Development Entity to assess whether the Department's approval has been unreasonably withheld.

(d) If the Department gives notice of non-approval in accordance with Section 19.14(c), the Development Entity may amend and re-submit the Reinstatement Outline (the **Amended Reinstatement Outline**) to the Department for its reconsideration and the Department shall give its approval or non-approval as soon as is reasonably practicable and in any event within five (5) Business Days of the submission of the Amended Reinstatement Outline to the Department. If the Department does not approve the Amended Reinstatement Outline, it shall provide reasons for such non-approval in sufficient detail so as to enable the Development Entity to understand the nature and extent of such non-approval and to assess whether the Department's approval has been unreasonably withheld. For the avoidance of doubt, the Department may only reasonably withhold its approval of an Amended Reinstatement Outline for the same reasons that it may reasonably withhold its approval of a Reinstatement Outline pursuant to Section 19.14(c).

(e) In the event that the Amended Reinstatement Outline or a Person proposed to carry out the Reinstatement Works is not approved by the Department in accordance with Section 19.14(d), the Development Entity may submit the Amended Reinstatement Outline to the Dispute Resolution Procedures in order for it to be determined whether the Department's approval under Section 19.14(d) was unreasonably withheld.

(f) The Reinstatement Outline or the Amended Reinstatement Outline (as the case may be) as approved by the Department pursuant to this Section 19.14(d) or as determined pursuant to the Dispute Resolution Procedures shall become the reinstatement plan (the **Reinstatement Plan**).

(g) The Development Entity shall effect the Reinstatement Works in accordance with the Reinstatement Plan and all other applicable provisions of this PPA, and shall enter into any contractual arrangements to effect the Reinstatement Works in accordance with the requirements of this PPA.

## 20. DEVELOPMENT ENTITY INDEMNITY

### 20.1 Indemnified Losses

Subject to Section 20.2 (Exclusions from Indemnity), to the fullest extent permitted by Applicable Law, the Development Entity shall release, defend, indemnify and hold harmless the Indemnified Parties on demand from and against any and all liability to third parties for Losses arising from:

(a) death or personal injury;

(b) loss of or damage to any Indemnified Party's property (excluding the Replacement Bridges), including loss of use thereof;

(c) third party actions, claims, fines, penalties and/or demands brought against any Indemnified Party;

which may arise out of, or in consequence of, the performance or non-performance by the Development Entity of its obligations under the Project Documents; and/or

(d) any violation of any federal or state securities or similar law by any Development Entity-Related Entity (other than as a direct result of any disclosure statements made by the Department or other Indemnified Party); and/or

(e) if applicable, the authorization, issuance, sale, trading, redemption or servicing of the PABs or any other bonds issued to finance the Project (regardless of the identity of the issuer), or the Development Entity's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs or other bonds (other than as a direct result of any disclosure statements made by the Department or other Indemnified Party).

**20.2 Exclusions from Indemnity**

The Development Entity shall not be responsible or be obliged to indemnify an Indemnified Party in respect of any Losses under Section 20.1 (Indemnified Losses) to the extent that the same arise as a direct result of:

(a) a Compensation Event or Relief Event;

(b) the presence of Hazardous Materials on any Project Site that the Department is, pursuant to Section 6.3 (Generator Status), deemed to be the sole generator and arranger of, but only to the extent that the relevant Loss does not arise as a direct result of the negligence of the Development Entity or the Development Entity failing to comply with the terms of the Project Documents;

(c) the fraud, negligence, recklessness, bad faith or willful misconduct of an Indemnified Party;

(d) any performance or non-performance by an Indemnified Party of its obligations under the Project Documents; or

(e) any Losses suffered by an Indemnified Party with respect to the use of the Project Data or any Intellectual Property related thereto other than specifically for the Replacement Bridges.

### 20.3 Limitation of Indemnity

An indemnity by the Development Entity under any provision of the Project Documents shall be without limitation to any indemnity by the Development Entity under any other provision of the Project Documents.

### 20.4 Conduct of Third-Party Claims

(a) Pursuant to the Commonwealth Attorneys Act (71 P.S. § 732-101, et. seq.), the Office of Attorney General shall have the sole authority to represent the Department in any Third-Party Claim brought against the Department. The Office of Attorney General may, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense of any Third-Party Claim. If the Office of Attorney General delegates the defense of any Third-Party Claim, the Department shall cooperate with all reasonable requests of the Development Entity made in the defense of such Third-Party Claim.

(b) The Development Entity shall, if it wishes to have conduct of any Third-Party Claim (at its own cost and expense), submit a request to the Department, and the Department shall notify the Office of Attorney General of such request. If the Office of Attorney General consents (in its sole discretion) to the Development Entity's conduct and control of any Third-Party Claim, the Department shall cooperate with all reasonable requests of the Development Entity made in respect of such Third-Party Claim.

(c) Notwithstanding the foregoing, neither Party shall enter into any settlement in respect of a Third-Party Claim without the other Party's written consent.

## 21. REPRESENTATIONS AND WARRANTIES

### 21.1 Development Entity Representations and Warranties

The Development Entity hereby represents and warrants to the Department that:

(a) The Financial Model (i) was prepared by or on behalf of the Development Entity in good faith and utilizes the same financial formulas that the Development Entity utilized and is utilizing in making its decision to enter into this PPA and in making disclosures to potential equity investors and Lenders under the Financing Documents, (ii) represents the projections that the Development Entity believes in good faith are the most realistic and reasonable for the Project, (iii) was audited and verified by an independent recognized model auditor prior to the date of this PPA and such audit will be updated within forty-eight (48) hours after the Financial Closing Date, and (iv) fully discloses all cost, revenue and other financial assumptions and projections that the Development Entity has used or is using in making its decision to enter into this PPA and in making disclosures to Lenders under the Financing Documents; **provided**, **however**, that such projections (A) are based upon a number of estimates and assumptions, (B) are subject to significant business, economic and competitive uncertainties and contingencies, and (C) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

(b) The Development Entity has all required authority, license status, professional ability, skills and capacity to perform the Work.

(c) Without limiting its rights and remedies expressly granted hereunder, the Development Entity has evaluated the constraints affecting design and construction of the Project, including each of the Project Sites, as well as the conditions of the Governmental Approvals then in effect, and has reasonable grounds for believing, and does believe, that the Project can be designed and built within such constraints.

(d) Without limiting its rights and remedies expressly granted hereunder as of the Setting Date, the Development Entity has, in accordance with Good Industry Practice, examined each Project Site and surrounding locations, investigated and reviewed the Disclosed Information, and other available public and private records, and undertaken other activities sufficient to familiarize itself with each Project Site or surrounding locations; and as a result of such review, inspection, examination and other activities the Development Entity is familiar with and, subject to the provisions of this PPA, accepts the physical requirements of the Work; **provided** that the same shall not diminish, reduce or otherwise affect any of the Development Entity's rights under this PPA, including, without limitation, its rights pursuant to Article 12 (Supervening Events).

(e) To the extent given access on or prior to the date hereof, the Development Entity has familiarized itself with the requirements of any and all Applicable Laws, including those Applicable Laws applicable to the use of federal-aid funds, and the conditions of any required Governmental Approvals then in effect prior to entering into this PPA. Except as specifically permitted in this PPA, the Development Entity shall be responsible for complying with all Applicable Laws at its sole cost and without any increase in compensation or extension of any deadlines in the Project Working Schedule on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Project Documents. The Development Entity has no reason to believe that any Governmental Approval required to be obtained by the Development Entity will not be granted in due course and, thereafter, remain in effect so as to enable the Work to proceed in accordance with the Project Documents.

(f) All Work furnished by the Development Entity will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the Commonwealth, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Project Documents.

(g) The Development Entity is a [●] duly organized and validly existing under the laws of [●], has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this PPA, and the Principal Development Entity Documents to which the Development Entity is a party and to perform each and all of the obligations of the Development Entity provided for herein and therein. The Development Entity is duly qualified to do business, and is in good standing, in the Commonwealth.

(h) The execution, delivery and performance of this PPA and the Principal Development Entity Documents to which the Development Entity is (or will be) a party have been (or

will be) duly authorized by all necessary [●] action of the Development Entity; each person executing this PPA and such Principal Development Entity Documents on the Development Entity's behalf has been (or at the time of execution will be) duly authorized to execute and deliver each such document on the Development Entity's behalf; and this PPA and such Principal Development Entity Documents have been (or will be) duly executed and delivered by the Development Entity.

(i) Neither the execution and delivery by the Development Entity of this PPA and the Principal Development Entity Documents to which the Development Entity is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the organizational documents of the Development Entity or any other material agreements or instruments to which it is a party or which are binding on the Development Entity or any of its property or assets or in a material default or violation of any Applicable Law.

(j) Each of this PPA and the Principal Development Entity Documents to which the Development Entity is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of the Development Entity, enforceable against the Development Entity and, if applicable, each member of the Development 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.

(k) There is no action, suit, proceeding, investigation or litigation pending or served on the Development Entity or, to the Development Entity's knowledge, threatened which (i) would reasonably be expected to have a material adverse effect on the ability of the Development Entity to perform its obligations under any Project Document or (ii) challenges the Development Entity's authority to execute, deliver or perform, or the validity or enforceability of, this PPA and the Principal Development Entity Documents to which the Development Entity is a party, or which challenges the authority of the Development Entity's representative executing this PPA or such Principal Development Entity Documents; and the Development Entity has disclosed to the Department any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Development Entity is aware.

(l) The audited consolidated financial statements of each of the Development Entity (to the extent available), the Equity Members, the D&C Contractor, the Lead Engineering Firm and/or the Lead Maintenance Firm (or the audited consolidated financial statements of the parent company of such Key Contractor, in the case of any such Key Contractor that is a special purpose vehicle) for the most recent reporting year prior to submission of the Proposal for which such audited statements are available have been prepared on a basis consistently applied and using GAAP or equivalent accounting principles utilized and generally accepted in the country of incorporation of such party, and audited by an independent certified public accountant (applying GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of such party) and give a true and fair view of the consolidated financial condition of each such entity or group (as applicable) and are unqualified for the accounting period in question; **provided**, that in the case of the Development Entity, such financial statements shall be on a *pro forma* basis.

(m) As of the date hereof, there has been no material adverse change in the financial condition of the Development Entity, the Equity Members, the D&C Contractor, the Lead Engineering Firm and/or the Lead Maintenance Firm or the parent company of any such Key Contractor since the date of its most recent audited financial statements that would have a material adverse effect on the Development Entity's ability to perform its obligations under this PPA and the other Project Documents.

(n) All written information and certifications furnished by or on behalf of the Development Entity to the Department, or any of its representatives or advisors, as part of or in connection with the Proposal and the negotiation of this PPA or the Project Documents or delivered by or on behalf of the Development Entity to the Department or any Person on its behalf pursuant to this PPA was true and accurate in all material respects when given and is true on the date on which this representation is made or repeated and taken as a whole and there are no other facts or matters the omission of which made any statement or information contained in the written information provided to the Department or to any of its representatives or advisors misleading in any material respect as of the relevant date of delivery thereof or the date on which this representation is made or repeated and all expressions of opinion contained therein were honestly made on reasonable grounds after due and careful enquiry.

(o) The legal, beneficial and equitable ownership of the Development Entity and the indirect ownership of the Development Entity by each Qualified Investor are as set out in Appendix 2 (List of Equity Members, Qualified Investors and Related Entities) and no arrangements are in place that will result in, or may reasonably be likely to result in, a Restricted Change in Ownership.

### 21.2 Department Representations and Warranties

The Department hereby represents and warrants to the Development Entity that:

(a) The Department is an executive agency of the Commonwealth, and has the requisite power and all required licenses to carry on its present activities and those proposed under the Principal Department Documents.

(b) The Department has the full power and authority to execute, deliver and perform each Principal Department Document and to carry out the transactions contemplated thereby. The execution, delivery and performance of each Principal Department Document, and the performance of the transactions contemplated thereby, have been duly and validly authorized by all necessary action of the Department. Each Principal Department Document has been duly and validly executed and delivered by the Department, and each constitutes a valid and binding obligation of the Department, enforceable against the Department in accordance with its terms, subject only to:

(i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Laws now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies;

(ii) the effect of Applicable Laws governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;

(iii) the effect of Applicable Law governing enforcement and collection of damages against the Department, including, without limitation, the doctrine of sovereign immunity; and

(iv) Applicable Law concerning the review and approval of contracts, as to form and legality, by the Office of General Counsel of the Commonwealth and the Office of the Attorney General of the Commonwealth.

(c) The execution, delivery and performance of each Principal Department Document by the Department do not:

(i) violate any Applicable Law applicable to the Department or the Department's ability to fully perform its obligations thereunder;

(ii) require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not obtained or accomplished as of the Commercial Closing Date; or

(iii) to the knowledge of the Department, conflict with, or result in a default under or a violation of, any other agreement or instruments to which the Department is a party or by which it is bound.

(d) To the knowledge of the Department, there is no material action, suit, proceeding, investigation or litigation pending and served upon the Department that challenges either the Department's authority to execute, deliver, or perform any of the Principal Department Documents, the validity or enforceability of any of the Principal Department Documents, or the authority of the Department official executing any of the Principal Department Documents.

### 21.3 Repetition and survival of Representations and Warranties

The representations and warranties of the Development Entity and the Department contained herein are made on the date of this PPA and repeated on the date of Financial Close.

## 22. DEVELOPMENT ENTITY DEFAULT

### 22.1 Development Entity Default

The occurrence of any one or more of the following events or conditions shall constitute a **Development Entity Default**:

(a) the Development Entity (i) discontinues the performance of the Work for a period of sixty (60) or more consecutive days, or (ii) fails to resume discontinued Work as required by the Project Documents within sixty (60) days after the Department notifies the Development Entity to do so, **provided** that any period that the performance of the Work is discontinued in response to the occurrence of a Compensation Event or a Relief Event shall be deemed not to have occurred for the purposes of this Section 22.1(a);

(b) the Development Entity fails to comply with any Governmental Approvals or Applicable Law, including the Federal Requirements, in any material respect;

(c) the Development Entity fails in any material respect to make a payment to the Department under this PPA when due, or fails to deposit funds in the Handback Reserve Account in the amount and within the time period required by this PPA, in either case provided that the relevant payment or deposit (as applicable) is not subject to a good faith Dispute;

(d) subject to Sections 19.4 (Consequences of a risk becoming an Uninsurable Risk) and 19.5 (Unavailability of Insurance Terms), the Development Entity fails to obtain, provide and maintain the Insurance Policies in accordance with the requirements of this PPA;

(e) any failure by the Development Entity to comply with Article 29 (Assignment and Transfer; Fundamental Changes);

(f) a Restricted Change in Ownership occurs;

(g) any representation or warranty made by the Development Entity in the Project Documents or any certificate, schedule, report, instrument or other document delivered to the Department pursuant to the Project Documents is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;

(h) an Insolvency Event arises with respect to:

(i) the Development Entity; and/or

(ii) any D&C Contractor or D&C Guarantor (in each case only during the Construction Period) or Maintenance Contractor, unless:

(A) the Development Entity either:

I. enters into a replacement D&C Contract, guarantee or Maintenance Contract (as relevant) with a reputable counterparty reasonably acceptable to the Department within ninety (90) days of the relevant Insolvency Event; or

II. in the absence of entering into a replacement Maintenance Contract, the Development Entity otherwise demonstrates to the satisfaction of the Department that the Development Entity possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with the Project Documents; or

(B) with respect to any D&C Contractor that is part of a joint venture or Guarantor, the Development Entity demonstrates to the satisfaction of the Department that the D&C Contractor and the Guarantors in respect of which an Insolvency Event has not occurred possess the technical and financial capability to perform all remaining Work in accordance with the Project Documents in all respects;

(i) Any D&C Contract or Maintenance Contract is terminated (other than non-default termination on its scheduled termination date) and the Development Entity has not either:

(i) entered into a replacement D&C Contract or Maintenance Contract (as relevant) with a reputable counterparty reasonably acceptable to the Department within ninety (90) days of the termination of the relevant D&C Contract or Maintenance Contract (as relevant); or

(ii) in the absence of entering into a replacement Maintenance Contract, the Development Entity otherwise demonstrates to the satisfaction of the Department that the Development Entity possesses the technical and financial capacity to perform all remaining Maintenance Work in accordance with the Project Documents;

(j) the Development Entity fails to comply with any written suspension of Work order issued by the Department pursuant to Section 7.9 (Suspension of Construction Work) as soon as is practicable, except to the extent that such failure arises as a direct result of a Relief Event;

(k) the Development Entity fails to:

(i) commence the Construction Work by the Construction Commencement Deadline; or

(ii) achieve Substantial Project Completion by the Long Stop Deadline;

(l) a Persistent Breach occurs;

(m) subject to Section 12.3(c)(iii), a Persistent Closure occurs;

(n) subject to Section 12.3(c)(iii), a Development Entity Noncompliance Trigger Event occurs; and

(o) without limitation to clauses (a) to (n) (inclusive), any breach (other than (i) any breach for which a Noncompliance Point or an Unavailability Event could have been assessed, (ii) any breach for which liquidated damages are payable, or (iii) any breach that arises as a direct result of the occurrence of a Compensation Event or a Relief Event) by the Development Entity of any other material obligation under this PPA or any written repudiation of this PPA by the Development Entity.

### 22.2 Termination for Persistent Breach by the Development Entity

(a) **Warning Notice**

If the Development Entity commits a breach of this PPA (other than (i) any breach for which a Noncompliance Point or an Unavailability Event could have been assessed or (ii) any breach that arises as a direct result of the occurrence of a Compensation Event or a Relief Event) that continues for more than thirty (30) consecutive days or occurs more than three (3) times in any six (6)-month period then the Department may serve a notice (an **Initial Warning Notice**) on the Development Entity:

(i) specifying that it is an Initial Warning Notice;

(ii) giving reasonable details of the relevant breach; and

(iii) stating that the relevant breach is a breach which, if it recurs frequently or continues, may result in termination of this PPA for Persistent Breach.

(b) **Final Notice**

If the breach specified in an Initial Warning Notice continues beyond thirty (30) consecutive days or recurs in three (3) or more months within the six (6)-month period after the date of service of the Initial Warning Notice, then the Department may serve another notice (a **Final Warning Notice**) on the Development Entity:

(i) specifying that it is a Final Warning Notice;

(ii) stating that the breach specified has been the subject of an Initial Warning Notice served within the six (6)-month period prior to the date of service of the Final Warning Notice; and

(iii) stating that if the breach continues for more than thirty (30) consecutive days or recurs in three (3) or more months within the six (6)-month period after the date of service of the Final Warning Notice, this PPA may be terminated for Persistent Breach.

(c) **Currency of Warning Notices**

An Initial Warning Notice may not be served in respect of any incident of breach which has previously been the subject of an Initial Warning Notice.

**22.3 Initial Notice and Cure Periods**

The Department shall provide written notice to the Development Entity of the occurrence of a Development Entity Default. Upon receipt of the Department's notice (if required), the Development Entity shall have the following cure periods:

(a) For a Development Entity Default under Section 22.1(a) and Sections 22.1(c) through 22.1(f), a period of thirty (30) days after the Development Entity receives written notice from the Department of such Development Entity Default.

(b) For a Development Entity Default under Sections 22.1(b), 22.1(g) or 22.1(o) a period of thirty (30) days after the Development Entity receives written notice from the Department of such Development Entity Default; provided, that:

(i) if such Development Entity Default cannot be cured within such time period, despite the Development Entity's commencement of meaningful steps to cure immediately after receiving the default notice, then the Development Entity shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to effect cure; and

(ii) with respect to a Development Entity Default under Section 22.1(g), cure will be regarded as complete when the adverse effects of the breach are cured.

(c) For any other Development Entity Default not referred to in Section 22.3(a) or Section 22.3(b), there is no cure period.

**22.4 Department Remedies for Development Entity Default**

(a) **Remedial Plan**

(i) In the event that a Development Entity Default occurs and it has not been cured within any relevant cure period set out in Section 22.3 (Initial Notice and Cure Periods) the Department may, without prejudice to any other right or remedy available to it, require the Development Entity to prepare and submit, within twenty (20) Business Days of being notified of such requirement, a remedial plan that shall set out a schedule and specific actions to be taken by the Development Entity to cure the relevant Development Entity Default and reduce the likelihood of such defaults occurring in the future. Such actions may, amongst other things, include improvements to the Development Entity's quality management practices, plans and procedures, revising and restating management plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, and replacement of Contractors.

(ii) Within twenty (20) Business Days of receiving any remedial plan pursuant to Section 22.4(a)(i), the Department shall notify the Development Entity whether or not the relevant remedial plan is, in the Department's sole discretion, acceptable. If Department notifies the Development Entity that the relevant remedial plan is acceptable, the Development Entity shall implement such remedial plan in accordance with its terms.

(b) **Right of Termination**

In the event that a Development Entity Default occurs and it has not been cured within any relevant cure period set out in Section 22.3 (Initial Notice and Cure Periods) or (if relevant) in accordance with any remedial plan accepted by the Department pursuant to Section 22.4(a) (Remedial Plan), the Department may terminate this PPA in accordance with, and subject to the terms of, Section 24.5 (Termination for Development Entity Default).

**23. DEPARTMENT DEFAULT**

**23.1 Department Default**

The occurrence of any one or more of the following events or conditions shall constitute a **Department Default**:

(a) the Department fails to make any payment due to the Development Entity under this PPA when due; **provided**, that such payment is not subject to a good faith Dispute;

(b) any representation or warranty made by the Department under Section 21.2 (Department Representations and Warranties) is false or materially misleading or inaccurate when made in each case in any material respect or omits material information when made;

(c) the Department or any other Governmental Entity confiscates, sequesters, condemns or appropriates a material number of the Replacement Bridges, or the Development Entity's

Interest or any material part thereof, excluding the exercise of any right set out in this PPA;

(d) the Department has ceased to perform substantially all of its obligations under this PPA, which substantially frustrates or renders it substantially impossible for the Development Entity to perform its obligations under this PPA for a continuous period of two (2) months;

(e) any failure by the Department to comply with Article 29 (Assignment and Transfer; Fundamental Changes); or

(f) funds sufficient to make any payments under this PPA required to be made by the Department are not appropriated (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth) to the Department.

### 23.2 Initial Notice and Cure Periods

The Development Entity shall provide written notice to the Department of the occurrence of a Department Default. Upon receipt of the Development Entity's notice, the Department shall have the following cure periods with respect to the following Department Defaults:

(a) for a Department Default under Section 23.1(a), a period of thirty (30) days after the Development Entity delivers to the Department written notice of such a Department Default;

(b) for a Department Default under Section 23.1(d) or Section 23.1(f), a period of sixty (60) days after the Development Entity delivers to the Department written notice of such a Department Default;

(c) for a Department Default under Section 23.1(b) or Section 23.1(c), a period of thirty (30) days after the Development Entity delivers to the Department written notice of such a Department Default; **provided**, that if such Department Default cannot be cured within such time period, despite the Department's commencement of meaningful steps to cure immediately after receiving the default notice, then the Department shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to effect cure; and

(d) for any other Department Default not referred to in Sections 23.2(a), (b) and (c), there is no cure period.

### 23.3 Right of Termination

In the event that a Department Default occurs and it has not been cured within any relevant cure period set out in Section 23.2 (Initial Notice and Cure Periods), the Development Entity may terminate this PPA in accordance with Section 24.2 (Termination for Department Default).

### 23.4 Right of Suspension

For so long as a Department Default set out in Section 23.1(a) has occurred and remains uncured, the Development Entity may suspend performance of the Work.

## 24. TERMINATION

### 24.1 Termination for Convenience

(a) The Department may terminate this PPA at any time on or before the last day of the Term by complying with its obligations under Section 24.1(b).

(b) If the Department wishes to terminate this PPA under this Section 24.1 (Termination for Convenience), it must give a Termination Notice to the Development Entity stating:

(i) that the Department is terminating this PPA under this Section 24.1 (Termination for Convenience); and

(ii) that this PPA will terminate on the date specified in the notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the notice.

(c) This PPA will terminate on the date specified in the Termination Notice referred to in Section 24.1 (Termination for Convenience).

(d) If this PPA is terminated pursuant to this Section 24.1 (Termination for Convenience), the Department shall pay the Department Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

### 24.2 Termination for Department Default

(a) If a Department Default occurs and it has not been cured within any relevant cure period set out in Section 23.2 (Initial Notice and Cure Periods), the Development Entity may serve a Termination Notice (**Development Entity Termination Notice**) on the Department at any time during the continuance of that Department Default.

(b) A Development Entity Termination Notice must specify the type of Department Default which has occurred entitling the Development Entity to terminate.

(c) This PPA will terminate on the date falling twenty (20) Business Days after the date the Department receives the Development Entity Termination Notice.

(d) If this PPA is terminated pursuant to this Section 24.2 (Termination for Department Default), the Department shall pay the Department Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

### 24.3 Termination by Court Ruling

(a) Termination by Court Ruling becomes effective and automatically terminates this PPA upon issuance of the final, non-appealable court order by a court of competent jurisdiction.

(b) If this PPA is terminated pursuant to this Section 24.3 (Termination by Court Ruling), the Department shall pay the Department Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

**24.4 Termination for Extended Force Majeure**

(a) **Effect of Force Majeure on Obligations**

No Party shall be entitled to bring a claim for a breach of obligations under this PPA by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event (except as contemplated below). During the continuance of any Force Majeure Event, the Affected Party shall be excused from performing those of its obligations directly affected by such Force Majeure Event; **provided** that the occurrence or continuance of any Force Majeure Event shall not (i) excuse any Party from performing any payment obligations contemplated under this PPA or any other Project Document, or (ii) relieve the Development Entity from the assessment of payment deductions attributable to Noncompliance Events or Closures that occur during the continuance of any Force Majeure Event.

(b) **Notification for Force Majeure**

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

(c) **Consultation**

As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all Reasonable Efforts to agree to appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this PPA.

(d) **Unable to Agree**

If no such terms are agreed on or before the date falling one hundred twenty (120) days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its relevant obligations under this PPA for a continuous period of more than one hundred eighty (180) days (including, if applicable, the one hundred twenty (120) day period referred to above), then, subject to Section 24.4(e) (Consequences of Termination), either Party may terminate this PPA by giving twenty (20) Business Days' written notice to the other Party.

(e) **Consequences of Termination**

If this PPA is terminated pursuant to Section 19.4(a), Section 24.4(d) (Unable to Agree) or Section 24.4(f) (Notice to Continue), the Department shall pay the Extended Force Majeure Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

(f) **Notice to Continue**

If the Development Entity gives notice to the Department under Section 24.4(d) (Unable to Agree) during the Maintenance Period that it wishes to terminate this PPA, then the Department has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this PPA to continue. If the Department gives the Development Entity such notice, then:

(i) the Department shall pay to the Development Entity each Monthly Disbursement from the day after the date on which this PPA would have terminated under Section 24.4(d) (Unable to Agree) as if the Works were being fully provided in accordance with the requirements of this PPA and all other amounts, including losses and expenses caused by any damage or delay (to the extent not covered by insurance proceeds), including by Force Majeure Events;

(ii) this PPA will not terminate until expiration of written notice (of at least twenty (20) Business Days) from the Department to the Development Entity that it wishes this PPA to terminate; and

(iii) the Development Entity will be responsible for the continuation of the Maintenance Work only to the extent practicable.

(g) **Mitigation**

The Parties shall at all times following the occurrence of a Force Majeure Event use all Reasonable Efforts to prevent and mitigate the effects of any delay and the Development Entity shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimize the consequences of the Force Majeure Event.

(h) **Cessation of Force Majeure Event**

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this PPA. Following such notification this PPA shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

**24.5 Termination for Development Entity Default**

(a) If a Development Entity Default occurs and it has not been cured within any relevant cure period set out in Section 22.3 (Initial Notice and Cure Periods) or (if relevant) in accordance with any remedial plan accepted by the Department pursuant to Section 22.4(a) (Remedial Plan), the Department may serve a Termination Notice (the **Department Termination Notice**) on the Development Entity at any time during the continuance of that Development Entity Default.

(b) The Department Termination Notice must specify the type of Development Entity Default which has occurred and entitled the Department to serve the Department Termination Notice.

(c) Subject to the terms of the Direct Agreement, this PPA will terminate on the date falling twenty (20) Business Days after the date the Development Entity receives the Department Termination Notice.

(d) If this PPA is terminated pursuant to this Section 24.5 (Termination for Development Entity Default), the Department shall pay the Development Entity Default Termination Sum to the Development Entity in accordance with Schedule 6 (Compensation on Termination).

**24.6 Termination for Failure to Achieve Financial Close**

(a) 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 of the following (and in such event this PPA may be terminated pursuant to Section 24.6(b)):

(i) if PABs are part of the Development Entity's Financing, the refusal or unreasonable delay of the PABs Issuer to issue the PABs in the amount that the Development Entity's underwriters are prepared to underwrite; **provided** that such refusal or delay is not due to any fault or less than diligent efforts of the Development Entity;

(ii) if PABs are part of the Development Entity's Financing:

(A) the refusal of bond counsel to the PABs Issuer to allow closing of the PABs where such bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs; or

(B) the unreasonable delay of bond counsel to the PABs Issuer in authorizing closing of the PABs;

(iii) if PABs are part of the Development Entity's Financing and the PABs allocation obtained by the Department expires, and the Development Entity was not able to reach Financial Close prior to such expiry due to delays directly attributable to the Department, or the USDOT reduces the amount of, or otherwise withdraws, such PABs allocation, such that the allocation is less than the allocation of PABs required by the Development Entity's Financing;

(iv) if each Development Entity Conditions Precedent (other than the conditions referred to in Sections 2.3(c) (Financial Close) and 2.3(g) (Representations and Warranties of the Department) (to the extent it requires that representations and warranties be correct as at the Financial Closing Date) has been satisfied and any Department Conditions Precedent is not satisfied (unless otherwise agreed by the Parties) on or before the Financial Closing Deadline; or

(v) the occurrence of a Compensation Event described in clause (f) of the definition thereof.

(b) If Financial Close does not occur by the Financial Closing Deadline and such failure is directly attributable to any of the contingencies set out in Section 24.6(a), then either Party shall have the right to terminate this PPA in its entirety by written notice to the other Party with immediate effect, other than as provided in Section 24.6(e). Within ten (10) days following receipt of such notice in accordance with this PPA, and so long as no Party is disputing pursuant to Article 30

(Dispute Resolution Procedures) whether the other Party has the right to terminate this PPA, the Department shall return the Closing Security to the Development Entity.

(c) If any Development Entity Condition Precedent is not satisfied or waived in writing by the Department on or before the Financial Closing Deadline, the Department shall have the right to:

(i) terminate this PPA in its entirety, other than as provided for in Section 24.6(e), by written notice to the Development Entity with immediate effect; and/or

(ii) draw and retain the full amount of the Closing Security as the sole remedy of the Department against the Development Entity hereunder.

(d) The right of the Department to draw upon the Closing Security under Section 24.6(c)(ii) is not intended to constitute a penalty, but is intended to be, and shall constitute, liquidated damages to compensate the Department for the cost of forgoing alternative opportunities and for other costs incurred by the Department in reliance upon the Development Entity's agreement to enter into the transactions contemplated hereby. The Parties acknowledge that it is difficult to ascertain the amount of actual damages that would be incurred by the Department in such circumstances, and that such liquidated damages are a reasonable estimate of the presumed actual damages that would be incurred by the Department.

(e) If this PPA terminates pursuant to this Section 24.6 (Termination for Failure to Achieve Financial Close), neither Party shall have any obligation or liability to the other Party, except:

(i) if this PPA is terminated pursuant to Section 24.6(c), as set out in Section 24.6(c)(ii) or Section 24.6(e)(iv);

(ii) in respect of any antecedent breach of this PPA;

(iii) in respect of Section 32.19 (Confidentiality), which shall remain in full force and effect notwithstanding the non-satisfaction of the Financial Closing Conditions Precedent; and

(iv) if either Party terminates this PPA pursuant to Section 24.6(b), the Department shall pay the Development Entity compensation in accordance with Schedule 6 (Compensation on Termination)

## 24.7 Termination Procedures and Duties

Upon expiration of the Term or any Early Termination for any reason, the provisions of this Section 24.7 (Termination Procedures and Duties) shall apply. Except as expressly provided otherwise in this Section 24.7 (Termination Procedures and Duties), the Development Entity shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due the Development Entity or the Department on account of termination.

(a) **Transition Plan**

(i) Within three (3) days after receipt by the relevant Party of a Termination Notice, the Parties shall meet and confer with each other for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and

transfer of control of the Project and Project Sites to the Department. The Parties shall use diligent efforts to complete preparation of the interim transition plan within fifteen (15) days after the date the relevant Party receives the Termination Notice.

(ii) The Parties shall use diligent efforts to complete a final transition plan within thirty (30) days after receipt by the relevant Party of a Termination Notice. The final transition plan shall be in form and substance reasonably acceptable to the Department and shall include and be consistent with the other provisions and procedures set out in this Section 24.7 (Termination Procedures and Duties), all of which procedures the Development Entity shall promptly follow, regardless of any delay in preparation or acceptance of the interim or final transition plan. The final transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan.

(b) **Handback of the Project**

(i) On the Termination Date, or as soon thereafter as is possible as provided in the final transition plan, the Development Entity shall relinquish and surrender full control of, and Access to, the Project and Project Sites to the Department or the Department's Authorized Representative, and shall cause all Persons claiming under or through the Development Entity to do likewise, in at least the condition required by the Handback Requirements.

(ii) On the later of the Termination Date or the date the Development Entity relinquishes control and Access as provided in the final transition plan, the Department shall assume responsibility, at its expense (subject to the right to recover damages under this PPA), for the Project and the Project Sites.

### 24.8 Exclusive Termination Rights

This Article 24 (Termination) and Schedule 6 (Compensation on Termination) contain the entire and exclusive provisions and rights of the Department and the Development Entity regarding termination of this PPA, and any and all other rights to terminate under Applicable Law are hereby waived to the maximum extent permitted by Applicable Law.

## 25. DEPARTMENT STEP-IN

### 25.1 Right to Step-in

If the Department reasonably believes that it needs to take action in connection with the Works because:

(a) an Emergency has arisen;

(b) a Development Entity Default has arisen and has not been cured within any relevant cure period set out in Article 22 (Development Entity Default); or

(c) the Development Entity has failed to meet any Safety Standard or comply with any Safety Compliance Order within a reasonable period of time under the circumstances,

then, subject to the Direct Agreement, the Department shall be entitled to take action in accordance with Sections 25.2 (Notice to the Development Entity) through 25.5 below.

**25.2 Notice to the Development Entity**

If Section 25.1 (Right to Step-in) applies and the Department wishes to take action, the Department shall notify the Development Entity in writing of the following:

(a) the action it wishes to take;

(b) the reason for such action;

(c) the date it wishes to commence such action;

(d) the time period which it believes will be necessary for such action; and

(e) to the extent practicable, the effect on the Development Entity and its obligation to carry out the Works during the period such action is being taken;

**provided** that in the case of an Emergency, the Department shall have the right to take any action it reasonably believes is necessary in order to mitigate or contain such Emergency without prior notice to the Development Entity.

**25.3 Action by Department**

(a) Following service of such notice or the occurrence of an Emergency, the Department shall take any of the actions referred to in Section 25.2 (Notice to the Development Entity) and any consequential additional action as it reasonably believes is necessary (together, the **Required Action**) and the Development Entity shall use Reasonable Efforts to give all assistance to the Department while it is taking the Required Action. The Department shall provide the Development Entity with notice of completion of the Required Action and shall use Reasonable Efforts to provide such advance notice as is reasonably practicable of its anticipated completion.

(b) The Department shall undertake all Required Actions to at least the same applicable standards achieved on Comparable Facilities in respect of substantially similar work.

**25.4 Step-in without Development Entity Breach**

If the Development Entity is not in breach of its obligations under this PPA, then for so long as and to the extent that the Required Action is taken, and to the extent this prevents the Development Entity from performing its obligations under this PPA:

(a) the Development Entity shall be relieved from performing its relevant obligations under this PPA; and

(b) in respect of the period in which the Department is taking the Required Action and; **provided**, that the Development Entity provides the Department with reasonable assistance (such assistance to be at the expense of the Department to the extent that incremental costs are incurred):

(i) such Required Action shall be deemed to be a Compensation Event for the purposes of this PPA; and

(ii) any Noncompliance Event or Closures that arise as a direct result of the Required Action shall, for the purposes of this PPA, be deemed not to have occurred.

### 25.5 Step-in on Development Entity Breach

If the Required Action is taken as a result of a breach of the obligations of the Development Entity under this PPA or any Priority 0 Noncompliance, then for so long as and to the extent that the Required Action is taken, and this prevents the Development Entity from carrying out any part of the Works:

(a) the Development Entity shall be relieved of its obligations to carry out such part of the Works; and

(b) in respect of the period following the application of any relevant Priority 0 Hazard Mitigation cure period herein in which the Department is taking the Required Action, any Noncompliance Event or Closure that arises as a direct result of the Required Action shall, for the purposes of this PPA, be deemed to have not occurred, but an amount equal to all the Department's reasonable and proper costs in taking the Required Action shall be deducted from the Monthly Disbursement.

## 26. MAINTENANCE AND INSPECTION OF RECORDS

### 26.1 Maintenance and Inspection of Records

(a) The Development Entity shall keep and maintain within the Commonwealth (or other location approved by the Department in writing in its sole discretion) all books, records and documents relating to the Project, Project Sites, or Work, including copies of all original documents delivered to the Department. The Development Entity shall keep and maintain such books, records and documents in accordance with applicable provisions of the Project Documents and in accordance with Good Industry Practice. The Development Entity shall notify the Department where such records and documents are kept.

(b) The Development Entity shall make all its books, records and documents available for inspection by the Department and by the Commonwealth in connection with the Commonwealth audits under Section 26.2 (Audits), at the Development Entity's offices within the Commonwealth (or other location approved by the Department in writing in its sole discretion) at all times during normal business hours, without charge. The Development Entity shall provide to the Department copies thereof as and when reasonably requested by the Department. The Department may conduct any such inspection upon forty-eight (48) hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud or criminal activity. The right of inspection includes the right to make extracts and take notes.

(c) The Development Entity shall retain records and documents for a minimum of six (6) years after the date the record or document is generated; **provided**, that if the Project Documents specify any different time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records, which relate to Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any

later date that such Disputes and actions are finally resolved; provided, that the Development Entity reserves the right to assert exemptions from disclosure of information that would be exempt under Applicable Law from disclosure or introduction into evidence in legal actions.

### 26.2 Audits

(a) In addition to any other specific audit rights that the Department may have under the Project Documents, the Commonwealth shall have such rights to review and audit the Development Entity, its Contractors and their respective books and records as the Commonwealth deems necessary for purposes of verifying compliance with the Project Documents and Applicable Law. Without limiting the foregoing, the Commonwealth shall have the right to audit the Development Entity's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and other relevant Project Documents.

(b) The Commonwealth's audit rights include the right to observe the business operations of the Development Entity and its Contractors to confirm the accuracy of books and records.

(c) The Development Entity shall include in the Project Management Plan internal procedures to facilitate review and audit by the Commonwealth and, if applicable, the federal government and any agency thereof, including FHWA.

(d) The Development Entity represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with the Commonwealth audits, 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 the Commonwealth audits.

(e) The Development Entity's internal and third-party quality and compliance auditing responsibilities shall be set out in the Project Management Plan.

(f) The Development Entity shall (and shall procure that any Contractor or subcontractor shall) include appropriate terms in each Contract in order to provide the Department and the Commonwealth with access and audit rights (as applicable) in accordance with the terms of this Article 26 (Maintenance and Inspection of Records).

## 27. INTELLECTUAL PROPERTY

### 27.1 Intellectual Property

(a) The Development Entity shall make available to the Department free of charge (and hereby, for itself and on behalf of each Development Entity-Related Entity, irrevocably licenses the Department to use) all Project Data in its ownership or possession or the ownership or possession of a Development Entity-Related Entity that might reasonably be required by the Department and the Development Entity shall ensure that it obtains all necessary licenses, permissions and consents to ensure that it can make the Project Data available to the Department on these terms, for the purposes of:

(i) the Department making the Project available to traffic and the public and operating the Project generally; and

(ii) following termination of this PPA, the design or construction of the Replacement Bridge, the maintenance or improvement of the Replacement Bridge and/or the provision of works and/or services the same as or similar to the Works (it being understood and agreed between the parties that any use of the Project Data, including but not limited to the Intellectual Property associated with such Project Data, other than in connection with any Replacement Bridge, is on an "AS IS" basis, and no representations or warranties, express or implied, are provided as to such Project Data and related Intellectual Property, including no representation or warranty against infringement or fitness for particular purpose,

and in this Section 27.1(a) "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly. As between the Parties, the Project Data, and all Intellectual Property encompassed therein, is and shall remain the property of the Development Entity-Related Entities and their licensors, notwithstanding the Development Entity licensing and otherwise making that Project Data available to the Department.

(b) The Department shall have and is hereby granted by the Development Entity, for itself and on behalf of each Development Entity-Related Entity, a nonexclusive, transferable (subject to Section 27.1(d)), royalty-free, irrevocable, worldwide, fully paid up right and license to use, reproduce, modify, adapt, disclose to and sublicense to other persons engaged by or on behalf of the Department (directly or indirectly), the Intellectual Property owned or licensable by any Development Entity-Related Entity; **provided**, that the Department shall have the right to exercise such license only in connection with the Department's performance of its statutory duties.

(c) The Department shall have no right to sell any Intellectual Property of the Development Entity or to use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Intellectual Property for any other purpose other than as set out in Section 27.1(b) and must ensure that any Person to which it discloses any Intellectual Property pursuant to the licenses granted under this Section 27.1 (Intellectual Property) agrees to be bound by the provisions of this Section 27.1 (Intellectual Property) and the confidentiality obligations set out in Section 32.19 (Confidentiality) of this PPA with respect to that Intellectual Property.

(d) The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of the Department generally or with respect to the Project.

(e) The Development Entity shall continue to have a full and complete right to use any and all duplicates or other originals of its Intellectual Property in any manner it chooses.

(f) With respect to any Intellectual Property that is not owned or licensable by a Development Entity-Related Entity, the Development Entity shall use Reasonable Efforts to obtain from the owner of that Intellectual Property (or any person entitled to license that Intellectual Property), concurrently with execution of any contract, subcontract or purchase order with such Person or with the first use or adaptation of the Intellectual Property in connection with the Project, both for the Development Entity and the Department, a nonexclusive, transferable (subject to Section 27.1(d)), irrevocable, royalty-free license to use, reproduce, modify, adapt and disclose such Intellectual Property solely in connection with the Project of at least identical scope, purpose, duration and applicability as the license granted under Section 27.1(b). Any such license shall be subject to the terms of this Article 27 (Intellectual Property).

### 27.2 Maintenance of Data

(a) To the extent that any data, materials and documents referred to in this Article 27 (Intellectual Property) are generated by or maintained on a computer or similar system, the Development Entity shall use Reasonable Efforts to procure for the benefit of the Department, at no charge or at the lowest reasonable fee, the grant of a license or sublicense for any relevant software to enable the Department or its nominee to access and otherwise use (subject to the payment by the Department of the relevant fee, if any) such data for the purposes set out in Section 27.1 (Intellectual Property). As an alternative, the Development Entity may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format.

(b) The Development Entity shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Section 27.2(a) in accordance with Good Industry Practice. Without prejudice to this obligation, the Development Entity shall submit to the Department's Authorized Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and the Department shall be entitled to object if the same is not in accordance with Good Industry Practice. The Development Entity shall comply, and shall use Reasonable Efforts to cause all the Development Entity-Related Entities to comply, with all procedures to which the Department's Authorized Representative has given its approval. The Development Entity may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Department's Authorized Representative, who shall be entitled to object on the basis set out above.

### 27.3 Indemnity

Where a claim or proceeding is made or brought against the Department, which alleges that the use of any Intellectual Property provided to the Department under the terms hereof or that the use of any materials, plant, machinery or equipment in connection with the Works or the Project by the Department or a Development Entity-Related Entity, infringes any intellectual property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Department otherwise than in accordance with the terms of this PPA, the Development Entity shall indemnify the Department at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of Article 20 (Development Entity Indemnity) shall apply.

## 28. FEDERAL REQUIREMENTS

### 28.1 Compliance with Federal Requirements

The Development Entity shall comply, and shall require its Contractors to comply, with federal Applicable Law, including, without limitation, the Federal Requirements. Notwithstanding whether or not:

(a) the Development Entity's financing under the Financing Documents incorporates federal assistance pursuant to Title 23, United States Code;

(b) any Replacement Bridge otherwise receives such assistance; or

(c) any Replacement Bridge is located on a roadway functionally classified as a local road or rural minor collector;

each Replacement Bridge comprising the Project, and the Project, shall be deemed to be a federal-aid highway project. The Development Entity shall comply, and shall require its Contractors to comply, with the Federal Requirements in its performance of this PPA as if (i) each Replacement Bridge has received federal assistance pursuant to Title 23, United States Code and (ii) federal Applicable Law applies to such Replacement Bridge.

**28.2 Federal Status of Project**

(a) The Development Entity acknowledges that FHWA has designated the Project as a "Major Project" under 23 USC § 106, which imposes certain reporting and coordination requirements on the Department. To assist the Department in the preparation of its financial plan in respect of the Department's obligations to FHWA, no later than June 30 of each year, commencing on the June 30 following the Commercial Closing Date, the Development Entity shall provide to the Department and FHWA certain information, including, but not limited to, project costs (including project development and construction costs, operating and maintenance costs and financing costs), cost and funding trends, cash flows, project status, project schedule and risk and response strategies. The Development Entity may be requested to provide other information as necessary in order to comply with FHWA's reporting requirements for "Major Projects".

(b) The Development Entity also acknowledges that certain Replacement Bridges will be part of the National Highway System, as defined in 23 CFR § 470, that such Replacement Bridges must meet federal design and construction requirements for facilities on the National Highway System, and that the Work applicable to such Replacement Bridges is intended to incorporate such federal design and construction requirements.

(c) The Development Entity acknowledges that FHWA has agreed to exempt the Project from certain requirements of 23 CFR 636.109 pursuant to FHWA's "Special Experimental Project #15" (the **SEP-15 Program**). The Development Entity understands that, as a condition to the Project's participation in the SEP-15 Program, FHWA will require the Department to prepare certain studies, evaluations, and reports with respect to the performance of the Project and the experimental value of the Project's participation in the SEP-15 Program. Accordingly, the Development Entity agrees to provide the Department, at the Department's request, such information reasonably required by the Department to comply with its obligations to FHWA in connection with the SEP-15 Program, including, without limitation, information concerning the cost and schedule of performing environmental evaluations (including the costs of engaging environmental consultants), procuring permits, and conducting environmental mitigation.

**28.3 Cooperation with FHWA**

The Development Entity shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Project.

**28.4 Conflicting Provisions**

In the event of any conflict between any Federal Requirements and the other requirements of the Project Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

## 29. ASSIGNMENT AND TRANSFER; FUNDAMENTAL CHANGES

### 29.1 Assignment by the Development Entity

Subject to Section 29.2 (Security), the Development Entity shall not assign or transfer any of its rights or obligations under this PPA without the written consent of the Department.

### 29.2 Security

The provisions of Section 29.1 (Assignment by the Development Entity) do not apply to the grant of any security for any financing extended to the Development Entity (directly or indirectly) under the Financing Documents or to the enforcement of the same.

### 29.3 Assignment by the Department

The Department may assign all or any portion of its rights, title and interests in and to this PPA, the Project, the Project Sites, appropriations, Project Documents, Construction Security, guarantees, letters of credit and other security for payment or performance:

(a) without the Development Entity's consent, to any other Governmental Entity of the Commonwealth that:

(i) succeeds to the governmental powers and authority of the Department, including the power and authority to request appropriations; and

(ii) has the sources of funding for the Milestone Payments and Availability Payments that are at least as adequate and secure as the Department's at the time of the assignment; and

(b) to others with the prior written consent of Development Entity.

### 29.4 Change of Organization or Name

(a) The Development Entity shall not change the legal form of its organization without providing prior written notice to the Department.

(b) If either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

## 30. DISPUTE RESOLUTION PROCEDURES

### 30.1 General

The Parties agree to use Reasonable Efforts to resolve promptly any Dispute pursuant to the terms of this Article 30 (Dispute Resolution Procedures).

### 30.2 Consultation

If any Dispute arises in relation to any aspect of the Project Documents, the Development Entity and the Department shall consult in good faith in an attempt to come to an agreement.

Participation in consultation shall not excuse a failure to comply with the time limits set out in Sections 30.3 (Written Protest to Department) and 30.4 below.

**30.3 Written Protest to Department**

(a) Without prejudice to Section 30.2 (Consultation), the Development Entity shall submit a Dispute by way of a written protest to the Department within fifteen (15) days of the Dispute arising, outlining in detail the basis of the Dispute, the Development Entity's position relative to the Dispute and submitting all relevant documentation. Such written protest shall not constitute a claim for purposes of 62 Pa. C.S. § 1712.1. The Department shall have fifteen (15) days following the receipt of such written protest from the Development Entity to render a written decision on the Dispute taking into consideration the relevant Project Documents and the Development Entity's submission, together with the facts and circumstances involved in the Dispute. Such written decision shall not constitute a determination by the relevant contracting officer of the Department for purposes of 62 Pa. C.S. § 1712.1.

(b) If the Development Entity objects to the Department's written decision, the Development Entity may file a written rebuttal with the Department within ten (10) days after its receipt of the written decision, stating clearly and in detail the basis for the objection. Such written rebuttal shall not constitute a claim for purposes of 62 Pa. C.S. § 1712.1.

(c) The Department will review the Development Entity's written rebuttal and issue a final written decision to the Development Entity within ten (10) days after receipt of the rebuttal. Such final written decision shall not constitute a determination by the contracting officer of the Department for purposes of 62 Pa. C.S. § 1712.1.

(d) The Department's final written decision in response to the Development Entity's rebuttal is final and conclusive on the Dispute, unless within fifteen (15) days of the Department's final written decision, the Development Entity (i) files a claim in relation to the Dispute with the contracting officer pursuant to 62 Pa. C.S. § 1712.1(d) (a **Chapter 17 Claim**) and (ii) submits such Dispute to the proper Disputes Review Board as set out in Section 30.4 (Disputes Review Board).

**30.4 Disputes Review Board**

(a) In the event that the Parties are unable to reach agreement on a Dispute pursuant to Section 30.2 (Consultation), and in the case of a Dispute raised by the Development Entity, which is submitted to the Department under Section 30.3 (Written Protest to Department), and properly filed by the Development Entity in accordance with Section 30.3(d), then the Department or the Development Entity may submit such Dispute to both the Technical Disputes Review Board and the Financial Disputes Review Board for determination by the Disputes Review Boards jointly whether:

(i) such Dispute is of a technical nature (a **Technical Dispute**) and should be resolved by the Technical Disputes Review Board; or

(ii) such Dispute is of a financial nature (a **Financial Dispute**) and should be resolved by the Financial Disputes Review Board;

in each case subject to the terms of this Article 30 (Dispute Resolution Procedures); **provided**, that the Parties shall not refer Disputes with respect to the legal validity of this PPA to either Disputes Review Board for determination nor shall either Disputes Review Board make any

determination relating to the legal validity of this PPA. If the Disputes Review Boards are not able jointly to determine whether a Dispute is of a technical or financial nature, this issue shall be referred to the International Institute for Conflict Prevention and Resolution for determination.

(b) If a Dispute involves issues of a technical nature and issues of a financial nature, the Disputes Review Boards, acting reasonably, may refer such Dispute to the Technical Disputes Review Board and the Financial Disputes Review Board jointly. In such case, the two Disputes Review Boards shall cooperate in determining such Dispute.

(c) The Department and administrative procedures with respect to each of the Technical Disputes Review Board and Financial Disputes Review Board are set out in Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board Procedures). Unless otherwise agreed by the Parties, any Dispute may be submitted for resolution by the Technical Disputes Review Board or the Financial Disputes Review Board, as the case may be, in accordance with the following procedures:

(i) Upon submittal by either Party of the matter to Disputes Review Boards, the Relevant Disputes Review Board receiving such referral in accordance with Section 30.3(a) above (the **Relevant Disputes Review Board**) will decide when to conduct the hearing; **provided**, that the Relevant Disputes Review Board shall hold the hearing within twenty (20) days of the referral, unless the Parties agree to a longer time period.

(ii) Either Party may furnish written evidence or documentation to the Relevant Disputes Review Board regarding the Dispute. If either Party furnishes such information to the Relevant Disputes Review Board, it will furnish copies of such information to the other Party promptly after having provided it to the Relevant Disputes Review Board and in any event prior to the date the Relevant Disputes Review Board sets to convene the hearing for the Dispute. If the Relevant Disputes Review Board requests any additional documentation or evidence prior to, during, or after the hearing, the relevant Party will provide the requested information to the Relevant Disputes Review Board and to the other Party, in accordance with the deadlines set by the Relevant Disputes Review Board.

(iii) The Development Entity and the Department will each be afforded a reasonable opportunity to be heard by the Relevant Disputes Review Board and to offer evidence. Neither the Department nor the Development Entity may present information at the hearing that was not previously distributed to both the Relevant Disputes Review Board and the other Party.

(iv) The Disputes Review Board's recommendations for resolution of the Dispute will be given in writing to both the Department and the Development Entity within fifteen (15) days after completion of the hearings. In cases of substantial complexity, both Parties may agree to allow additional time for the Relevant Disputes Review Board to formulate its recommendations.

(v) Within fifteen (15) days of receiving the Relevant Disputes Review Board's recommendations, both the Department and the Development Entity will respond to the other and to the Relevant Disputes Review Board in writing, signifying either acceptance or rejection of the Relevant Disputes Review Board's recommendations. The failure of the Development Entity to respond within the fifteen (15) day period will be deemed an acceptance of the Relevant Disputes Review Board's recommendations by the

Development Entity. The failure of the Department to respond within the fifteen (15) day period or before the 120th day after its receipt of the related Chapter 17 Claim, whichever is earlier, will be deemed (A) a rejection of the Relevant Disputes Review Board's recommendations by the Department and (B) a denial of the Chapter 17 Claim in accordance with 62 Pa. C.S. § 1712.1(d).

(vi) The recommendations of the Relevant Disputes Review Board shall be final and binding only to the extent the Parties accept such recommendations, either expressly or to the extent deemed accepted by virtue of that Party's failure to respond within such fifteen (15) day period. If the Parties accept (or if the Development Entity is deemed to have accepted) any recommendation of the Relevant Disputes Review Board in accordance with this Section 30.4(c)(vi), each Party shall (unless otherwise specified in the relevant recommendation) give effect to such recommendation as soon as is reasonably practicable.

(vii) Should the Dispute remain unresolved, either Party may seek reconsideration of the decision by the Relevant Disputes Review Board only when there is new evidence to present.

**30.5 Right to Litigate Dispute**

(a) The Department and the Development Entity agree that the right of the Department or the Development Entity to proceed to litigation of any unresolved Dispute is subject to:

(i) the submission of such Dispute to the Relevant Disputes Review Board under this Article 30 (Dispute Resolution Procedures); and

(ii) where such Dispute is raised by the Development Entity:

(A) the proper filing of the related Chapter 17 Claim by the Development Entity in accordance with Section 30.3(d); and

(B) such claim remaining unresolved for at least 120 Days after the receipt thereof by the Department pursuant to 62 Pa. C.S. § 1712.1;

**provided**, however, that:

(iii) to the extent provided by Applicable Law, either Party may seek specific performance of any obligation under the Project Documents or injunctive relief following consultation as set out in Section 30.2 (Consultation); and

(iv) such condition shall not apply if there is a good faith determination by the disputing Party that a statute of limitations would expire pending any such process.

(b) If a recommendation of the Relevant Disputes Review Board is:

(i) not accepted (or deemed to have been accepted) by both Parties pursuant to Section 30.4(c)(v); or

(ii) accepted by both Parties, but a Party does not give effect to such recommendation in accordance with the requirements of Section 30.4(c)(vi), then

either Party may proceed to litigation of such unresolved Dispute, and all records and written recommendations of the Relevant Disputes Review Board will be admissible as evidence in any subsequent proceedings.

**30.6 Continuance of Work During Dispute**

During the course of the dispute resolution process, the Development Entity will continue with the Work (including any Work that is the subject of the Dispute) in a diligent manner and without delay or otherwise conform to the Department's decision or order, and will be governed by all applicable provisions of this PPA, and the Department shall continue to make payments of any amounts not in dispute pursuant to the terms of this PPA. Throughout any disputed Work, the Development Entity will keep complete records of extra costs and time incurred. The Development Entity will provide the Department and any Disputes Review Board members access to these and any other records needed for evaluating the Dispute.

**30.7 Joinder of Disputes**

(a) If any Dispute arising under the Project Documents raises issues, which relate to any dispute between the Development Entity and any Key Contractor, then the Development Entity may join as part of its submissions made to the Relevant Disputes Review Board any such dispute between it and any Key Contractor.

(b) Any submissions made by any Key Contractor shall be made within the time limits applicable to the delivery of submissions by the Development Entity and concern only those matters which relate to the dispute between the Department and the Development Entity under this PPA.

(c) The Department shall have no liability to any Key Contractor arising out of or in connection with any decision of the Relevant Disputes Review Board or in respect of the costs incurred by any Key Contractor as a result of participating in the resolution of any Dispute under the Project Document.

**30.8 Costs of Dispute Resolution**

Each Party will bear its own attorneys' fees and costs in any Dispute arising out of or pertaining to this PPA and no Party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided herein.

**31. SOLE REMEDY AND LIABILITIES**

**31.1 Common Law Rights of the Department**

Without prejudice to:

(a) any entitlement of the Department to specific performance of any obligation under the Project Documents;

(b) any entitlement of the Department to injunctive relief;

(c) any other express right of the Department pursuant to the Project Documents; and

(d) the Department's right to claim, on or after termination of this PPA, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of the Project Documents by the Development Entity, save to the extent that the same has already been recovered by the Department pursuant to this PPA or has been taken into account to calculate any compensation payable pursuant to Schedule 6 (Compensation on Termination),

the sole remedy of the Department in respect of Noncompliance Events and Closures shall be the Department's ability to assess Noncompliance Points and Unavailability Events, in each case in accordance with Article 11 (Noncompliance Events) and Schedule 8 (Payment Mechanism).

### 31.2 Consequential Losses

Save where stated to the contrary, neither Party shall have the right to claim damages, including punitive and incidental damages, against the other Party for breach of this PPA, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses. The Parties agree that, notwithstanding the foregoing limitation on each Party's liability, such limitation shall not apply to or limit either Party's right to recover from the other Party:

(a) any Losses of the Development Entity arising under the Key Contracts as originally executed (or as amended in accordance with the terms of this PPA), which are not of themselves Indirect Losses;

(b) any Losses (excluding defense costs) to the extent that they are either covered by the proceeds of insurance carried by the relevant Party or are required to be insured against pursuant to Article 19 (Insurance) or the Development Entity is deemed to have self-insured the Loss pursuant to Article 19 (Insurance);

(c) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party;

(d) Losses arising out of any Third-Party Claims in respect of a Hazardous Materials Release or Pre-Existing Hazardous Materials;

(e) amounts payable by the Development Entity to the Department under an indemnity set out in this PPA;

(f) amounts payable by the Department to the Development Entity pursuant to Section 12.2 (Compensation Events);

(g) any Monthly Maintenance Payment Deduction; or

(h) interest, late charges, fees, transaction fees and charges, penalties and similar charges that the Project Documents expressly state are due from the relevant Party.

Notwithstanding the foregoing, this Section 31.2 (Consequential Losses) shall not in any way be construed to limit the doctrine of sovereign immunity as applicable to the Department or the Commonwealth.

### 31.3 No Double Recovery

Notwithstanding any other provisions of this PPA to the contrary, neither Party shall be entitled to recover compensation or make a claim under this PPA in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this PPA or otherwise.

### 31.4 Contractor Losses

Where:

(a) a Contractor is entitled to claim any compensation and/or relief from the Development Entity under any Contract; and

(b) the Development Entity subsequently makes a claim against the Department under this PPA in relation to such compensation and/or relief,

the Department waives any right to defend the Development Entity's claim on the ground that the Development Entity is only required to pay compensation or grant relief to the Contractor under the relevant Contract to the extent that the same is recoverable from the Department.

## 32. MISCELLANEOUS

### 32.1 Amendments

The Project Documents may be amended only by a written instrument duly executed by the Parties or their respective permitted successors or assigns.

### 32.2 Waiver

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of any Project Document at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision thereof, any course of dealing or custom of the trade notwithstanding (other than the waived breach or failure in accordance with the terms of such waivers). Furthermore, if the Parties make and implement any interpretation of the Project Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

### 32.3 Independent Contractor

(a) The Development Entity is an independent contractor, and nothing contained in the Project Documents shall be construed as constituting any relationship with the Department other than that of the Development Entity of the Project and independent contractor. It is the express intent and agreement of the Parties that nothing in the Project Documents is intended or shall be construed to create any landlord-tenant, lessor-lessee of real property, optionor-optionee, vendor-purchaser, or mortgagor-mortgagee relationship between the Department and the Development Entity; and in no event shall either 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 any such relationship exists.

(b) Nothing in the Project Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between the Department and the Development Entity; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give the Department control or joint control over the Development Entity's financial decisions or discretionary actions concerning the Project and Work.

(c) In no event shall the relationship between the Department and the Development Entity be construed as creating any relationship whatsoever between the Department and the Development Entity's employees. Neither the Development Entity nor any of its employees is or shall be deemed to be an employee of the Department. Except as otherwise specified in the Project Documents, the Development 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 Development Entity or any Contractor hires to perform or assist in performing the Work.

### 32.4 Successors and Assigns

The Project Documents shall be binding upon and inure to the benefit of the Department and the Development Entity and their respective permitted successors and assigns.

### 32.5 Designation of Representatives; Cooperation with Representatives

The Department and the Development Entity shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Project Documents (each, an **Authorized Representative**). Schedule 11 (Initial Designation of Authorized Representatives) to this PPA provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other Party in accordance with Section 32.10 (Notices and Communications).

### 32.6 Survival

The Development Entity's and the Department's representations and warranties, the Dispute Resolution Procedures contained in Article 30 (Dispute Resolution Procedures), the indemnifications and releases contained in Article 20 (Development Entity Indemnity), the rights to all indemnities and compensation contained in Article 24 (Termination) and any other obligations to pay amounts hereunder and under the other Project Documents, Article 27 (Intellectual Property), Article 32 (Miscellaneous) and all other provisions, which by their inherent character should survive expiration or Early Termination and/or completion of the Work under this PPA, shall survive the expiration or Early Termination and/or the completion of the Work under this PPA. The Department's obligation to pay compensation to the Development Entity upon Early Termination as provided in Article 24 (Termination) and any other payment obligations of the Department arising prior to expiration or Early Termination shall survive the expiration or Early Termination.

## 32.7 Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Project Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Except as otherwise provided in this Section 32.7 (Limitation on Third-Party Beneficiaries), the duties, obligations and responsibilities of the Parties with respect to third parties shall be determined and governed by Applicable Law. The Project Documents shall not be construed to create a contractual relationship of any kind between the Department and any Person other than the Development Entity.

## 32.8 Waiver of Jury Trial

**EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT THAT IT MAY HAVE TO A JURY TRIAL IN RESPECT OF ANY CLAIM, CAUSE OF ACTION OR OTHER PROCEEDING IN CONNECTION WITH THIS PPA OR ANY TRANSACTION CONTEMPLATED HEREBY. Each of the Parties hereby (a) certifies that no representative, agent or attorney of any other has represented, expressly or otherwise, that such other would not, in the event of any suit, action or proceedings relating to this PPA, seek to enforce the foregoing waiver and (b) acknowledges that it has been induced to enter into this PPA by, among other things, the mutual waivers and certifications in this Section 32.8 (Waiver of Jury Trial).**

## 32.9 Governing Law and Jurisdiction

This PPA shall be governed by, and interpreted and enforced in accordance with, the Laws of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Development Entity consents to the jurisdiction of any court of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Development Entity agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Applicable Law.

## 32.10 Notices and Communications

(a) Notices under the Project Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by facsimile or e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

(i) All notices, correspondence and other communications to the Development Entity shall be delivered to the following address or as otherwise directed by the Development Entity's Authorized Representative:

[●]

(ii) All notices, correspondence and other communications to the Department shall be marked as regarding the Project and shall be (A) delivered to the following address or as otherwise directed by the Department's Authorized Representative and (B) with the

exception of notices regarding Disputes, and termination and default notices, posted on the Collaboration Portal:

Pennsylvania Department of Transportation
8th Floor, Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0041
E-mail: RA-PDRBRRFQ@pa.gov
Attention: Secretary

(iii) In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Pennsylvania Department of Transportation
Office of Chief Counsel
P.O. 8212
17105-8212
Attention: Chief Counsel

(b) Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m., Eastern Standard or Daylight Time (as applicable), and all other notices (including by e-mail communication) received after 5:00 p.m., Eastern Standard or Daylight Time (as applicable), shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m., Eastern Standard or Daylight Time (as applicable)). Any technical or other communications pertaining to the Work shall be conducted by the Development Entity's Authorized Representative and technical representatives designated by the Department.

**32.11 Integration of Project Documents; Compliance**

(a) The Department and the Development Entity agree and expressly intend that this PPA (including all Exhibits, Schedules, forms and appendices hereto) and other Project Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible, such that, among other things, no part of this PPA could be separated from any other part for the purposes of assumption or rejection under Section 365 of title 11 of the United States Bankruptcy Code.

(b) Notwithstanding anything contained in this PPA to the contrary, the Development Entity and the Department shall comply with all terms and conditions set out in this PPA and the other Project Documents, including all Exhibits, Schedules and appendices hereto and thereto (including, without limitation, the Technical Provisions).

**32.12 Severability**

If any clause, provision, Section or part of the Project Documents is ruled invalid by a court having proper jurisdiction, then the Parties shall:

(a) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including any adjustment to the Department's compensation to the Development Entity's account for any change in the Work resulting from such invalidated portion; and

(b) if necessary or desirable, apply to the court or other decision maker (as applicable), which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of the Project Documents, which shall be construed and enforced as if the Project Documents did not contain such invalid or unenforceable clause, provision, Section or part.

**32.13 Headings**

The captions of the Articles, Sections and subsections of this PPA are for convenience purposes only and shall not be deemed part of this PPA or considered in construing this PPA.

**32.14 Entire Agreement**

The Project Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

**32.15 Counterparts**

This PPA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**32.16 No Commonwealth Obligations**

The Development Entity acknowledges and agrees that, notwithstanding any concurrence by the Commonwealth in, or approval of, the solicitation or award of this PPA, the Commonwealth shall not incur any liability to any person pursuant to the terms of this PPA. For the avoidance of doubt, nothing in this Section 32.16 (No Commonwealth Obligations) shall have the effect of limiting the Department's rights, obligations or liabilities under this PPA.

**32.17 No Personal Liability**

No officer, agent, representative or employee of the Department or of the Commonwealth or of the Development Entity shall be held personally liable under any term or provision of this PPA or because of the execution or attempted execution of this PPA, or because of any breach thereof.

**32.18 Public Release of Information**

(a) The Development Entity shall not, and shall cause (by way of contract and enforcement thereof) all the Development Entity-Related Entities not to, issue or permit to be issued any press release, advertisement, public statement or literature of any kind, or make any statements or comments through the media (including print, television or internet) which refers to the Department, the

Project or any of the services or obligations to be performed in connection with the Project Documents, without first obtaining the written approval of the Department. Such approval may be withheld if for any reason the Department believes that the publication of such information would be harmful to the public interest or is any way undesirable.

(b) This provision shall survive termination or expiration of this PPA.

**32.19 Confidentiality**

(a) In this Section 32.19 (Confidentiality), **Information** means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this PPA), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party and such term includes all, analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

(b) Each Party will maintain the confidentiality of any Information, except that Information may be disclosed or provided:

(i) by either Party to its and its Affiliates' directors, officers, employees, consultants and agents, including accountants, legal counsel and other advisors;

(ii) by the Department, to any Governmental Entity or otherwise as the Department may require for the maintenance or improvement of the Project in the event of, or following, termination of this PPA;

(iii) by the Development Entity:

(A) to the Lenders to the extent such Information is reasonably required by the Lenders in connection with arranging Project Debt or which the Development Entity is obligated to supply by the terms of the Financing Documents; and

(B) to any Contractor to the extent such Information is necessary for the performance by the Development Entity of its obligations under this PPA;

(iv) by either Party to the extent:

(A) it is required to disclose such Information pursuant to an Applicable Law or by any subpoena or similar legal process or by any Governmental Entity;

(B) the other Party confirms in writing that such Information is not required to be treated as confidential (such confirmation not to be unreasonably withheld or delayed);

(C) such Information is or comes into the public domain otherwise than through any disclosure prohibited by this PPA;

**provided** that, in the cases of Sections 32.19(b)(i), 32.19(b)(ii) and 32.19(b)(iii) of this Section 32.19 (Confidentiality), the Persons to whom such disclosure is made will be

informed of the confidential nature of such Information and will so provide such Information subject to the same or similar requirements to maintain confidentiality as contained in this PPA.

**32.20 Right-to-Know Law**

(a) The Development Entity acknowledges that the Department is required to comply with the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 (the **RTKL**). The Department's policy in relation to the RTKL in operation as at the date of this PPA is available online at ftp://ftp.dot.state.pa.us/public/bureaus/BOS/PennDOTRTKLAgencyPolicy.pdf.

(b) Upon written notification from the Department that it requires the Development Entity's assistance in responding to a request under the RTKL for information related to this PPA that may be in the Development Entity's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (**Requested Information**), the Development Entity shall:

(i) provide the Department, within ten (10) days after receipt of written notification, access to, and copies of, any document or information in the Development Entity's possession arising out of this PPA that the Department reasonably believes is Requested Information and may be a public record under the RTKL; and

(ii) provide such other assistance as the Department may reasonably request, in order to comply with the RTKL with respect to this PPA.

(c) If the Development 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 Development Entity considers exempt from production under the RTKL, the Development Entity must notify the Department and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Development Entity explaining why the requested material is exempt from public disclosure under the RTKL.

(d) The Department will rely upon the written statement from the Development Entity in denying a RTKL request for the Requested Information unless the Department determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Department determine that the Requested Information is clearly not exempt from disclosure, the Development Entity shall provide the Requested Information within five (5) Business Days of receipt of written notification of the Department's determination.

(e) If the Development Entity fails to provide the Requested Information within the time period required by these provisions, the Development Entity shall indemnify and hold the Department harmless for any damages, penalties, costs, detriment or harm that the Department may incur as a result of the Development Entity's failure, including any statutory damages assessed against the Department.

(f) The Department will reimburse the Development Entity for any costs associated with complying with these provisions 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.

(g) The Development Entity may file a legal challenge to any Department decision to release a record to the public with the Office of Open Records, or in the Pennsylvania courts; however, the Development Entity shall indemnify the Department for any legal expenses incurred by the Department as a result of such a challenge and shall hold the Department harmless for any damages, penalties, costs, detriment or harm that the Department may incur as a result of the Development Entity's failure, including any statutory damages assessed against the Department, regardless of the outcome of such legal challenge. As between the parties, the Development Entity agrees to waive all rights or remedies that may be available to it as a result of the Department's disclosure of Requested Information pursuant to the RTKL.

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

## SIGNATORIES

**[●]**

By: _____

Name: _____

Title: _____

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF TRANSPORTATION**

By: _____
Secretary of Transportation

**APPROVED AS TO FORM AND LEGALITY**

By: _____
Department Agency Counsel

By: _____
Commission Agency Counsel

By: _____
Deputy General Counsel
Office of General Counsel

By: _____
Deputy Attorney General
Office of Attorney General

CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

By: _____
Comptroller

## SCHEDULE 1

## DEFINITIONS

As used in this PPA or any other Project Document, the capitalized terms set out in this Schedule 1 (Definitions) shall have the respective meanings below. Unless expressly provided otherwise, all references to Articles, Sections, Exhibits, Schedules and Appendices refer to the Articles, Sections, Exhibits, Schedules and Appendices of or attached to this PPA, as applicable.

**Access** means, in relation to any Project Site, the right to access and use such Project Site in accordance with the terms of this PPA, subject to:

(a) its state and condition at the time access is first granted to the Development Entity;

(b) the rights of Governmental Entities, Utility Owners or third parties to have access to any of the Project Sites existing as of the Proposal Due Date and communicated in writing to the Development Entity or included in the Disclosed Information prior to the Setting Date;

(c) the statutory rights or public franchise rights of Governmental Entities and Utility Owners to have access to such of the Project Sites existing as of the Proposal Due Date;

(d) the rights, including rights of access, granted to the Department and its employees, agents, consultants and contractors and to other Persons under any Project Document;

(e) restrictions of use set out in easement deeds and/or right of entry permits of record applicable to any Governmental Approval (other than Department Obtained Governmental Approvals obtained or modified subsequent to the Setting Date); and

(f) restrictions set out in any title commitments or ALTA maps related to any of the Project Sites included in the Disclosed Information on or prior to the Setting Date.

**Account Balances** means all amounts standing to the credit of any bank account held by or on behalf of the Development Entity (excluding the Handback Reserve Account), or the value of any letter of credit issued in substitution for any bank account previously held by the Development Entity (excluding the Handback Reserve Account), at the Early Termination Date.

**Actual Benchmarked Insurance Cost** means, in respect of any Insurance Review Period, the aggregate of the insurance premiums reasonably incurred by the Development Entity (or by a third party on its behalf) to maintain the Benchmarked Insurance during the Insurance Review Period but excluding any insurance premium tax or broker's fees and commissions and, for the avoidance of doubt, not including any amounts deducted from the Monthly Disbursements by the Department in accordance with Section 19.4(b)(iii) of this PPA.

**Additional Equity Investment** means an Equity Investment made solely by the Qualified Investors after Financial Close that is not a Committed Equity Investment, or otherwise contractually committed to by the relevant Qualified Investors, as at Financial Close.

**Additional Federal Requirements** means the provisions set out in Schedule 15 (Additional Federal Requirements) of this PPA.

**Affected Party** has the meaning set out in the definition of Force Majeure Event.

**Affiliate** of any Person means any entity which, directly or indirectly, through one or more intermediaries, (a) has a ten percent (10%) or more voting or economic interest in such Person or (b) Controls, is Controlled by, or is under common Control with such Person.

**Aggregate Construction Noncompliance Deduction** means the amount described in Section 2.1(b) of Schedule 8 (Payment Mechanism).

**Aggregate Construction Unavailability Deduction** means the amount described in Section 2.1(c) of Schedule 8 (Payment Mechanism).

**Applicable Law** means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the Project, Work or any relevant Person, whether taking effect before or after the date of this PPA. **Applicable Laws**, however, excludes Governmental Approvals.

**Archaeological Remains** means antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains and other similar remains of archaeological or paleontological interest discovered in any of the Project Sites.

**As-Built Drawings** means, in respect of each Replacement Bridge, the Final Design Documents submitted by the Development Entity, revised to incorporate all changes made in the specifications and working drawings during construction and show the dimensions, geometry, and location of each Element in respect of such Replacement Bridge.

**As-Built Schedule** means, in respect of each Replacement Bridge, the schedule developed and submitted by the Development Entity in accordance with Section 2.1.1.5 of the Technical Provisions.

**Associated Company** means, in respect of a relevant company, a company, which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that relevant company, and in the case of the Development Entity, shall include each of the Equity Members.

**Assumed Driven Pile Length** means, in respect of any Karst Bridge, the aggregate length (in feet) of all foundation piles that the Development Entity is assumed to drive during the carrying out of the Construction Work at the relevant Project Site, provided that for the purposes of such calculation, it shall be assumed that the distance to the top of rock is that distance from the bottom of the substructure footing elevation and the top of rock elevation based on a straight line being drawn between the results of the two bore holes drilled by the Department at the relevant Project Site.

**Authorized Representative** has the meaning set out in Section 32.5 (Designation of Representatives; Cooperation with Representatives).

**Availability Payment** means the amount earned by the Development Entity in each given year during the Term as determined in accordance with Schedule 8 (Payment Mechanism).

**Base Benchmarked Insurance Cost** means, for an Insurance Review Period, the greater of:

(a) $3,000,000 (subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism) ; and

(b) the Actual Benchmarked Insurance Cost for the first Insurance Review Period (indexed annually by CPI from the Benchmarked Insurance Inception Date);

in each case less any Base Benchmarked Insurance Reduction.

**Base Benchmarked Insurance Reduction** means the reduction to be made to the Base Benchmarked Insurance Cost in respect of a risk which has become an Uninsurable Risk or a term or condition which is no longer available and shall be an amount that is either:

(a) the amount by which the Base Benchmarked Insurance Cost would have been a lesser amount had such a risk been an Uninsurable Risk or such a term or condition been unavailable at the date of this PPA (which amount, for the avoidance of doubt, can be $0); or

(b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Benchmarked Insurance Cost having due regard to:

(i) the amount by which the Actual Benchmarked Insurance Cost is less than it would have been as a result of the risk becoming an Uninsurable Risk or the term or condition becoming unavailable (the **Actual Reduction**);

(ii) the size of the Actual Reduction as a percentage of the Actual Benchmarked Insurance Cost immediately prior to the risk becoming an Uninsurable Risk or the term or condition becoming unavailable; and

(iii) the effects of CPI since the date of this PPA.

**Base Case Equity IRR** means [●]%.[2]

**Base MAP** means an amount equal to the aggregate of the fixed element and indexed element of the MAP.[3]

**Baseline Project Completion Date** means [●].[4]

**Baseline Substantial Completion Date** means, in respect of each Replacement Bridge, the relevant date set out under the heading "Baseline Substantial Completion Date" on Attachment 10-1 of the Technical Provisions.[5]

**Benchmark Rate** means any of the rates set out in Schedule 4 (Benchmark Rates).

**Benchmarked Insurance Inception Date** means the date on which the Benchmarked Insurances are first providing active insurance coverage to the Development Entity, being a date no earlier than the Substantial Project Completion Date.

[2] This will be the Equity IRR shown in the Preliminary Financial Model.
[3] This definition will be amended by Commercial Close to reflect the relevant elements of Form J-1 relating to the fixed and indexed portion of the MAP as of the bid date. The Base MAP will be updated at Financial Close in accordance with Schedule 2.
[4] This will be the date that the Preliminary Financial Model assumes Substantial Completion of 100% of the Replacement Bridges will occur.
[5] This will be the date that the Preliminary Financial Model assumes Substantial Completion of each Replacement Bridge will occur.

**Benchmarked Insurances** means the Insurance Policies and any other insurances as may be required by Law other than:

(a) Construction Period Insurance;

(b) business interruption coverage; and

(c) any professional indemnity coverage.

**Betterment** means any upgrading of the Utility in the course of any Utility Relocation that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner. Notwithstanding the foregoing, the following are not considered Betterments:

(a) any upgrading which is required for accommodation of the Project;

(b) replacement devices or materials that are of equivalent standards although not identical;

(c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) any upgrading required by applicable law;

(e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) any upgrading required by the Utility Owner's applicable Utility Relocation Standards; and

(g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

**Bridge and Roadway Programmatic Agreement** means Programmatic Agreement for Bridge, Roadway, and Non-Complex Projects dated October 9, 2012 between FHWA and the Department.

**Bridge Elements Handback Amount** has the meaning set out in Section 2 of Schedule 5 (Calculation of Handback Amounts).

**Business Day** means any day that is not a Saturday, Sunday or other day on which:

(a) the Department is officially closed for business;

(b) banks located in New York City are required or authorized by law or executive order to close; or

(c) the New York Stock Exchange is closed.

**Calendar Event** means each of the days identified in Schedule 16 (Calendar Events) of this PPA.

**Calendar Event Unavailability Event** means any Unavailability Event which occurs during a Calendar Event.

**Calendar Year** means the consecutive 12-month period starting on January 1 and ending on December 31.

**Capital Expenditure** means any expenditure which is treated as a capital expenditure in accordance with GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of such party.

**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).

**Categorical Exclusion** has the meaning set out in 40 CFR 1508.4, and as further described in 23 CFR 771.117(a), (c) and (d).

**Certificate of Final Acceptance** has the meaning set out in Section 7.8(a).

**Certificate of Substantial Completion** has the meaning set out in Section 7.7(a).

**CE1** means a Categorical Exclusion of the type described in 23 CFR 771.117(c) and (d), the approval authority over which has been delegated to the Department by the FHWA pursuant to the Stewardship and Oversight Agreement dated August 2012 between the Department and the FHWA.

**CE2** means a Categorical Exclusion of the type described in 23 CFR 771.117(d) which requires FHWA approval in order to qualify as a Categorical Exclusion.

**Change in Costs** means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Development Entity, including, as relevant, the following:

(a) the reasonable costs of complying with the requirements of Articles 10 (Department and Development Entity Changes), 12 (Supervening Events), 13 (Change in Law) or 16 (Financial Model Adjustments), including the reasonable costs of preparation of design and estimates;

(b) the costs of continued employment of, or making redundant, staff who are no longer required;

(c) the costs of employing additional staff;

(d) reasonable professional fees;

(e) the costs to the Development Entity of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs, interest and hedging costs, lost interest on any of the Development Entity's own capital employed and any finance required pending receipt of a lump-sum payment;

(f) the effects of costs on implementation of any insurance reinstatement in accordance with this PPA, including any adverse effect on the insurance proceeds payable to the Development Entity (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;

(g) operating costs, or life cycle, maintenance or replacement costs;

(h) Capital Expenditure;

(i) the costs required to ensure continued compliance with the Financing Documents;

(j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and

(k) Losses,

**provided** that in no circumstances shall Change in Costs include any costs or other Losses that arise in consequence of the Development Entity receiving Milestone Payments or Availability Payments later than the date that it would have received them in the absence of the Relevant Event.

**Change in Law** means the introduction or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any Law or standards, practices or guidelines issued or published by any Governmental Entity that occur at any time after the Setting Date and that are either binding on the Development Entity or if non-binding on the Development Entity are both typically complied with in the construction and/or bridge operating industries and are necessary in order to comply with Good Industry Practice, **excluding** however, any such introduction, repeal, amendment, alteration, modification or change in relation to federal Law (other than any federal Law that imposes liability or standards of conduct for or otherwise regulates, concerns or relates to the protection of public health, safety, or welfare and the Environment; Hazardous Substances; or pollution as defined by any federal Applicable Law), standards, practices and guidelines.

**Change in Ownership** means:

(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares or membership interests in the Development Entity and/or any Related Entity (including the direct or indirect control over the exercise of voting rights conferred on those shares or membership interests, direct or indirect control over the right to appoint or remove directors or the rights to receive dividends or distributions); and/or

(b) any other arrangements that have or may have or which result in the same effect as clause (a).

**Closing Security** means one or more on-demand bonds or irrevocable standby letters of credit (or a combination thereof) in the aggregate amount of $20,000,000 and each in substantially the same form (as relevant) set out in Form 4 (Form of Closing Security) and issued by an Eligible Security Issuer.

**Closure** means:

(a) in respect of a Replacement Bridge which has achieved NTP3, but not Substantial Completion, that all or part of any traffic lanes in respect of that Replacement Bridge are closed or blocked, or that the use thereof is otherwise precluded for any reason, which results in a breach of any of the applicable requirements set out under the heading “Construction Requirements” in Attachment 10-1 of the Technical Provisions; and

(b) in respect of a Replacement Bridge which has achieved Substantial Completion, that all or part of any traffic lanes in respect of that Replacement Bridge are closed or blocked, or that the use thereof is otherwise precluded for any reason.

**Collaboration Portal** means the secure collaborative program website to communicate, store, share and/or distribute documentation related to the Project (including during the period prior to the date of this PPA).

**Collateral Agent** means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders in the Financing Documents with respect to the Project Debt.

**Commercial Closing Conditions Precedent** means the conditions set out in Section 2.2 (Conditions Precedent to the Commercial Closing Date).

**Commercial Closing Date** means the date on which all of the Commercial Closing Conditions Precedent set out in Section 2.2 (Conditions Precedent to the Commercial Closing Date) are satisfied or otherwise waived in accordance with this PPA.

**Committed Equity Investment** means, in the aggregate (a) any Equity Investment, and (b) any Deferred Equity Amounts.

**Commonwealth** has the meaning set out in clause (A) of the Background to this PPA.

**Comparable Facilities** means, in respect of each Replacement Bridge, bridges that are substantially similar to the relevant Replacement Bridge (excluding any other Replacement Bridge) that the Department is responsible for the ongoing operation and maintenance of. For the purposes of this definition, determination of what bridges are substantially similar to a Replacement Bridge shall be based on any one or more of similar age, design, engineering, construction, topographical features, operating systems and features, or other features or situations, and/or based on a geographical area in which bridges have been or are susceptible to being affected by a common event (such as, but not limited, to flood, snow, ice or wind storm).

**Compensation Event** means any of the following:

(a) any material breach of an obligation in this PPA by the Department including, but not limited to:

  (i) any failure by the Department to deliver a Department Obtained Governmental Approval to the Development Entity by March 31, 2015;

  (ii) any failure (in whole or in part) by the Department to provide Access to the Project in accordance with the Project Documents;

  (iii) any failure by the Department to issue any certificate that it is required to issue pursuant to Article 7 (Design and Construction), but to the extent that such failure represents a breach by the Department of its obligations thereunder; and

  (iv) the occurrence of any Department Default;

(b) violation of any Applicable Law by the Department;

(c) any Qualifying Change in Law;

(d) any Department Change or the issuance of any Directive Letter;

(e) the release of any Hazardous Material into a Project Site at any time after the Commercial Closing Date, but only to the extent that such release:

(i) constitutes a Hazardous Environmental Condition; and

(ii) does not constitute a Development Entity Release of Hazardous Material;

(f) 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 Applicable Law, which injunction, order, restraint or prohibition materially and adversely affects the Department's or the Development Entity's performance under this PPA, except to the extent resulting from the negligence, willful misconduct, recklessness, breach of contract or Applicable Law, or violation of a Governmental Approval, by any Development Entity-Related Entity;

(g) the Department or any Utility Owner requires the Development Entity to perform any Undisclosed Utility Incorporated Work or the presence of an Unforeseeable Utility otherwise impacts the D&C Work in respect of an Early Completion Bridge;

(h) the issuance by the Department of any Safety Compliance Order in respect of the implementation of any Safety Compliance that does not arise as a direct result of any Development Entity-Related Entity's failure to comply with any Safety Standards;

(i) any Required Action taken by the Department that is the subject of Section 25.4 (Step-in without Development Entity Breach);

(j) the discovery of any Undisclosed Hazardous Environmental Condition by the Development Entity;

(k) any suspension of the Construction Work or Maintenance Work has occurred and is considered a Compensation Event pursuant to Section 7.9(b) or 8.10(b), respectively;

(l) the discovery of any Undisclosed Endangered Species by the Development Entity during the carrying out of the Construction Work;

(m) the discovery of any Archaeological Remains by the Development Entity during the carrying out of the Construction Work;

(n) the discovery of any man-made mine by the Development Entity during the carrying out of the Construction Work;

(o) in respect of a Karst Bridge, Total Driven Pile Length exceeds Assumed Driven Pile Length;

(p) any delay in obtaining any Major Governmental Approval by the Major Governmental Approval Deadline;

(q) any Department Obtained Governmental Approvals in respect of an Early Completion Bridge, when delivered to the Development Entity pursuant to the terms of this PPA:

(i) does not reflect the ECB Permit Constraints for the relevant Early Completion Bridge; or

(ii) contains any conditions that were not referenced or highlighted in the Disclosed Information on or prior to the Setting Date.

(r) any claim, cause of action or Loss initiated, prosecuted, incurred or suffered by the Development Entity or any Development Entity-Related Entity as a result of or arising out of any Hazardous Materials for which the Department is deemed to be the generator or arranger pursuant to Article 6 (Hazardous Materials);

(s) any single incident of Department Retained O&M Damage for which the Development Entity will incur a Capital Expenditure in excess of $10,000 (subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism)) to repair; **provided**, for the avoidance of doubt, that multiple incidents of Department Retained O&M Damage which, when aggregated together, will result in the Development Entity incurring Capital Expenditure in excess of $10,000 (subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism)) to repair shall not constitute a Compensation Event, either individually or in the aggregate;

(t) any physical damage to a Replacement Bridge directly caused by a Utility Owner or any other Person (in each case acting under a permit issued by the Department) undertaking work on the Replacement Bridge;

(u) either the Department or FHWA determines not to construct a Replacement Bridge for any reason related to NEPA;

(v) the discovery by the Development Entity of asbestos at any Project Site that is not identified in Schedule 3 (Project Sites with Asbestos);

(w) a Replacement Bridge is not eligible for a Bridge and Roadway Programmatic Agreement, a CE1 or a CE2;

(x) the Department does not complete the ROW acquisition process in respect of a Replacement Bridge within the relevant ROW Acquisition Period, but only to the extent that the Department receives a proposed final ROW Acquisition Plan (complete in both form and substance in accordance with Section 7 (Right-of-Way) of the Technical Provisions) in respect of the relevant Replacement Bridge within thirty (30) days of the commencement of the relevant ROW Acquisition Period;

(y) in respect of a Replacement Bridge, any failure of a Utility Owner to cooperate with the Development Entity in relation to a Utility Relocation (including but not limited to an unreasonable request by a Utility Owner that, in connection with any Utility Relocation Work, a Utility Enhancement be completed) in such manner that would:

(i) in the case of any Utility Relocation where the anticipated completion date of such Utility Relocation is prior to the commencement of Construction Work for such Replacement Bridge (i.e., "prior work"), delay the commencement of that Construction Work (as set out in the Development Entity's Project Baseline Schedule) beyond the relevant ROW Acquisition Period; and

(ii) in the case of any Utility Relocation which can only be performed concurrently with the Construction Work for such Replacement Bridge (i.e., is not "prior work"), result in a

delay to that Construction Work (as set out in the Development Entity's Project Baseline Schedule) of more than thirty (30) days;

**provided**, that the Development Entity shall have continued to satisfy the "conditions to assistance" set out in Section 5.2(e)(ii)(A) for the duration of such failure to cooperate by the Utility Owner;

(z) any hydrologic and hydraulic report in respect of an Early Completion Bridge included in the Disclosed Information contains a material error or omission;

(aa) subject to Section 7.1(c)(ii), the NEPA approval process in respect of a Remaining Eligible Bridge requires environmental mitigation action (including, without limitation, wetland replacement, Phase III archaeology data recovery excavation, associated interpretive materials, recordation of historic bridge and/or associated historic district, and context sensitive design elements) to be taken in respect of that Replacement Bridge; and

(bb) The SEP-15 Variance is either rescinded or any of its conditions are not satisfied;

except, in each case, to the extent attributable to any breach of this PPA by, or any negligent act or negligent omission of, a Development Entity-Related Entity.

**Construction Commencement Deadline** means the date, initially one hundred eighty (180) days after the Commercial Closing Date and subject to adjustment pursuant to the Project Documents.

**Construction Documents** means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project in accordance with the Project Documents.

**Construction Equity Ratio** means at any time the ratio between:

(a) the Committed Equity Investment at the time; and

(b) the sum of Committed Equity Investment at the time and the amount of Project Debt scheduled to be outstanding at the time.

**Construction Limits** means:

(a) in respect of any Early Completion Bridge, the area shown on the relevant plan(s) developed by the Department in accordance with Section 7 (Right-of-Way) of the Technical Provisions and delivered to the Development Entity on or before the Setting Date, together with any amendments to such plan(s) made by the Development Entity in accordance with the requirements of the Project Documents; and

(b) in respect of any Remaining Eligible Bridge, the area shown on the relevant final ROW plan submitted by the Development Entity and approved by the Department in accordance with Section 7 (Right-of-Way) of the Technical Provisions, in any case including:

(i) the approach pavement as may be necessary to transition with the existing roadway as required in Section 10 (Roadways and Pavements) of the Technical Provisions, not to

exceed 500 feet of approach pavement on each side of the Remaining Eligible Bridge measured longitudinally from the end of the approach slab;

(ii) any guiderail that may need to be replaced as required in Section 10 (Roadways and Pavements) of the Technical Provisions, not to exceed 100 feet longitudinally beyond the end of the approach pavement on each side of the Remaining Eligible Bridge; and

(iii) any retaining walls and cut slopes to the extent such walls or slope may affect the structural integrity of the Remaining Eligible Bridge and the approach pavement, not to exceed 50 feet on each side of the Remaining Eligible Bridge measured transversally from the relevant edge of such Remaining Eligible Bridge, or when such walls or slopes run parallel to the Remaining Eligible Bridge, not to exceed 50 feet longitudinally beyond the end of the approach pavement on each side of the Remaining Eligible Bridge.

**Construction Manager** means the Key Personnel with such title identified in Section 2.1.4.1 of the Technical Provisions.

**Construction Period** means the period starting on the Commercial Closing Date and ending on D&C Work Completion.

**Construction Period Insurance** means the Insurance Policies described in Schedule 9 (Insurance Coverage Requirements), but only in respect of the period prior to the Substantial Project Completion Date.

**Construction Quality Management Plan (CQMP)** means the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2 (Project Management) of the Technical Provisions

**Construction Security** means [●].[6]

**Construction Work** means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver, landscape or equip the Project, excluding Design Work.

**Consumer Price Index** or **CPI** means the annual "Consumer Price Index – for all Urban Consumers" for the U.S. City Average area (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; **provided**, **however**, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury's Inflation-Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the Parties in accordance with general market practice at the time.

**Context Sensitive Design and Aesthetics Master Plan** means the plan submitted pursuant to Section 14 (Context Sensitive Design and Aesthetics) of the Technical Provisions.

[6] To the extent that the D&C Contractor provides any parent company/affiliate guarantee, performance bond, surety or letter of credit to Development Entity in connection with its obligations under the D&C Contract, the Department will require the right to be a named beneficiary of such security, it being acknowledged that the Department's rights in respect of any such security shall be subordinate to all rights of claim of the Lenders and only exercisable by the Department following a termination of the PPA.

**Contract** means any agreement, and any supplement or amendment thereto, by the Development Entity with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers.

**Contractor** means any Person with whom the Development Entity has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project, on behalf of the Development Entity, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

**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.

**Cost to Complete** means (without double-counting):

(a) those costs (internal and external) that the Department reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the Department to achieve D&C Work Completion, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(b) the costs that the Department reasonably and properly projects that it will incur in achieving D&C Work Completion in respect of those Replacement Bridges yet to achieve Final Acceptance; plus

(c) any other Losses that the Department would, but for the termination of this PPA, not have incurred prior to D&C Work Completion; minus

(d) any insurance proceeds available to the Department for the purposes of achieving D&C Work Completion.

**Critical Path** means the longest (in terms of time) unbroken chain or path of logically connected activities in the Preliminary Project Baseline Schedule, Project Baseline Schedule or (as the case may be) Project Working Schedule ending with D&C Work Completion.

**Cure Period** means, in respect of any applicable Noncompliance Event, the period of **x** hours or days commencing on the Noncompliance Start Date for that Noncompliance Event, where **x** equals the number of hours or days referred to in Schedule 7 (Noncompliance Points Tables) as the Cure Period for that Noncompliance Event, which Cure Period may be extended by the Department in accordance with the Project Documents.

**D&C Contract** means any Contract entered into by the Development Entity for third party management, direction, supervision or performance of all of the D&C Work or any significant portion thereof (including any guaranty or similar credit support provided by a creditworthy entity to backstop obligations under such a Contract). There may be more than one D&C Contract concurrently in effect.

**D&C Contract Amount** means $[●].[7]

[7] This is the contract price set out in the Design-Build Contract, as reflected in the Preliminary Financial Model.

**D&C Contractor** means [●] and any other counterparty to a D&C Contract from time to time.

**D&C Direct Agreement** means the agreement substantially in the form attached as Form 2 (Form of D&C Direct Agreement) by and among the Department, the Development Entity, and the D&C Contractor.

**D&C Guarantor** means any parent company guarantor in respect of a D&C Contract.

**D&C Work** means the Design Work and the Construction Work.

**D&C Work Completion** means the achievement of Final Acceptance in respect of all of the Replacement Bridges.

**D&C Work Completion Date** means the date upon which the Development Entity achieves D&C Work Completion.

**D&C Work Value** means an amount equal to the D&C Contract Amount *minus* the aggregate of (x) the Cost to Complete, (y) any Milestone Payments and Availability Payments that became payable prior to the Early Termination Date and (z) any Monthly Maintenance Payment Deduction or Milestone Payment Deduction accrued prior to the Early Termination Date that has, in each case, not been deducted from any Maximum Milestone Payment or Maximum Availability Payment (as relevant).

**Day** or **day** means calendar days unless otherwise expressly specified as a Business Day.

**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); and

(d) 49 CFR Part 29 "Government-wide Debarment and Suspension (Nonprocurement)".

**Defect** means any defect in any of the D&C Work attributable to:

(a) defective design;

(b) defective workmanship or defective materials, plant or machinery used in such construction having regard to Good Industry Practice and to appropriate industry standards and codes of practice current at the date of construction;

(c) the use of materials in the D&C Work which (whether defective or not defective in themselves) prove to be defective in the use to which they are put;

(d) defective installation of anything in or on a Replacement Bridge; or

(e) defective preparation of a Project Site.

**Deferred Equity Amounts** means, on any date, any amount of unfunded equity that has been committed to the Development Entity as of the Financial Closing Date (including commitments to provide an Equity

Investment or Equity Member Debt) and is shown to be utilized in the Financial Model prior to D&C Work Completion.

**Delay Rate** means:

(a) in respect of any Department Substantial Completion Delay Period, a daily amount payable in respect of each day of the relevant Department Substantial Completion Delay Period, calculated in accordance with the following formula:

$$\frac{MAP_{m,y}}{d_{m,y} \times RB_t} \times 65\%,$$

save that to the extent that Substantial Completion(s) of Replacement Bridge(s) have been delayed as a direct result of Compensation Events by less than 2,790 days in aggregate, the Department shall not be required to pay the Delay Rate in respect of the first ten (10) Business Days that Substantial Completion of a Replacement Bridge is delayed beyond the Baseline Substantial Completion Date for that Replacement Bridge; and

(b) in respect of any Department Project Completion Delay Period, an amount equal to the aggregate of:

(i) a daily amount payable in respect of each day of the relevant Department Project Completion Delay Period, calculated as the greater of:

(A) $RB_d \left( \frac{MAP_{m,y}}{d_{m,y} \times RB_t} \right) \times 65\%$; and

(B) $RB_d \left( \frac{DebtService_{m,y}}{d_{m,y} \times RB_t} \right)$;

*plus*

(ii) an amount payable in respect of each full or partial calendar month that the Development Entity is delayed in achieving Substantial Project Completion *and* in respect of which $DebtService_{m,y}$ is greater than ( $MAP_{m,y} \times CDF_{m-1}$ ) *plus* the amount paid under (i) above), calculated in accordance with the following formula:

$$\frac{RB_{sc} \left[ DebtService_{m,y} - \left( MAP_{m,y} \times CDF_{m-1} \right) \right]}{RB_t} \times \frac{RB_d}{\left( RB_t - RB_{sc} \right)};$$

where, in each case, $MAP_{m,y}$, $RB_t$ and $d_{m,y}$ have the same meanings given to such terms in Section 1.2 (Availability Payments) of Schedule 8 (Payment Mechanism) and:

(c) $DebtService_{m,y}$ means, for any given month (m) in a given calendar year (y), the lesser of:

(i) the debt service amount scheduled to be paid (including any amounts reserved for principal repayment) as shown in the Financial Model, divided by the number of months in each model period; and

(ii) the actual amount of debt service accrued in such month, including a *pro rata* share of principal divided by the number of months in the debt service period that the relevant month falls in[8];

(d) $RB_d$ means, on any day during any Department Project Completion Delay Period, the number of Replacement Bridges that have not achieved Substantial Completion as a direct result of one or more Compensation Events; and

(e) $RB_{sc}$ means, on any day, the number of Replacement Bridges that have achieved Substantial Completion.

**Department** has the meaning set out in the introductory paragraph to this PPA.

**Department Change** means any change in the Works by the Department that the Development Entity is required to implement pursuant to Article 10 (Department and Development Entity Changes).

**Department Change Request** has the meaning set out in Section 10.1(b) (Department Changes).

**Department Conditions Precedent** means the Financial Closing Conditions Precedent specified in Sections 2.3(b) (Department Documents), 2.3(g) (Representations and Warranties of the Department), 2.3(j) (Department Financial Close Responsibilities) and 2.3(k) (Department Legal Opinion).

**Department Default** has the meaning set out in Section 23.1(Department Default).

**Department Delay Period** means the Department Substantial Completion Delay Period or Department Project Completion Delay Period, as applicable.

**Department Obtained Governmental Approvals** means, in respect of each Early Completion Bridge, each of the following Governmental Approvals, to the extent applicable to such Early Completion Bridge:

(a) NEPA approval;

(b) Section 404 permit or general permit from US Army Corps of Engineers;

(c) Chapter 105 permit or general permit from PADEP;

(d) National Pollution and Discharge Elimination System permit (if applicable) from PADEP; and

(e) E&S plan approval from the relevant Conservation District or PADEP (as applicable).

**Department Project Completion Delay Period** has the meaning set out in Section 12.2(f)(ii).

**Department Retained O&M Damage** means physical damage to an Element of a Replacement Bridge to the extent directly caused by the Department, or a contractor (other than a Development Entity-Related-Entity) on behalf of the Department, in the performance of the Department Retained O&M Work.

[8] Language to be refined to reflect Successful Proposer's Financial Model.

**Department Retained O&M Work** means the responsibilities of the Department set out in Section 17.1.10 (Department's Responsibilities within the Maintenance Limits) of the Technical Provisions.

**Department Substantial Completion Delay Period** has the meaning set out in Section 12.2(f)(i).

**Department Termination Notice** has the meaning set out in Section 24.5(a).

**Department Termination Sum** means the amount calculated in accordance with Section 1 (Compensation on Termination for Convenience, for Department Default and Termination by Court Ruling) of Schedule 6 (Compensation on Termination).

**Design Documents** means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), design criteria, specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project. Design Documents include the Final Design Documents.

**Design Exception** means a change, deviation, modification, alteration or exception requiring approval by the Department and/or FHWA with regard to those design criteria identified in the Department's Publication 10X Appendix P and which deviate from the minimum values in the 2011 AASHTO Policy on Geometric Design of Highways and Streets for those criteria.

**Design Work** means all Work related to the design, redesign, engineering or architecture for the Project.

**Detour Unavailability Event** means, in respect of a Replacement Bridge, an Unavailability Event which results in a Closure in respect of all traffic lanes for such Replacement Bridge.

**Detour Unavailability Value** means, in respect of a Replacement Bridge, the corresponding Unavailability Value under the heading "Detour Unavailability Value" set out in Attachment 10-1 of the Technical Provisions.

**Development Entity** has the meaning set out in the introductory paragraph to this PPA.

**Development Entity Change** has the meaning set out in Section 10.6(a).

**Development Entity Change Request** has the meaning set out in Section 10.6(a).

**Development Entity Conditions Precedent** means the Financial Closing Conditions Precedent excluding the Department Conditions Precedent.

**Development Entity Default** has the meaning set out in Section 22.1 (Development Entity Default).

**Development Entity Default (Construction Period) Termination Sum** means the amount calculated in accordance with Section 3(a) of Schedule 6 (Compensation on Termination).

**Development Entity Default (Maintenance Period) Termination Sum** means the amount calculated in accordance with Section 3(b) of Schedule 6 (Compensation on Termination).

**Development Entity Default Termination Sum** means either the Development Entity Default (Construction Period) Termination Sum or the Development Entity Default (Maintenance Period) Termination Sum, as applicable.

**Development Entity Noncompliance Trigger Event** means an accumulation of assessed Noncompliance Points where:

(a) the cumulative number of Noncompliance Points assessed in connection with the performance of the D&C Work during any rolling 12-month period equals or exceeds 1,700; or

(b) the cumulative number of Noncompliance Points assessed in connection with the performance of the D&C Work during any rolling 36-month period equals or exceeds 4,800; or

(c) the cumulative number of Noncompliance Points assessed in connection with the performance of the Maintenance Work during any rolling 12-month period following Substantial Project Completion equals or exceeds 1,000; or

(d) the cumulative number of Noncompliance Points assessed in connection with the performance of the Maintenance Work during any rolling 48-month period following Substantial Project Completion equals or exceeds 3,800.

**Development Entity Release of Hazardous Material** means any Hazardous Materials Release:

(a) to the extent attributable to the acts, omissions, negligence, willful misconduct or breach of Applicable Law or contract by any Development Entity-Related Entity, **provided** that the removal of Hazardous Materials, or any Remedial Action in respect of Hazardous Materials, by a Development Entity-Related Entity in accordance with the requirements of the Project Documents shall not be a Development Entity Release of Hazardous Material;

(b) involving any Hazardous Materials arranged to be brought onto a Project Site or elsewhere by any Development Entity-Related Entity, regardless of cause (unless brought onto a Project Site pursuant to a removal of Hazardous Materials, or any Remedial Action in respect of Hazardous Materials, by a Development Entity-Related Entity in accordance with the requirements of the Project Documents); or

(c) to the extent attributable to the use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Development Entity-Related Entity in breach of any of the requirements of the Project Documents or any Applicable Law or Governmental Approval.

**Development Entity Termination Notice** has the meaning set out in Section 24.2(a).

**Development Entity's Estimate** has the meaning set out in Section 10.3(a).

**Development Entity's Initial Design** means the conceptual design of the Project forming part of the Development Entity's Proposal Commitments.

**Development Entity's Interest** means all rights, title, and/or interest of the Development Entity derived from this PPA and the other Project Documents.

**Development Entity-Related Entity** means:

(a) the Development Entity;

(b) Equity Members;

(c) Contractors (including Suppliers);

(d) any other Persons performing any of the Work for or on behalf of the Development Entity;

(e) any other Persons for whom the Development Entity may be legally or contractually responsible; and

(f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing, excluding, for the avoidance of doubt, any Patrons.

**Development Entity's Final Design** means the design prepared by the Development Entity and Signed and Sealed by the Engineer of Record, in compliance with the Technical Provisions, consistent with the Development Entity's Initial Design and subject to the Department's review.

**Development Entity's Financing** means the arrangements made or to be made by the Development Entity for the provision of financing to support the Development Entity's performance of its obligations in respect of the Project, including its obligations under the Project Documents and the Key Contracts.

**Development Entity's Proposal Commitments** means those commitments made by the Development Entity in its Proposal and attached as Appendix 1 (Development Entity's Proposal Commitments) to this PPA.

**Direct Agreement** means the agreement substantially in the form attached as Form 1 (Form of Direct Agreement) to this PPA by and among the Department, the Development Entity, and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders).

**Directive Letter** has the meaning set out in Section 10.2 (Directive Letter).

**Disadvantaged Business Enterprise** or **DBE** has the meaning set out in 49 CFR Part 26.

**Disclosed Information** means all written information provided to the Development Entity or any Development Entity-Related Entity by the Department or any of its employees, agents, officers, directors, shareholders, representatives, consultants, successors and assigns prior to the date of this PPA, including: (a) the RFP and its contents; and (b) all contents of the Collaboration Portal.

**Discretionary Submittal** means any Submittal that is expressed in the Project Documents to be subject to the approval or consent of the Department in its sole or absolute discretion.

**Discriminatory Change in Law** means a Change in Law, the terms of which apply to:

(a) the Project or projects substantially the same as the Project;

(b) private operators of roads or bridges; or

(c) the Development Entity or any Key Contractor,

**provided**, that in each case, such Change in Law is not of general application to other Persons.

**Dispute** means any dispute, disagreement or controversy between the Department and the Development Entity concerning their respective rights and obligations under any Project Document, including in respect of any claim, alleged breach or failure to perform and any remedy.

**Dispute Resolution Procedures** means the procedures for resolving Disputes set out in Article 30 (Dispute Resolution Procedures).

**Disputes Review Board** means the disputes review board established to aid in the resolution of Disputes pursuant to Section 30.4 (Disputes Review Board).

**Disputes Review Board Agreement** means the agreement in the form attached to this PPA as Part 1 (Form of Disputes Review Board Agreement) of Schedule 10 (Disputes Review Board).

**Distribution** means, whether in cash or in kind, any:

(a) dividend or other distribution in respect of 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 Equity Members Funding Agreements (whether of principal, interest, breakage costs or otherwise);

(d) payment, loan, contractual arrangement or transfer of assets or rights directly to the extent (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; or

(e) the receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms.

**Dollars** or **$** refers to the lawful money of the United States of America.

**Early Completion Bridge** or **ECB** means any Replacement Bridge that is expressed to be an "Early Completion Bridge" in Attachment 10-1 of the Technical Provisions.

**Early Handback Elements** means the following Elements included in the Maintenance Limits:

(a) flexible pavement;

(b) roadside post-mounted signs and clearance signs;

(c) pavement markings;

(d) reflectors and delineators;

(e) roadway lighting not attached to the structure;

(f) signal equipment not attached to the Replacement Bridge; and

(g) native vegetation and landscaping and other plantings part of the Construction Work, including seeding, grass, ground cover, shrubs, brush and trees.

**Early Handback Date** means:

(a) in the case of the Early Handback Element identified in clause (a) of the definition thereof:

(i) May 1, 2021 where the relevant Replacement Bridge achieved Substantial Completion in 2015;

(ii) May 1, 2022 where the relevant Replacement Bridge achieved Substantial Completion in 2016;

(iii) May 1, 2023 where the relevant Replacement Bridge achieved Substantial Completion in 2017; and

(iv) May 1, 2024 where the relevant Replacement Bridge achieved Substantial Completion in 2018;

(b) in the case of Early Handback Elements identified in clauses (b) through (f) of the definition thereof, the date on which Final Acceptance for the relevant Replacement Bridge is achieved; and

(c) in the case of the Early Handback Element identified in clause (g) of the definition thereof, the date which is twelve (12) months following the date on which Final Acceptance for the relevant Replacement Bridge is achieved.

**Early Termination** means the termination of this PPA for any reason prior to the expiration of the Term.

**Early Termination Date** means the effective date of termination of this PPA for any reason prior to the stated expiration of the Term, as specified in the relevant provisions of Article 24 (Termination).

**ECB Permit Constraints** means, collectively, the dimensions, characteristics and impacts of the conceptual design and the area of potential effect associated with an Early Completion Bridge that form the basis of any Governmental Approval issued for such Early Completion Bridge (including a Categorical Exclusion for such Early Completion Bridge).

**Element** or **Project Element** means an individual component, system or subsystem of the Project.

**Element Category** means:

(a) Roadway and pavement;

(b) Approach slabs;

(c) Decks;

(d) Deck joints;

(e) Bearings;

(f) Concrete Beams;

(g) Steel Beams;

(h) Abutments, wings and piers;

(i) Other structural elements;

(j) Bridge railings;

(k) Guiderail, impact attenuators and other safety devises.

(l) Approach slabs;

(m) Drainage, storm water Elements, and non-bridge-class culverts;

(n) Scour control systems;

(o) Stream channel and banks;

(p) Bridge lighting (attached to bridge structure);

(q) Sidewalks;

(r) Noise and retaining walls;

(s) Traffic signal equipment; and

(t) Signs.

**Eligible Security Issuer** means:

(a) in respect of a letter of credit, any Person; and

(b) in respect of a demand guaranty, 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 has an office in the Commonwealth at which the demand guaranty or letter of credit (as relevant) can be presented for payment by facsimile or by electronic means.

**Emergency** means any unplanned event affecting the Project that:

(a) presents an immediate or imminent hazard to Patrons, or a risk of immediate or imminent structural failure, or an immediate or imminent risk of damage to a third party's property or equipment, or an immediate or imminent risk of damage to the Environment or a threat to the long term integrity of any part of the Project;

(b) has jeopardized the safety of road users or the traveling public using the Replacement Bridge;

(c) is a declared state of emergency pursuant to Commonwealth or federal Law; or

(d) is recognized or declared by any law enforcement agency or any other Governmental Entity (other than the Department) as an Emergency.

**Endangered Species** means any animal or plant wildlife listed as endangered or threatened under and subject to an endangered or threatened species Law.

**Engineer of Record** or **EOR** means the Professional Engineer employed by the Lead Engineering Firm responsible for preparing Final Design Documents, all specifications, certification of all shop drawings and providing As-Built Drawings for the Project.

**Environment** means air, soils, surface waters (including wetlands), groundwater, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and cultural, historic, archaeological and paleontological resources.

**Environmental Approval** means a Governmental Approval required under any Applicable Law for the Project or any Project Site that imposes liability or standards of conduct for or otherwise regulates, concerns or relates to the protection of public health, safety, or welfare and the Environment; Hazardous Substances; or pollution as defined by any Applicable Law.

**Environmental Commitments** means all of the environmental requirements of the Development Entity as further described in Section 4 (Environmental) of the Technical Provisions.

**Equity Investment** means:

(a) any form of direct investment by Equity Members, including the purchase of newly issued equity shares in and/or the provision of Equity Member Debt to the Development Entity; and

(b) any payment under, or draws on, any instrument guaranteeing the provision of Deferred Equity Amounts, including but not limited to any draws by or on behalf of the Development Entity of any letter(s) of credit issued by or for the account of an Equity Member or Associated Company in respect of Deferred Equity Amounts.

**Equity IRR** means the nominal post-tax internal rate of return on Equity Investment (on a Cash-on-Cash Basis) over the full Term calculated using the 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 Equity Investment. The Equity IRR initially is equal to the Base Case Equity IRR and is subject to amendment only in accordance with Article 16 (Financial Model Adjustments). For the purposes of this definition:

(a) the phrase **post-tax** refers only to U.S. federal, state and local income tax liability of the Development Entity (or, if the Development Entity is a pass-through entity for tax purposes, its Equity Members) and specifically excludes (i) any foreign income tax and other tax of any kind, and (ii) any federal, state or local withholding tax, including any tax that the Development Entity 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) in calculating the Equity IRR, a single level of corporate income taxes for a regularly-taxed, U.S.-organized, domestic **C** corporation should be taken into account.

**Equity Member** means any Person that directly holds an equity interest in the Development Entity.

**Equity Member Debt** means any obligations created, issued or incurred by the Development Entity for borrowed money that:

(a) is owed to any Equity Member, any Related Entity, Qualified Investor or any Affiliate thereof or of the Development Entity; and

(b) is subordinated in priority of payment and security to all Project Debt held by Persons who are not Equity Members, other than any mezzanine debt that is provided by a party referred to in clause (a) on an arm's length basis.

**Equity Members Funding Agreements** means any loan agreement, credit agreement or other similar financing agreement or subordination agreement providing for or evidencing Equity Member Debt.

**Escrow Agent** has the meaning set out in Section 8.7(a) (Establishment and Security).

**Exceptional Cost** means for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds 30% of the Base Benchmarked Insurance Cost for that Insurance Review Period.

**Exceptional Saving** means for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds 30% of the Base Benchmarked Insurance Cost for that Insurance Review Period.

**Exempt Refinancing** means:

(a) any Refinancing to the extent that it was taken into account in the calculation of the Maximum Aggregate Payment;

(b) any amendment, modification, supplement, or consent to any Financing Document or the exercise by a Lender of rights, waivers, consents and similar actions in the ordinary course of day-to-day loan administration and supervision which do not provide a financial benefit to the Development Entity;

(c) any of the following acts by a Lender:

    (i) the syndication in the ordinary course of business of any of such Lender's rights and interests in the Financing Documents;

    (ii) the sale of a participation, assignment, or other transfer by such Lender of any of its rights or interests, in respect of the Financing Documents in favor of any other Lender or any investor; or

    (iii) the grant by such Lender of any other form of benefit or interest in either the Financing Documents or the revenues or assets of the Development Entity, whether by way of security or otherwise, in favor of any other Lender or any investor;

(d) any amendment, variation, or supplement of any Financing Documents in connection with the funding of a Department Change pursuant to Article 10 (Department and Development Entity Changes);

(e) a re-set of an interest rate (excluding margin) pursuant to the express terms of any Financing Documents; or

(f) any sale of any equity interests in the Development Entity by an Equity Member or securitization of the existing rights and/or interests attaching to any equity interests in the Development Entity or its direct, 100% Equity Member, if any.

**Extended Force Majeure Termination Sum** means the amount calculated in accordance with Section 2 (Compensation on Termination for Extended Force Majeure) of Schedule 6 (Compensation on Termination).

**Extra Work** means any work which is required by the Department to be performed by the Development Entity and which at that time is not otherwise covered or included in the Project by the Project Documents, whether it is in the nature of additional work, altered work, deleted work, or otherwise, including by means of a Department Change and/or Directive Letter.

**Federal Requirements** means the provisions required to be part of federal-aid construction contracts by Applicable Law, including without limitation the Additional Federal Requirements and other federal Applicable Laws identified in the Project Documents.

**Final Acceptance** means, in respect of a Replacement Bridge, the occurrence of all the events and satisfaction of all the conditions set out in Part 2 (Final Acceptance of a Replacement Bridge) of Schedule 21 (Conditions Precedent to Substantial Completion and Final Acceptance) in respect of that Replacement Bridge.

**Final Design** means, depending on the context:

(a) the Final Design Documents;

(b) the design concepts set out in the Final Design Documents; or

(c) the process of developing the Final Design Documents.

**Final Design Documents** means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, design criteria, specifications, reports, studies, calculations, electronic files, records and submittals prepared by the Development Entity, necessary or related to construction and maintenance of the Project.

**Final Warning Notice** has the meaning set out in Section 22.2(b) (Final Notice).

**Financial Close** means the satisfaction or waiver of all conditions precedent to the initial disbursement to the Development Entity or utilization by the Development Entity of Project Debt proceeds or the effectiveness of the Lenders' commitments, as applicable, under the Financing Documents (other than any condition as to the effectiveness of this PPA or any conditions relating to the adjustment of the Base MAP hereunder).

**Financial Close Termination Sum** means the amount calculated in accordance with Section 4 (Compensation on Termination for Failure to Achieve Financial Close) of Schedule 6 (Compensation on Termination).

**Financial Closing Conditions Precedent** means the conditions set out in Section 2.3 (Conditions Precedent to the Financial Closing Date).

**Financial Closing Date** means the date on which all of the Financial Closing Conditions Precedent are satisfied in accordance with this PPA.

**Financial Closing Deadline** means the date that is ninety (90) days after the date of this PPA.

**Financial Dispute** has the meaning set out in Section 30.4(a).

**Financial Disputes Review Board** means the Disputes Review Board for Financial Disputes.

**Financial Model** means the base case financial model set out in Form 3 (Form of Financial Model) (as updated from time to time in accordance with the terms of this PPA) for the purposes of, amongst other things, calculating the Availability Payments.

**Financing Documents** means the Funding Agreements and the Security Documents.

**Force Majeure Event** means the occurrence after the date of this PPA of:

(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 a Project Site by the Development Entity or its Key Contractors or is as a result of any breach by the Development Entity of the terms of this PPA;

(c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near a Project Site by the Development Entity or its Key Contractors or is as a result of any breach by the Development Entity of the terms of this PPA;

(d) any blockade or embargo;

(e) any:

(i) official or unofficial strike;

(ii) lockout;

(iii) go-slow; or

(iv) other dispute,

generally affecting the construction industry or a significant sector of it; or

(f) any act of Terrorism,

which directly causes either Party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this PPA.

**Funding Agreements** means the documents listed in Section 1 (Funding Agreements) of Annex 3 (Financing Documents) to the Direct Agreement executed on or about Financial Close (excluding, for the avoidance of doubt, any Equity Members Funding Agreement), together with any other document designated by the Parties acting jointly as a Funding Agreement.

**GAAP** means the Generally Accepted Accounting Principles approved and adopted by the American Institute of Certified Public Accountants.

**General Change in Law** means a Change in Law which is not a Discriminatory Change in Law.

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, maintenance contractor or operator or developer seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals, using accepted design and construction standards and criteria normally used on similar projects in the Commonwealth, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

**Governmental Approval** means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) which are required from time to time in connection with the Project to be issued by the Department, or 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 or the cities and counties within the Commonwealth. Governmental Entity does not include the Department.

**Handback Bridge** means, in respect of each Handback Date, each Replacement Bridge that the Development Entity is no longer required to carry out Maintenance Work on after that Handback Date.

**Handback Date** means, in respect of a Replacement Bridge, the 25$^{th}$ anniversary of the Substantial Completion Date for that Replacement Bridge.

**Handback Period** means the period beginning on the date sixty (60) months before the scheduled end of the Term and ending on the Termination Date.

**Handback Requirements** has the meaning set out in Section 8.6(a).

**Handback Reserve Account** has the meaning set out in Section 8.7(a) (Establishment and Security).

**Handback Reserve Amount** has the meaning set out in Section 4(b) of Schedule 5 (Calculation of Handback Amounts).

**Handback Work Plan** means the Development Entity's plan which describes the methodologies and activities to be undertaken or employed to meet the Handback Requirements and prepared in accordance with Section 17 (Maintenance Work) of the Technical Provisions.

**Handback Year** has the meaning set out in Section 8.7(b)(i).

**Hazardous Environmental Condition** means the presence of any Hazardous Materials on, in, under or about a Project Site at concentrations or in quantities that are required to be removed or remediated as a

matter of Law or in accordance with the requirements of the Project Documents or any Governmental Entity.

**Hazardous Materials** means any element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law, or any other such substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the Environment or human health and safety. Hazardous Materials includes the following:

(a) hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances, ignitable, corrosive and reactive substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of hazardous substance, hazardous waste, hazardous material, extremely hazardous waste, acutely hazardous waste, radioactive waste, radioactive materials, bio-hazardous waste, pollutant, toxic pollutant, contaminant, restricted hazardous waste, infectious waste, toxic substance, toxic waste, toxic material, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor Environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, TCLP toxicity or EP toxicity or words of similar import under any Applicable Law);

(b) any petroleum product, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) any solvent, solvent waste, including any refined solvent product, and any waste solvent or waste solvent byproduct, including any additive, byproduct or fraction of any of the foregoing;

(d) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(e) any flammable substances or explosives;

(f) any radioactive materials;

(g) any asbestos or asbestos-containing materials;

(h) silica;

(i) any lead, cadmium, or lead-based paint or any other heavy metal-based paint or material, or any metal listed in or regulated by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.);

(j) any radon or radon gas;

(k) any methane gas or similar or regulated gaseous materials;

(l) any urea formaldehyde foam insulation;

(m) electrical equipment and components which contain any oil or dielectric fluid containing polychlorinated biphenyls;

(n) pesticides, herbicides or fungicides;

(o) 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, Patrons or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and

(p) soil, or surface water or groundwater, containing any of the Hazardous Materials as defined above.

**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 indoor or outdoor Environment, including any of the foregoing that exacerbates an existing release or condition of Hazardous Materials contamination.

**Hedging Arrangements** means any Financing Documents entered into for the purposes of hedging the Development Entity's exposure to floating rate interest risk.

**Hedging Liabilities** means all amounts due from the Development Entity to the Lenders by reason of the early termination of any Hedging Arrangements.

**Hedging Receipts** means all amounts (if any) payable by the Lenders to the Development Entity by reason of the early termination of any Hedging Arrangements.

**Incident** means, with respect to any Replacement Bridge, a localized disruption to the free flow of traffic or safety of Patrons on the Replacement Bridge.

**Increased Monitoring Period** means a period commencing when:

(a) the cumulative number of Noncompliance Points assessed in connection with the performance of the D&C Work during any rolling 12-month period exceeds 1,250; or

(b) the cumulative number of Noncompliance Points assessed in connection with the performance of the Maintenance Work during any rolling 12-month period exceeds 750; or

(c) the cumulative number of Noncompliance Points assessed in connection with the performance of the Maintenance Work during any rolling 48-month period exceeds 2,850;

and ending when the Development Entity has demonstrated to the reasonable satisfaction of the Department that:

(i) it is diligently pursuing cure of all Noncompliance Events that have not been cured; and

(ii) it will perform, and is capable of performing, its obligations under the Project Documents.

**Indemnified Parties** means the Department and its respective successors, assigns, agencies, divisions, officers, agents, representatives, employees, and the Commonwealth.

**Indexable Element** means any financial amount referred to in this PPA that is expressed to be subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism).

**Indexation Base Date** means October 1, 2014.

**Indexation Formula** has the meaning set out in Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism).

**Indexation Review Date** means the date of Substantial Project Completion and each anniversary thereof.

**Indirect Losses** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to payments expressly provided for under this PPA.

**Insolvency Event** means in respect of any Person:

(a) any involuntary bankruptcy, insolvency, liquidation, company reorganization, 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 Applicable Law, in any jurisdiction, except to the extent that the same has been dismissed within sixty (60) days;

(b) any voluntary bankruptcy, insolvency, liquidation, company reorganization, 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 Applicable Law, in any jurisdiction; or

(c) any general inability on the part of that Person to pay its debts as they fall due.

**Insurance Broker** means the Development Entity's insurance broker, such broker to be a reputable international insurance broker of good standing.

**Insurance Cost Decrease** means the Insurance Cost Differential if the value is less than zero, multiplied by minus one.

**Insurance Cost Differential** shall, subject to the Insurance Premium Benchmarking Procedure, be determined as follows:

Insurance Cost Differential = (ABIC - BBIC) - (+/-PIC),

where:

(a) **ABIC** is the Actual Benchmarked Insurance Cost;

(b) **BBIC** is the Base Benchmarked Insurance Cost; and

(c) **PIC** is any Project Insurance Change.

**Insurance Cost Increase** means the Insurance Cost Differential if the value thereof is greater than zero.

**Insurance Policies** means all of the insurance policies the Development Entity is required to carry pursuant to Article 19 (Insurance) and/or Schedule 9 (Insurance Coverage Requirements).

**Insurance Premium Benchmarking Procedure** means the procedure set out in Section 19.13 (Benchmarking of Insurance Costs).

**Insurance Proceeds** means all proceeds from insurance payable to the Development Entity (or that should have been payable to the Development Entity but for the Development Entity's breach of any obligation under this PPA to take out or maintain such insurance) on or after the Early Termination Date.

**Insurance Review Period** means a three year period from the Benchmarked Insurance Inception Date and each subsequent three year period commencing on the third anniversary of the Benchmarked Insurance Inception Date except where the end of such period lies beyond the end of the Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Term.

**Insurance Term** means any terms and/or conditions required to be in a policy of insurance by Article 19 (Insurance) and/or Schedule 9 (Insurance Coverage Requirements).

**Intellectual Property** means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by any Development Entity-Related Entity for the purposes of carrying out the Works and/or otherwise for the purposes of this PPA.

**Interim Work** means:

(a) Preliminary Work; and

(b) any other Design Work or Construction Work that does not involve activities on any Project Site.

**Interval of Recurrence** means for each Noncompliance Event, each continuous period of time after the Cure Period (including where there is no Cure Period), after which, unless already cured, such Noncompliance Event will continue to accrue Noncompliance Points. The Intervals of Recurrence are set out in Table 7.1 (Noncompliance Events Relating to D&C Work) and Table 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table) and in Table 17-1 (Maintenance Performance Requirements) of Section 17 (Maintenance Work) of the Technical Provisions; **provided** that to the extent a Noncompliance Event is also a Priority 0 Noncompliance for which a temporary remedy is required pursuant to Section 17.2.1 (Noncompliance Priority Classification and Cure) of the Technical Provisions, the Interval of Recurrence in respect of such temporary remedy shall be (x) half of the Cure Period (if any) set out opposite such Noncompliance Event under the heading "Priority 0 Hazard Mitigation" or (y) if there is no Cure Period, twenty-four (24) hours.

**Invoice** has the meaning set out in Section 14.3 (Invoicing and Monthly Performance Reports).

**Joint Insurance Cost Report** has the meaning set out in Section 19.13(b).

**Karst Bridges** means each of the Replacement Bridges set out in Schedule 17 (Karst Bridges):

**Key Assets** means all assets and rights to enable the Department or a successor contractor to own, operate and maintain each Replacement Bridge in accordance with this PPA including:

(a) any land or buildings;

(b) any core equipment;

(c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);

(d) any contractual rights; and

(e) any Intellectual Property subject to and in accordance with Article 27 (Intellectual Property),

but excluding (i) any assets and rights in respect of which the Department is full legal and beneficial owner, and (ii) any of the above to the extent that the relevant asset or right is not owned by the Development Entity).

**Key Contract** means:

(a) any D&C Contract;

(b) any Maintenance Contract; or

(c) any guaranty, performance and/or payment security, or any other support provided by a creditworthy entity in respect of the obligations of a Key Contractor under any of the foregoing.

**Key Contractor** means the Contractor under any Key Contract.

**Key Personnel** has the meaning set out in Section 2 (Project Management) of the Technical Provisions.

**Key Ratios** has the meaning set out in the Direct Agreement executed on or about Financial Close.

**Lane Closure Unavailability Event** means, in respect of a Replacement Bridge, an Unavailability Event which results in a Closure in respect of less than all traffic lanes for such Replacement Bridge.

**Lane Closure Unavailability Value** means, in respect of a Replacement Bridge, the corresponding Unavailability Value under the heading "Lane Closure Unavailability Value" set out in Attachment 10-1 of the Technical Provisions.

**Law** means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of this PPA including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Governmental Entity.

**Lead Engineering Firm** means [●].

**Lead Maintenance Firm** means [●].

**Lenders** means any Person that:

(a) provides Project Debt, together with their successors and assigns; or

(b) is appointed by any Person referred to in clause (a) as its agent or trustee in connection with the Project Debt.

**Lenders' Liabilities** means, at the relevant time, the aggregate of (without double counting):

(a) all principal, interest (including default interest under the Financing Documents, but with respect to default interest, only to the extent that it arises as a result of the Department making any payment later than the date that it is due under this PPA or any other default by the Department under this PPA), banking fees and premiums on financial insurance policies, costs and expenses and other amounts properly incurred owing or outstanding to the Lenders by the Development Entity under or pursuant to the Financing Documents on the Early Termination Date, including any prepayment costs, make-whole amounts and breakage costs; *plus*

(b) Hedging Liabilities, *minus*

(c) Hedging Receipts.

**Long Stop Deadline** means the date that is 365 days after the Substantial Project Completion Deadline (as such date may be extended pursuant to the terms of this PPA).

**Loss** or **Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of this PPA)), 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.

**Maintained Element** means any Element of a Replacement Bridge that is to be maintained by the Development Entity as further described in Section 17 (Maintenance Work) of the Technical Provisions.

**Maintenance Contract** means any Contract entered into by the Development Entity for third party management, direction, supervision or performance of all of the Maintenance Work or any significant portion thereof (including any guaranty or similar credit support provided by a creditworthy entity to backstop obligations under such a Contract). There may be more than one Maintenance Contract concurrently in effect.

**Maintenance Contractor** means the Contractor under any Maintenance Contract.

**Maintenance Limits** means in respect of any Replacement Bridge the Construction Limits (excluding any areas subject to any temporary rights or interests that the Department or the Development Entity may acquire in connection with the Construction Work for such Replacement Bridge, such as construction, staging, storage, lay down and borrow areas) for such Replacement Bridge and, if such Replacement Bridge crosses a stream, channel or other waterway, the area of such waterway which is 50 feet upstream and downstream from the relevant edge of such Replacement Bridge.

**Maintenance Management Information System or MMIS** has the meaning in Section 17.3 (Maintenance Management Information System) of the Technical Provisions.

**Maintenance Management Plan** means the plan developed by the Development Entity that identifies the approach, methods, staffing, systems, schedule and procedures for performing the Maintenance Work, as described in more detail in Section 17 (Maintenance Work) of the Technical Provisions.

**Maintenance Manager** means the Key Personnel with such title identified in Section 2.1.4.1 of the Technical Provisions.

**Maintenance Monthly Report** means the report to be prepared by the Development Entity on a monthly basis, as required under Section 17 (Maintenance Work) of the Technical Provisions.

**Maintenance Performance Requirements** means in respect to each Element of the Project, the minimum performance requirements set out in Section 17.2.2 and Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions.

**Maintenance Period** means, in respect of a Replacement Bridge, the period starting on the Substantial Completion Date for that Replacement Bridge and ending on the last day of the Term.

**Maintenance Record** means all data in connection with maintenance of the Project including:

(a) all inspection and inventory records, whether generated by the Development Entity or a third party, and

(b) any information system (as may be introduced or amended by the Department from time to time) in connection with maintenance, renewal or hand back of the Project that the Department requires the Development Entity to use.

**Maintenance Rectification Costs** means, in respect of any termination of this PPA that occurs after D&C Work Completion, all Losses that the Department determines it is reasonably likely to incur as a direct result of the termination of this PPA, including (without double counting):

(a) those costs (internal and external) that the Department is reasonably likely to incur as a direct result of carrying out any process to request tenders from any parties interested in entering into a contract with the Department to carry out maintenance work in respect of the Project (on similar terms contemplated herein), including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts;

(b) those costs reasonably expected to be incurred by the Department in relation to:

    (i) remediation or, if remediation is not possible or would cost more than renewal, renewal of any defective D&C Work or Maintenance Work (other than Department Retained O&M Work); and

    (ii) rectification or cure of any breach of this PPA or the Project Documents by the Development Entity; and

(c) on the assumption that this PPA had not been terminated, those costs reasonably projected to be incurred for the remainder of the Term in order to ensure that the Project complies with the requirements of the Project Documents, but only to the extent such projected costs exceed the costs assumed in the Financial Model,

including, for the avoidance of doubt, any amount which, but for the termination of this PPA, either should have been deposited into the Handback Reserve Account in accordance with the terms of this PPA.

**Maintenance Work** means all Routine Maintenance and Renewal Work.

**Major Governmental Approval** means in respect of any Remaining Eligible Bridge:

(a) Section 404 permit or general permit from US Army Corps of Engineers; and

(b) National Pollution and Discharge Elimination System permit (if applicable) from PADEP.

**Major Governmental Approval Deadline** means, in respect of any Major Governmental Approval, the later of:

(a) the date falling nine (9) months after the date that any submission by the Development Entity of the relevant application proves to be compliant with the submission requirements of the relevant Governmental Entity; and

(b) the last day of the relevant ROW Acquisition Period.

**Maximum Aggregate Payment** means the aggregate of the Maximum Milestone Payments and the Maximum Availability Payments, each as determined from the Financial Model on or prior to the Financial Closing Date.

**Maximum Allowable Detour Period** means, in respect of a Replacement Bridge:

(a) a period of two (2) weeks or five (5) weeks indicated as being the "Maximum Allowable Detour Period" for such Replacement Bridge in Attachment 10-1 of the Technical Provisions; or

(b) if no such period is indicated in Attachment 10-1 of the Technical Provisions, the relevant period set out in the table below based on the number of spans of such Replacement Bridge;

in each case subject to adjustment pursuant to the Project Documents.

| Number of Spans | Days |
|---|---|
| **1** | 75 |
| **2 or more** | 110 |

**Maximum Availability Payment** or **MAP** means the maximum Availability Payment that the Development Entity can earn in a given year, as calculated in accordance with Schedule 8 (Payment Mechanism) and as may be further adjusted in accordance with this PPA.

**Maximum Milestone Payment** or **MMP** means the amount described in Section 1.1(b) of Schedule 8 (Payment Mechanism).

**Milestone** means each of the milestones described under the heading "Milestone" in Table 1 (Scheduled Milestone Payments) of Schedule 8 (Payment Mechanism).

**Milestone Payment** means the amount calculated according to the methodology set out in Section 1.1 (Milestone Payments) of Schedule 8 (Payment Mechanism).

**Milestone Payment Deduction** means an amount equal to the sum of the Aggregate Construction Noncompliance Deduction and the Aggregate Construction Unavailability Deduction calculated as provided in Section 2.1 (Payment Deductions on Milestone Payments) of Schedule 8 (Payment Mechanism).

**Month or month** means a time period comprised of one calendar month and pertaining to the invoice period defined for that period.

**Monthly Disbursement** means the actual Availability Payments paid by the Department to the Development Entity in any given month, taking into account the calculations, adjustments and deductions provided for in this PPA.

**Monthly Maintenance Noncompliance Deduction** means the amount described in Section 2.2(b) of Schedule 8 (Payment Mechanism).

**Monthly Maintenance Payment Deduction** means an amount equal to the sum of the Monthly Maintenance Unavailability Deduction and the Monthly Maintenance Noncompliance Deduction calculated as provided in Section 2.2 (Payment Deductions on Availability Payments) of Schedule 8 (Payment Mechanism).

**Monthly Maintenance Unavailability Deduction** means the amount described in Section 2.2(c) of Schedule 8 (Payment Mechanism).

**Monthly Performance Report** means the monthly report required to be delivered by the Development Entity to the Department for a given month in respect of the Monthly Maintenance Payment Deduction calculation for the previous month, all as further described in Schedule 13 (Monthly Performance Report).

**Net Lenders' Liabilities** means the amount calculated as at the Early Termination Date (without double counting) as follows:

(a) Lenders' Liabilities; *minus*

(b) Account Balances; *minus*

(c) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

**Non-Bridge Element** means those Elements identified as "Non-Bridge Elements" in Table 17-2 of the Technical Provisions.

**Non-Bridge Elements Handback Amount** has the meaning set out in Section 3 of Schedule 5 (Calculation of Handback Amounts).

**Non-CE1 Bridge** means any Replacement Bridge which is not eligible for a CE1.

**Non-Discretionary Submittal** means any Submittal that is expressed in the Project Documents to be subject to the approval or consent of the Department, but which is not a Discretionary Submittal.

**Noncompliance Event** has the meaning set out in Section 11.1(a).

**Noncompliance Points** means the points that may be assessed for certain Noncompliance Events by the Development Entity, as set out in Schedule 7 (Noncompliance Points Table) to this PPA.

**Noncompliance Rectification Date** means, in respect of any Noncompliance Event, the date and time that the Noncompliance Event has been cured and reasonable measures have been taken by the Development Entity to prevent the reoccurrence of that Noncompliance Event.

**Noncompliance Start Date** means, in respect of any Noncompliance Event, the earlier of the date and time that the Development Entity:

(a) first obtains knowledge of the Noncompliance Event; or

(b) first should have reasonably known of the occurrence of the Noncompliance Event.

**Nonconforming Work** means any D&C Work that does not conform to the requirements of the Project Documents.

**NTP1** has the meaning set out in Section 7.4 (Conditions Precedent to NTP1).

**NTP2** has the meaning set out in Section 7.5 (Conditions Precedent to NTP2).

**NTP3** has the meaning set out in Section 7.6 (Conditions Precedent to NTP3).

**PABs** means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of the Internal Revenue Code §§ 142(a)(15) and (m) (which acronym stands for "private activity bonds").

**PABs Issuer** means the Pennsylvania Economic Development Financing Authority.

**Party** means the Development Entity or the Department, as the context may require, and **Parties** means the Development Entity and the Department, collectively.

**Patron** means any user of the Project Facility, including motorists, pedestrians and cyclists.

**Permissible Unplanned Maintenance** means, in respect of any Replacement Bridge which has achieved Substantial Completion, any Closure between the hours of 8:00 p.m. and 6:00 a.m. local time reasonably required to cure a Noncompliance Event which does not result in the number of open traffic lanes for such Replacement Bridge being less than the relevant number set out under the heading "Total Minimum Number of Lanes that Must Remain Open – From 6:00 pm to 6:00 am" of Attachment 10-1 of the Technical Provisions, subject in all cases to the Department's consent (such consent not to be unreasonably withheld).

**Permitted Closure** has the meaning set out in Section 2.4 (Permitted Closures) of Schedule 8 (Payment Mechanism).

**Persistent Breach** means a breach for which a Final Warning Notice has been issued, which has continued for more than thirty (30) consecutive days or recurred in three (3) or more months within the six (6)-month period after the date on which such Final Warning Notice is served on the Development Entity.

**Persistent Closure** shall be deemed to have occurred if:

(a) the cumulative amount of Unavailability Deductions assessed in connection with the performance of the D&C Work during any rolling 12-month period equals or exceeds $500,000, subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism); or

(b) the cumulative number of Unavailability Events assessed in connection with the performance of the D&C Work during any rolling 12-month period equals or exceeds thirty (30); or

(c) the cumulative number of months where the Unavailability Deduction assessed in connection with the performance of the D&C Work equals or exceeds $150,000, subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism), assessed during any rolling 12-month period equals or exceeds four (4); or

(d) the cumulative amount of Monthly Maintenance Unavailability Deductions assessed during any rolling 12-month period after achievement of Substantial Project Completion equals or exceeds $250,000, subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism); or

(e) the cumulative number of Unavailability Events assessed in connection with the performance of the Maintenance Work during any rolling 12-month period after achievement of Substantial Project Completion equals or exceeds twenty-five (25).

**Person** or **Persons** means any natural person, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity or other type of entity.

**Planned Maintenance** means Maintenance Work that has been properly scheduled as part of the Maintenance Management Plan or Renewal Work Plan (as relevant) in cooperation with the Department, for which the proper notices and notice periods have been provided to the Department, and for which the Department has provided the relevant approvals, in each case in accordance with Section 17 (Maintenance Work) of the Technical Provisions.

**Poor Maintenance Performance** means:

(a) the cumulative number of Noncompliance Points assessed in connection with the performance of the Maintenance Work during any rolling 12-month period equals or exceeds 900; or

(b) the cumulative number of Noncompliance Points assessed in connection with the performance of the Maintenance Work during any rolling 48-month period equals or exceeds 3,400; or

(c) the cumulative amount of Monthly Maintenance Unavailability Deductions assessed during any rolling 12-month period equals or exceeds $75,000, subject to indexation in accordance with Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism); or

(d) the cumulative number of Unavailability Events assessed in connection the performance of the Maintenance Work during any rolling 12-month period equals or exceeds twenty (20).

**Portfolio Cost Savings** means any insurance cost saving which arises from the Development Entity changing the placement of the Insurance Policies from being on a stand-alone project-specific basis

assumed at the date of this PPA, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero.

**PPA Amendment** has the meaning set out in Section 2.4(b).

**Pre-Existing Hazardous Materials** means Hazardous Materials that exist in, on or under a Project Site prior to the date at which the Development Entity gains vacant possession to a relevant portion of the Project Site, including those that manifest themselves after that date.

**Preliminary Financial Model** has the meaning set out in Section 2.4(b).

**Preliminary Project Baseline Schedule** means the logic-based summary schedule as provided in the Development Entity's Proposal Commitments and is the basis of the Project Baseline Schedule.

**Preliminary Work** means:

(a) any Work that the Development Entity is required to undertake in order to satisfy the conditions precedent listed in Part 2 (Conditions Precedent to NTP2) of Schedule 20 (Conditions Precedent to Notices to Proceed); and

(b) any other Work related to general administrative activities, preparation of the Project Management Plan and Project Baseline Schedule, preliminary Design Work, NEPA and permitting activities, investigations (including geotechnical investigations) and surveys, ROW-related work, coordination and planning activities associated with Utility Relocation Work and railroad coordination and planning activities.

**Pre-Refinancing Equity IRR** means the nominal post-tax Equity IRR calculated immediately prior to the Refinancing on a version of the Financial Model updated for the actual revenue and cost performance of the Project up to the Refinancing date.

**Principal Department Documents** means each Project Document to which the Department is expressed to be a party, the D&C Direct Agreement and the Direct Agreement.

**Principal Development Entity Documents** means each Key Contract and each Financing Document.

**Priority 0 Noncompliance** means a Noncompliance Event, which requires prompt attention because it represents an immediate or imminent hazard, or there is a risk of immediate or imminent structural failure, or there is an immediate or imminent risk of damage to a third party's property or equipment, or there is an immediate or imminent risk of damage to the Environment.

**Priority 1 Noncompliance** means any Noncompliance Event other than a Priority 0 Noncompliance.

**Probable Maximum Loss** means, for an asset and a peril covered by an Insurance Policy, the probable maximum loss to that asset as a result of the occurrence of that peril, as approved by the Department (acting reasonably) on the basis of a report prepared by a competent and experienced person acceptable to the Department in its absolute discretion.

**Professional Engineer** means an engineer who is licensed in the Commonwealth.

**Prohibited Person** means any Person who is:

(a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement transactions with the United States federal government or any department, agency or instrumentality thereof pursuant to 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 United States federal government or any department, agency or instrumentality thereof;

(c) listed on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement 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 Control (**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 Section 311 of the USA PATRIOT Act (**Section 311**);

(h) located within or is operating 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 Section 311;

(j) a senior foreign political figure or a prohibited foreign shell bank within the meaning of 31 C.F.R. Section 103.175; or

(k) any Person with whom the Department is engaged in litigation relating to performance of contract or business practices (unless the Department has first waived (in Department's sole discretion) by written notice to the transferring equity holder, with a copy to the Development Entity, the prohibition on a transfer to such Person during the continuance of the relevant litigation).

**Project** has the meaning set out in clause (B) of the Background to this PPA.

**Project Baseline Schedule** means the logic-based critical path schedule for all D&C Work as described in the Technical Provisions, as may be revised and updated in accordance with the Project Documents.

**Project Data** means:

(a) Design Documents; and

(b) any other information, documents or data acquired or brought into existence or used in relation to the Works or this PPA,

in each case that is used by or on behalf of any Development Entity-Related Entity in connection with the provision of the Work or the performance of the Development Entity's obligations under this PPA.

**Project Debt** means all amounts outstanding from time to time pursuant to the Financing Documents.

**Project Documents** means this PPA, the Technical Provisions, the Development Entity's Proposal Commitments, any amendments to the foregoing undertaken in accordance with the terms hereof or thereof and any other document that the Department and the Development Entity may deem to be a **Project Document** from time to time after the date hereof.

**Project Executive** means the individual designated and engaged by the Development Entity and approved in writing by the Department in the position to take overall responsibility for the Project and who will act as a single point of contact on all matters on behalf of the Development Entity.

**Project Facilities** means all Elements of the Project including Maintained Elements and any other Elements in respect of which the Development Entity is required to perform Work, as required by the Technical Provisions.

**Project Insurance Change** means any net increase or net decrease in the Actual Benchmarked Insurance Cost relative to the Base Benchmarked Insurance Cost, arising from:

(a) the claims history or re-rating of the Development Entity or any Related Entity (other than any re-rating due to the acts or omissions of the Department);

(b) the effect of any change in deductibles unless the following applies:

    (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Markets; and

    (ii) the deductible further to such change is either greater than or equal to the maximum in Schedule 9 (Insurance Coverage Requirements); or

(c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Markets, except for any Portfolio Cost Saving;

with such amount to be expressed as a positive number in the event of a net increase and a negative number in the event of a net decrease for the purposes of determining the Insurance Cost Differential.

**Project Management Plan** means the document approved by the Department, in accordance with the terms of the Project Document, describing the Work necessary to manage the development, design, construction, and maintenance of the Project, and containing the component parts, plans and documentation required under the Project Documents.

**Project Manager** means the individual designated by the Development Entity, the superintendent identified in the Development Entity's Proposal Commitments for the D&C Contractor or one of their

respective designees, in each case, as approved in writing by the Department, in accordance with the terms of the PPA, in the position to take full responsibility for the prosecution of the Work.

**Project Site** means in respect of a Replacement Bridge all those areas from time to time referred to in the definitions of Construction Limits and Maintenance Limits.

**Project Working Schedule** means a copy of the most current approved Project Baseline Schedule that is to be or is in the process of being revised and updated by the Development Entity to reflect current project status in accordance with the Technical Provisions.

**Proposal** means the proposal submitted by the Development Entity to the Department in response to the RFP.

**Proposal Due Date** means September 29, 2014.

**Protection in Place** means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of the Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

**Public Information and Communications Plan (PICP)** means the plan setting forth the procedures by which the Development Entity shall work with the Department to inform, coordinate with, educate and engage customer groups, as more particularly described in Section 3 (Public Information and Communications) of the Technical Provisions.

**Punch List** means an itemized list of Construction Work which remains to be completed, corrected, adjusted, or modified, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the relevant Replacement Bridge.

**Qualified Investor** means [●][9].

**Qualifying Change in Law** means:

(a) a Discriminatory Change in Law; or

(b) a General Change in Law which involves Capital Expenditure,

which, in each case, was not foreseeable at the Proposal Due Date.

**Qualifying Refinancing** means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

**Quality Management Plan** means the plan described in Section 2 (Project Management) of the Technical Provisions.

**Quality Manager** means the individual retained by the Development Entity with the authority and responsibility for quality management system-related activities for all Work, including the establishment

[9] The Department will shortly be writing to each of the bidders to notify them of the Qualifying Investors relevant to their team. To the extent that bidders wish to notify the Department of their expectations in this regard, bidders are encouraged to do this as soon as possible.

and maintenance of, and compliance with the Quality Management Plan as further described in Section 2 (Project Management) of the Technical Provisions.

**R&C Submittal** means any Submittal that is expressed in the Project Documents that is not a Discretionary Submittal or a Non-Discretionary Submittal.

**Rating Agency** means any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Dominion Bond Rating Service, Inc. or Fitch Investors Service, Inc.

**Reasonable Efforts** means all those steps in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and reasonable person desiring to achieve that result would take; **provided**, that subject to its other express obligations under this PPA, the relevant Party shall not be 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).

**Redundancy Payments** means the payment of all wages earned, accrued unused vacation time, and any other payments required by Law or required by the employer's employment agreement with the employees.

**Refinancing** means:

(a) any amendment, variation, novation, supplement or replacement of any Financing Document (other than any Equity Members Funding Agreement);

(b) the exercise of any right, or the grant of any waiver or consent, under any Financing Document (other than any Equity Members Funding Agreement);

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Document (other than any Equity Members Funding Agreement) or the creation or granting of any other form of benefit or interest in either a Financing Document (other than any Equity Members Funding Agreement) or the contracts, revenues or assets of the Development Entity whether by way of security or otherwise; or

(d) any other arrangement put in place by the Development Entity or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Development Entity's or any Associated Company's ability to carry out any of (a) to (c) above.

**Refinancing Gain** means an amount equal to the greater of zero and {(A-B)-C}, where:

A = the net present value using the Base Case Equity IRR as the discounting rate of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this PPA following the Refinancing;

B = the net present value using the Base Case Equity IRR as the discounting rate of the Distributions projected immediately prior to the Refinancing (but without taking into

account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this PPA following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR.

**Registered Business Partner of the Commonwealth** means a person that has obtained "SAP-Vendor Number" through the Department's "Supplier Portal Website" at www.pasupplierportal.state.pa.us (or otherwise in accordance with the instructions set out in page 5 (Vendor Registration) of Department Publication IV (12-13), *Conducting Business with the Pennsylvania Department of Transportation*).

**Related Entity** means [●].[10]

**Released For Construction Documents** means all drawings, specifications, revisions thereto, and any other items necessary to construct the Work, Signed and Sealed by the Engineer of Record.

**Relevant Disputes Review Board** has the meaning set out in Section 30.4(c)(i).

**Relevant Event** means any of the following:

(a) a Compensation Event; or

(b) any other matter as a result of which there may be an adjustment to the Availability Payments or any other payments to be made by the Department or to the Department in accordance with Article 16 (Financial Model Adjustments).

**Relevant Insurance Markets** means the insurance markets which insure the majority of transportation related public-private partnerships in North America. At the date of this PPA the Relevant Insurance Markets are each of New York, Bermuda and London.

**Relief Event** means any of the following:

(a) any Force Majeure Event;

(b) any change in Law that is not a Qualifying Change in Law;

(c) fire, explosion, unusually adverse weather, flood, earthquakes, riot and civil commotion;

(d) named windstorm and any ensuing storm surge, including the direct action of wind originating from a named windstorm;

(e) any accidental loss or damage to a Project Site or any roads servicing them (including obstructed waterways);

(f) any delay in obtaining any Governmental Approval (other than any Department Obtained Governmental Approval); **provided**, that such delay is beyond the reasonable control of any Development Entity-Related Entity,

[10] This will be defined based on the ownership structure of the Development Entity as set forth in Appendix 2 of the PPA.

except, in each case, to the extent attributable to any breach of this PPA or any negligent act or negligent omission of a Development Entity-Related Entity.

**Remaining Eligible Bridge** means each Replacement Bridge which is not an Early Completion Bridge.

**Remaining Work** means, in respect of a Replacement Bridge, any Construction Work that is not Preliminary Work or Interim Work.

**Remedial Action** means any remediation or removal of a Hazardous Environmental Condition that the Development Entity is responsible for pursuant to Article 6 (Hazardous Materials).

**Renewal Work** means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any worn-out, obsolete, deficient, damaged or under-performing Element that is not Routine Maintenance so that such Element does not prematurely deteriorate and remain fully functional..

**Renewal Work Plan** has the meaning in Section 17.4.2 (Renewal Work Plan) of the Technical Provisions.

**Renewal Work Schedule** has the meaning in Section 17.4.2.1 (Renewal Work Schedule) of the Technical Provisions.

**Replacement Bridge** means each new bridge to be, or is in the process of being, constructed by the Development Entity as replacements for the existing bridges listed in Attachment 10-1 of the Technical Provisions.

**Required Action** has the meaning set out in Section 25.3(a).

**Residual Life** means the calculated duration that any Element of the Project, subject to Routine Maintenance, will continue to comply with any applicable Maintenance Performance Requirement or standard before Renewal Work is required.

**Restricted Change in Ownership** has the meaning set out in Section 15.1(a).

**Reviewable Submittal** means any Submittal that is a Discretionary Submittal, Non-Discretionary Submittal or R&C Submittal.

**RFP** has the meaning set out in clause (E) of the Background to this PPA.

**RFQ** has the meaning set out in clause (C) of the Background to this PPA.

**Routine Maintenance** means Work to preserve the current condition of assets, including any inspection, that is routine in nature and includes matters that are typically included as an annually or bi-annual recurring cost in highway and bridge maintenance budgets.

**ROW Acquisition Period** means the period:

(a) commencing on the date the Department receives all of the information (complete in both form and substance) required by the Department for formal NEPA approval under Section 4 (Environmental) of the Technical Provisions in respect of the relevant Replacement Bridge (to the extent that the Department does not notify the Development Entity otherwise); and

(b) ending on the date that is either eleven (11) months after such date in the case of a Non-CE1 Bridge or ten (10) months after such date in the case of any other Replacement Bridge; **provided** that in the event a proposed final ROW Acquisition Plan in respect of any Replacement Bridge must be amended and re-submitted to the Department in order to conform such ROW Acquisition Plan with the final NEPA approvals in respect of the relevant Replacement Bridge, such end date shall be the date that is nine (9) months from the date the revised ROW Acquisition Plan is approved by the Department in accordance with Section 7 (Right-of-Way) of the Technical Provisions.

**ROW Acquisition Plan** means the "ROW Plan" described in Section 7 (Right-of-Way) of the Technical Provisions.

**Safety Compliance** means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition of the Project that the Department or a Governmental Entity has reasonably determined to exist by investigation or analysis (including if the condition exists despite prior compliance with Safety Standards).

**Safety Compliance Order** means a written order or directive from the Department to the Development Entity to implement Safety Compliance.

**Safety Plan** has the meaning as set out in Section 2 (Project Management) of the Technical Provisions.

**Safety Standards** means those provisions of the Technical Provisions that are measures to protect public safety or worker safety. As a matter of clarification, provisions of the Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

**School Summer Recess Unavailability Event** means, in respect of a Replacement Bridge, a Detour Unavailability Event which occurs outside of the school summer recess in the school district for such Replacement Bridge.

**Security Documents** means the documents listed in Section 2 (Security Documents) of Annex 3 (Financing Documents) to the Direct Agreement executed on or about Financial Close, together with any other document designated by the Parties acting jointly as a Security Document.

**SEP-15 Variance** means means any exemption, deviation, or variance from the requirements of 23 CFR 636.109(b)(6) or 23 CFR 636.109(b)(7) authorized by FHWA with respect to the Project pursuant to 23 U.S.C. 502(b) and "Special Experimental Project No. 15" established thereunder.

**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 such 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 the Department's or a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

**Setting Date** means the date falling thirty (30) days before the Proposal Due Date.

**Signed and Sealed** means the signature and seal of a Professional Engineer on a document indicating that the licensee takes professional responsibility for the work and, to the best of the licensee's knowledge and ability, the work represented in the document is accurate, in conformance with applicable codes at the time of submission and has been prepared in conformity with normal and customary standards of practice and with a view to the safeguarding of life, health, property and public welfare. The Professional Engineer certifies that the documents have been signed and sealed in accordance with laws, rules and regulations of the Commonwealth.

**Subcontractor Breakage Costs** means Losses that have been or will be reasonably and properly incurred by the Development Entity under a Key Contract as a direct result of the termination of this PPA (and which shall not include lost profit or lost opportunity), but only to the extent that:

(a) the Losses are incurred in connection with the Project and in respect of the Works required to be provided or carried out, including:

(i) any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;

(ii) any expenditure incurred in anticipation of the provision of services or the completion of Works in the future; and

(iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project;

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on an arm's length basis; and

(c) the Development Entity and the relevant Key Contractor have each used their Reasonable Efforts to mitigate such Losses.

**Submittal** means any document, work product or other written or electronic product or item required under the Technical Provisions to be delivered or submitted to the Department for approval, review, comment or otherwise.

**Substantial Completion** means, in respect of a Replacement Bridge, the occurrence of all events and satisfaction of all conditions set out in Part 1 (Substantial Completion of a Replacement Bridge) of Schedule 21 (Conditions Precedent to Substantial Completion and Final Acceptance) with respect to that Replacement Bridge.

**Substantial Completion Conditions** means all of the conditions set out in Part 1 (Substantial Completion of a Replacement Bridge) of Schedule 21 (Conditions Precedent to Substantial Completion and Final Acceptance).

**Substantial Completion Date** means, in respect of a Replacement Bridge, the date upon which the Development Entity achieves Substantial Completion in respect of that Replacement Bridge.

**Substantial Completion Deadline** means, in respect of a Replacement Bridge, the date that the most recent version of the Project Working Schedule assumes that Substantial Completion will occur in respect of that Replacement Bridge.

**Substantial Project Completion** means Substantial Completion with respect to at least 99% of the Replacement Bridges.

**Substantial Project Completion Date** means the date upon which the Development Entity achieves Substantial Project Completion.

**Substantial Project Completion Deadline** means the later of:

(a) the date that is 42 months after the Commercial Closing Date; and

(b) August 30, 2018;

in each case subject to adjustment pursuant to the Project Documents.

**Supplier** means any Person not performing work at or on a Project Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to the Development Entity or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from a Project Site shall not be deemed to be performing Work at such Project Site.

**Technical Dispute** has the meaning set out in Section 30.4(a).

**Technical Disputes Review Board** means the Disputes Review Board for Technical Disputes.

**Technical Provisions** means the Technical Provisions set out in Schedule 18 (Technical Provisions).

**Term** has the meaning set out in Section 2.1(a).

**Termination by Court Ruling** means any of the following:

(a) issuance of a final, non-appealable order by a court of competent jurisdiction to the effect that this PPA is void and/or unenforceable or impossible to perform in their entirety, except where void, unenforceable or impossible to perform by reason of the Development Entity's acts, omissions, negligence, willful misconduct, fraud or breach of warranty or representation; or

(b) issuance of a final, non-appealable order by a court of competent jurisdiction upholding the binding effect on the Development Entity or the Department of a Change in Law that causes impossibility of performance of a fundamental obligation by the Development Entity or the Department under the Project Documents or impossibility of exercising a fundamental right of the Development Entity or the Department under the Project Documents.

**Termination Date** means:

(a) the date of expiration of the Term; or

(b) if applicable, the Early Termination Date.

**Termination Notice** means a Development Entity Termination Notice or a Department Termination Notice.

**Termination Sum** means the Department Termination Sum, the Development Entity Default Termination Sum or the Extended Force Majeure Termination Sum.

**Terrorism** means activities against Persons or property of any nature:

(a) that involve the following or preparation for the following:

(i) use or threat of force or violence; or

(ii) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system;

(b) when one or both of the following applies:

(i) it appears that the intent is to intimidate or coerce the Department or a Governmental Entity or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(ii) it appears that the intent is to intimidate or coerce the Department or a Governmental Entity, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology; and

(c) that are criminally defined as terrorism for purposes of Commonwealth, federal or international Law.

**Third-Party Claims** means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations or administrative proceedings brought by a Person that is not an Indemnified Party or the Development 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.

**Time Impact Analysis** means a time impact analysis prepared in accordance with Section 2 (Project Management) of the Technical Provisions.

**Total Driven Pile Length** means, in respect of any Karst Bridge, the aggregate length (in feet) of all foundation piles driven by the Development Entity during the carrying out of the Construction Work at the relevant Project Site.

**Total Handback Amount** means, as of any date of calculation, the sum of:

(a) the Bridge Elements Handback Amount; plus

(b) the Non-Bridge Elements Handback Amount.

**Transportation Management Plan (TMP)** means the plan prepared by Development Entity for the management of traffic during construction, as more particularly described in Section 16 (Maintenance and Protection of Traffic) of the Technical Provisions.

**Tribunal** means a court, tribunal, agency, special district, commission or other authority exercising judicial or regulatory functions.

**Unavailability Event** means a unitary event arising from a Closure that is not a Permitted Closure as further described in Schedule 8 (Payment Mechanism), including without limitation a School Summer Recess Unavailability Event and Calendar Event Unavailability Event. Depending on its duration and time of occurrence, a Closure may entail multiple Unavailability Events (i.e., one per day).

**Unavailability Value** means each of the relevant values set out in Attachment 10-1 of the Technical Provisions under the heading "Unavailability Value" deducted for each Unavailability Event in accordance with Schedule 8 (Payment Mechanism).

**Unavailable Term** has the meaning set out in Section 19.5 (Unavailability of Insurance Terms).

**Undisclosed Endangered Species** means any Endangered Species discovered in a Project Site, the temporary, continual or habitual presence of which, as at the Setting Date, was neither:

(a) known to the Development Entity; or

(b) reasonably to be expected to be found temporarily, continually or habitually in any Project Site based on review and analysis of the Disclosed Information and any publicly available information.

**Undisclosed Hazardous Environmental Condition** means any Hazardous Environmental Condition that existed on any part of a Project Site prior to the date on which the Department provided Access to the relevant Project Site to the Development Entity, excluding any Hazardous Environmental Condition that could reasonably have been identified or discovered prior to the Setting Date by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice based on the Disclosed Information provided by the Department on or prior to the Setting Date, but at all times excluding any Hazardous Environmental Condition caused by the discovery of lead-based material in any existing structure.

**Undisclosed Utility Incorporated Work** means any Utility Incorporated Work in respect of an Early Completion Bridge that was not referenced or highlighted in the Disclosed Information on or prior to the Setting Date.

**Unforeseeable Utility** means any Utility present on a Project Site that was not:

(a) referenced or highlighted in the Disclosed Information on or prior to the Setting Date; or

(b) capable of being reasonably identified or discovered prior to the Setting Date through diligent and thorough visual inspection and other investigative practices of each Project Site by an appropriately qualified and experienced contractor or engineer exercising due care and skill and Good Industry Practice in the same or equivalent circumstances.

**Uninsurable Risk** means a risk for which:

(a) insurance is not available to the Development Entity in respect of the Project in the worldwide insurance or reinsurance markets on the terms required herein with reputable insurers of good standing; or

(b) the insurance premium payable for insuring that risk on the terms required herein is at such a level that the risk is not generally being insured against in the worldwide insurance or reinsurance markets with reputable insurers of good standing by contractors in relation to transportation-related infrastructure projects in North 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.

**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 and (b) ITS (intelligent transportation systems) and IVHS (intelligent vehicle highway systems) facilities. 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 Enhancements** has the meaning set out in Section 5.2(c) (Utility Enhancements).

**Utility Incorporated Work** means, in respect of each Replacement Bridge, Utility Relocation Work that is the subject of an incorporated work agreement between the Department and the relevant Utility Owner or is otherwise incorporated into the Construction Work and required to be performed by the Development Entity.

**Utility Relocation** means each relocation (temporary or permanent), abandonment, 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 Relocation shall not refer to any of the work associated with facilities owned by any railroad. The Utility Relocation Work for each crossing of a Project Site by a Utility that crosses such Project Site more than once shall be considered a separate Utility Relocation. For any Utility installed longitudinally within a Project Site, the Utility Relocation Work for each continuous segment of that Utility located within such Project Site shall be considered a separate Utility Relocation.

**Utility Relocation Standards** means the standard specifications, standards of practice and construction methods that a Utility Owner customarily applies to facilities (comparable to those subject to a Utility Relocation on account of the Project) constructed by the Utility Owner, or for the Utility Owner by its contractors, at its own expense.

**Utility Relocation Work** means all efforts and costs necessary to accomplish the required Utility Relocations during the Construction Period, including all coordination, design, design review, permitting, construction, inspection and maintenance of records, whether provided by the Department, the Development Entity or by the Utility Owners. For the avoidance of doubt, Utility Relocation Work includes Utility Incorporated Work.

**Utility Owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative Utilities, and municipalities and other governmental agencies (including, without limitation, the Department)).

**Utility Owner Project** means the design and construction by or at the direction of a Utility Owner (including by the Development Entity) of a new Utility other than as part of a Utility Relocation. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the applicable Utility Owner.

**Works** or **Work** means the D&C Work and the Maintenance Work, and all other work and services required to be furnished, performed and provided by the Development Entity under the Project Documents.

**ACRONYMS**

As used in this PPA to which this Schedule 1 (Definitions) is attached and in the other Project Documents (unless otherwise specified therein), the following acronyms shall have the meanings set out below (unless the context requires otherwise).

A – Ampere

AADT – annual average daily traffic

AAP – AASHTO Accreditation Program

AAR – American Association of Railroads

AASHTO – American Association of State Highway and Transportation Officials

ACHP – Advisory Council of Historic Preservation

ACI – American Concrete Institute

ACM – Asbestos-containing Materials

ACORD - Association for Cooperative Operations Research and Development

ADA – Americans With Disabilities Act

ADT – average daily traffic

ADTT – average daily truck traffic

AES – Audio Engineering Society

ALTA – American Land Title Association

AMRL – AASHTO Material Reference Library

ANSI – American National Standards Institute

AREMA – American Railway Engineering and Maintenance-of-Way Association

ASCE – American Society of Civil Engineers

ASNT – American Society of Non-Destructive Testing

ASSE – American Society of Safety Engineers

ASTM – American Society for Testing and Materials

AWS – American Welding Society

BCI – Bridge Coating Inspector

BIN – Bridge Identification Number

BMS – Bridge Management System

BOMO – MTLD – Bureau of Maintenance and Operation – Maintenance Technical Leadership Division

BRKEY – Bridge Key

CAD – computer-assisted drafting

CAP – Corrective Action Plan

CCTV – closed-circuit television (system)

CFR – Code of Federal Regulations

CONRAIL – Consolidated Rail Corporation

COTS – commercial off-the-shelf

CWI – Certified Welding Inspector

D&C – Design and Construction

DBE – Disadvantaged Business Enterprise

DMS – dynamic message signs

DNCR - Pennsylvania Department of Conservation & Natural Resources

DWG – CAD design file format supported by Autodesk, Inc.

ECMS – electronic collaborative management system

EDMS – electronic document management system

EEO – Equal Employment Opportunity

EIA – Electronic Industries Alliance

EIS – Environmental Impact Statement

EOR – Engineer of Record

EPA – Environmental Protection Agency (see USEPA)

EQMS – Emergency Quality Management System

FAA – Federal Aviation Administration

FEMA – Federal Emergency Management Agency

FHWA – Federal Highway Administration

FTA – Federal Transit Administration

GBRP – Pennsylvania Rapid Bridge Replacement Project

GUI – graphical user interface

HVAC – heating, ventilation, and air conditioning

IBC – International Building Code

IEEE – Institute of Electrical and Electronics Engineers

IES, IESNA – Illuminating Engineering Society (of North America)

ISO – International Organization for Standardization

ITS – Intelligent Transportation System

JEDEC – Joint Electron Devices Engineering Council

LDD – lamp dirt depreciation

LED – light-emitting diode

LLD – lamp lumens depreciation

LRFD – load and resistance factor design

MPMS – Multi-modal Project Management System

MPT – Maintenance and Protection of Traffic

MSDS – Material Safety Data Sheets

MSL – Mean sea level

MTA – Metropolitan Transportation Authority (interstate)

MTC – mass transit corridor

MTP – Media Transfer Protocol

MUL – managed use lanes

MURK – Manual for Uniform Record Keeping

NAD – North American Datum

NAVD – North American Vertical Datum

NBIS – National Bridge Inspection Standards

NCHRP – National Cooperative Highway Research Program

NCR – Non-conformance Report

NEMA – National Electrical Manufacturers Association

NEPA – National Environmental Policy Act, 42 U.S.C. s 4321 *et seq.* as amended from time to time

NFPA – National Fire Protection Agency

NICET – National Institute for Certification in Engineering Technologies

NPS – National Park Service (United States)

NRCS – Natural Resources Conservation Service (United States Department of Agriculture)

NTCIP – National Transportation Communications for ITS Protocol

OSHA – Occupational Safety and Health Administration (United States)

PACD - Pennsylvania Association of Conservation Districts

PADEP - Pennsylvania Department of Environmental Protection

PAWANET – Pennsylvania Wide Area Network

PCI – Precast/Prestressed Concrete Institute

PDF – Portable Document File format

PEDFA - Pennsylvania Economic Development Finance Authority

PFBC - Pennsylvania Fish & Boat Commission

PGC - Pennsylvania Game Commission

PHMC - Pennsylvania Historic and Museum Commission

PLS – Professional Land Surveyor

PSA – Project Site Activity

PSE&G – Public Service Electric and Gas Company

PVC – polyvinyl chloride

RETMA – Radio Electronics Television Manufacturers Association

RFC – Released for Construction

ROD – Record of Decision

ROW – Right-of-way

RWIS – Roadway Weather Information System

SBE – Small Business Enterprise

SIB – Staten Island Bridges

SN – skid number

SSPC – Society for Protective Coatings

SWAC – Secure Worker Access Consortium

TIA – Time Impact Analysis

TRB – Transportation Research Board

TP – Technical Provisions

USACOE – United States Army Corps of Engineers

USCG – United States Coast Guard

USDA – United States Department of Agriculture

USDOL – United States Department of Labor

USDOT – United States Department of Transportation

USEPA – United States Environmental Protection Agency

USFWS – United States Fish and Wildlife Service

VMS – variable message signs

VRTIP – Verification Review Testing and Inspection Program

VSLS – variable speed limit signs

WBS – Work Breakdown Structure

WIM – Weight-in-Motion (system)

XER – Oracle Primavera Project Management electronic compressed file format

## SCHEDULE 2

## UPDATE TO THE BASE MAP

### 1.1 Changes in Financing Terms

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

### 1.2 Market Interest Rate Protection

(a) Subject to the Department's rights to terminate under Section 24.6 (Termination for Failure to Achieve Financial Close), the Department will bear the risk and have the benefit of one hundred percent (100%) of the impact (either positive or negative) on the Base MAP of changes in any Benchmark Rate for the period beginning at 10:00 a.m. ET on September 16, 2014 and ending on the earliest of:

(i) 10:00 a.m. ET on the Financial Closing Date;

(ii) the date of execution of any interest rate hedging instrument by the Development Entity; or

(iii) the date of the execution of a bond purchase agreement relating to the purchase and sale of PABs or taxable bonds (each such date in clauses (i) through (iii) being a **Benchmark Rate Adjustment Date**).

(b) The interest rate adjustment will be based on the movement, if any, in any Benchmark Rate.

(c) The Development Entity and the Department shall both adjust the Financial Model as of the Benchmark Rate Adjustment Date to reflect the changes (if any) in any Benchmark Rate and any revisions approved by the Parties.

### 1.3 Credit Spread Fluctuation Risk Protection

(a) Subject to the Department's rights to terminate under Section 24.6 (Termination for Failure to Achieve Financial Close), the Department will bear the risk and have the benefit of eighty percent (85%) of the impact (either positive or negative) on the Base MAP of the differences between the credit spreads for any bonds (whether PABs or taxable bonds) assumed and indicated in the Preliminary Financial Model and the credit spreads for PABs or taxable bonds as obtained at Financial Close or the date of the execution of the bond purchase agreement relating to the purchase and sale of such PABs or taxable bonds.

(b) The Department shall not accept increases in credit spreads in respect of bonds which are part of the Development Entity's Financing resulting from the final credit rating of such bonds being lower than the indicative investment grade rating(s) of such bonds provided in the Proposal.

(c) Movements in margins associated with any commercial bank debt which is part of the Development Entity's Financing, including bank lender margins and swap credit margins, from the Proposal Due Date to the Financial Closing Date will be borne by the Development Entity.

## 1.4 Base MAP Update Protocol

The Parties will use the Preliminary Financial Model to calculate the change under Sections 1.1 (Market Interest Rate Protection) and 1.2 (Credit Spread Fluctuation Risk Protection) of this Schedule 2 (Update to the Base MAP), positive or negative, in the Base MAP. The Parties shall make such calculation and produce the Financial Model delivered pursuant to Section 2.4(a) of this PPA as follows:

(a) first, as a means of mitigating against the negative impact of any changes in credit spreads and Benchmark Rates for any bonds or commercial bank debt which is part of the Development Entity's financing, as applicable, on the minimum prevailing debt covenants established in the Preliminary Financial Model, the Development Entity will optimize, to the extent possible, the maturities and make consequential amendments to the Preliminary Financial Model;

(b) second, the Preliminary Financial Model in the form attached hereto as Form 3 (Form of Financial Model), subject to any updates from the previous step, shall be run to solve for a "first interim" Base MAP, inputting only the changes, if any, in Benchmark Rates as described in Section 1.2 (Market Interest Rate Protection) of this Schedule 2 (Update to the Base MAP), and holding the Base Case Equity IRR constant. In addition, as part of this process it will be ensured that the minimum prevailing debt covenants in the Preliminary Financial Model are not breached by solving the Preliminary Financial Model for the lowest possible change in the Base MAP;

(c) third, the interim Financial Model resulting from the second step shall be run to solve for a "second interim" Base MAP, inputting only the changes, if any, in credit spreads for any bonds under Section 1.3 (Credit Spread Fluctuation Risk Protection) of this Schedule 2 (Update to the Base MAP), and holding the Base Case Equity IRR constant; and (y) the rate of escalation of the Base MAP set out in Section 2.6 (Indexation) of Schedule 8 (Payment Mechanism). In addition, as part of this process it will be ensured that the minimum prevailing debt covenants in the Preliminary Financial Model are not breached by solving the interim Financial Model for the lowest possible change in the Base MAP;

(d) fourth, the changed Base MAP shall be determined as the sum of the first interim Base MAP plus eighty five percent (85%) of the difference, positive or negative, between the first interim and the second interim Base MAP; and

(e) fifth, the interim Financial Model resulting from the calculations in clause (b) above shall be run to solve for the Equity IRR, inputting (x) the Base MAP determined under clause (d) above, (y) all the changes in the credit spreads for any bonds under Section 1.3 (Credit Spread Fluctuation Risk Protection) of this Schedule 2 (Update to the Base MAP) and (z) all other changes in terms of financing between those assumed and indicated in the Preliminary Financial Model and those set out in the Financing Documents as obtained on the Financial Closing Date.

Notwithstanding anything in this Schedule 2 (Update to the Base MAP) to the contrary, the Development Entity shall bear the full risk of changes to any financing terms not explicitly identified within Section 1.2 (Credit Spread Fluctuation Risk Protection) of this Schedule 2 (Update to the Base MAP) and in the Preliminary Financial Model.

## SCHEDULE 3

## PROJECT SITES WITH ASBESTOS

The Project Sites with asbestos are the Project Sites in respect of the Replacement Bridges with the following "Bridge Key Numbers":

(1) 20820;

(2) 21277;

(3) 29566.

# SCHEDULE 4

# BENCHMARK RATES

[*Insert at Commercial Closing Date*][11]

[11] The Benchmarks selected by the Development Entity, approved by the Department and included in Form P of the Proposal will be inserted here.

## SCHEDULE 5

## CALCULATION OF HANDBACK AMOUNTS

(1) This Schedule sets forth the methodology for calculating the Handback Reserve Amount.

(2) The **Bridge Elements Handback Amount** means the aggregate amount, which shall be calculated prior to the beginning of each Handback Year and at the end of the Term, of the estimated cost (in real dollars) to improve, repair, renew or replace each Handback Bridge so as to ensure that as of the relevant Handback Date, each Handback Bridge and each Project Element meet the requirements of Section 17 (Maintenance Work) and Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions.

(3) The **Non-Bridge Elements Handback Amount** means the aggregate amount, which shall be calculated prior to the beginning of each Handback Year and at the end of the Term, of the estimated cost to improve, repair, renew or replace each Non-Bridge Element to ensure that it meets the requirements of Section 17 (Maintenance Work) and Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions and its Residual Life will meet or exceed the number of years specified for such Non-Bridge Element in Table 17-2 (Useful Life Requirements) of the Technical Provisions, such estimated cost to be determined by the Renewal Work Plan (as may be revised pursuant to the Handback Requirements).

(4) As required by Section 8.7(b)(i) of the PPA, no later than sixty (60) days prior to the commencement of each Handback Year, the Development Entity shall deliver to the Department a report setting out its calculations of:

(a) the Total Handback Amount in respect of the remaining Handback Period, which shall include the Development Entity's calculations of the (i) Bridge Elements Handback Amount and (ii) Non-Bridge Elements Handback Amount; and

(b) the amount required to be reserved in the Handback Reserve Account (the **Handback Reserve Amount**) for such Handback Year, which shall be calculated as follows:

(i) If, as of the date of calculation, the aggregate amount of the Maximum Aggregate Payments projected to be paid to the Development Entity, during the period commencing on such date and ending upon the expiration of the Term, is less than two times the Total Handback Amount calculated on such date, then the Handback Reserve Amount shall be equal to the Total Handback Amount.

(ii) If, as of any date of calculation, the aggregate amount of the Maximum Aggregate Payments projected to be paid to the Development Entity, during the period commencing on such date and ending upon the expiration of the Term, is more than or equal to two times the Total Handback Amount calculated on such date, then the Handback Reserve Amount shall be equal to the percentage of the Total Handback Amount set out below for the applicable Handback Year.

| **Handback Years** | **Handback Reserve Amount** |
|---|---|
| First Handback Year (i.e., the 12- | 33% of the Total Handback Amount |

| | |
|---|---|
| month period beginning on the first Business Day of the Handback Period) | |
| Second Handback Year | 50% of the Total Handback Amount |
| Third Handback Year | 66% of the Total Handback Amount |
| Fourth Handback Year | 100% of the Total Handback Amount |
| Fifth Handback Year | 100% of the Total Handback Amount |

## SCHEDULE 6

## COMPENSATION ON TERMINATION

### 1. COMPENSATION ON TERMINATION FOR CONVENIENCE, FOR DEPARTMENT DEFAULT AND TERMINATION BY COURT RULING

On termination of this PPA pursuant to Section 24.1 (Termination for Convenience), Section 24.2 (Termination for Department Default) or Section 24.3 (Termination by Court Ruling), the Department shall pay to the Development Entity the Department Termination Sum in accordance with and subject to Section 5 (Miscellaneous Compensation Provisions) of this Schedule 6 (Compensation on Termination). The Department Termination Sum shall equal the amount calculated at the Early Termination Date (without double-counting) as follows:

(a) all amounts shown in the Financial Model (or, if applicable, any financial model most recently delivered to the Department pursuant to Section 17.3 (Development Entity Details)) as payable by the Development Entity from the Early Termination Date, either in dividends or other distributions on the share capital of the Development Entity or as payments of interest or repayments of principal made by the Development Entity under the Equity Members Funding Agreements, each amount discounted back at the Base Case Equity IRR (as adjusted to reflect, if applicable, any financial model most recently delivered to the Department pursuant Section 17.3 (Development Entity Details)) from the date on which it is shown to be payable in the Financial Model to the Termination Date; **provided** that if the Early Termination Date occurs following the Long Stop Deadline, such calculation shall be based on the number of Replacement Bridges which have achieved Substantial Completion; plus

(b) Lenders' Liabilities; *plus*

(c) Subcontractor Breakage Costs; *plus*

(d) Redundancy Payments for employees of the Development Entity that have been or will be reasonably incurred by the Development Entity as a direct result of termination of this PPA; *minus*

(e) Account Balances; *minus*

(f) Deferred Equity Amounts; *minus*

(g) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party); *minus*

(h) any Monthly Maintenance Payment Deduction or Milestone Payment Deduction accrued prior to the Early Termination Date that has, in each case, not been deducted from any Maximum Milestone Payment or Maximum Availability Payment (as relevant).

## 2. COMPENSATION ON TERMINATION FOR EXTENDED FORCE MAJEURE

On termination of this PPA pursuant to Section 24.4 (Termination for Extended Force Majeure), the Department shall pay to the Development Entity the Extended Force Majeure Termination Sum in accordance with and subject to Section 5 (Miscellaneous Compensation Provisions) of this Schedule 6 (Compensation on Termination). The Extended Force Majeure Termination Sum shall equal the amount calculated at the Early Termination Date (without double-counting) as follows:

(a) all amounts paid to the Development Entity by way of equity to the capital of the Development Entity less dividends and other distributions paid to the Equity Members (save to the extent deducted under Section 2(b) below which shall never be a negative number; *plus*

(b) Equity Member Debt less an amount equal to the aggregate of all payments of interest made by the Development Entity under the Equity Members Funding Agreements prior to the Termination Date; *plus*

(c) Lenders' Liabilities; *plus*

(d) Subcontractor Breakage Costs; *plus*

(e) Redundancy Payments for employees of the Development Entity that have been or will be reasonably incurred by the Development Entity as a direct result of termination of this PPA; *minus*

(f) Account Balances; *minus*

(g) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

(h) any Monthly Maintenance Payment Deduction or Milestone Payment Deduction accrued prior to the Early Termination Date that has, in each case, not been deducted from any Maximum Milestone Payment or Maximum Availability Payment (as relevant).

## 3. COMPENSATION ON TERMINATION FOR DEVELOPMENT ENTITY DEFAULT

(a) On termination of this PPA pursuant to Section 24.5 (Termination for Development Entity Default) prior to Substantial Project Completion, the Department shall pay to the Development Entity the Development Entity Default (Construction Period) Termination Sum in accordance with and subject to Section 5 (Miscellaneous Compensation Provisions) of this Schedule 6 (Compensation on Termination). The Development Entity Default (Construction Period) Termination Sum shall be an amount equal to the lower of:

(i) the D&C Work Value and

(ii) the Net Lenders' Liabilities.

(b) On termination of this PPA pursuant to Section 24.5 (Termination for Development Entity Default) on or after Substantial Project Completion, the Department shall pay to the Development

Entity the Development Entity Default (Maintenance Period) Termination Sum in accordance with and subject to Section 5 (Miscellaneous Compensation Provisions). The Development Entity Default (Maintenance Period) Termination Sum shall equal the amount calculated at the Early Termination Date (without double-counting) as follows:

(i) eighty percent (80%) of Lenders' Liabilities; *minus*

(ii) Maintenance Rectification Costs; *minus*

(iii) Account Balances; *minus*

(iv) Deferred Equity Amounts; *minus*

(v) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party); *minus*

(vi) any Monthly Maintenance Payment Deduction or Milestone Payment Deduction accrued prior to the Early Termination Date that has, in each case, not been deducted from any Maximum Milestone Payment or Maximum Availability Payment (as relevant); *plus*

(vii) the balance standing to the credit of the Handback Reserve Account on the Early Termination Date.

## 4. COMPENSATION ON TERMINATION FOR FAILURE TO ACHIEVE FINANCIAL CLOSE

On termination of this PPA pursuant to Section 24.6 (Termination for Failure to Achieve Financial Close), the Department shall, but only in the circumstances where it has no right to draw and retain the full amount of the Closing Security pursuant to Section 24.6(c), pay to the Development Entity the Financial Close Termination Sum in accordance with and subject to Section 5 (Miscellaneous Compensation Provisions) of this Schedule 6 (Compensation on Termination). The Financial Close Termination Sum shall equal the Development Entity's Reasonable and Proper Costs *minus* the aggregate of (x) any Milestone Payments that became payable prior to the Early Termination Date and (y) any amounts withdrawn from the Mobilization Fund on or prior to the Termination Date. The Development Entity's Reasonable and Proper Costs shall equal the amount calculated at the Early Termination Date (without double counting) as representing all of the reasonable and proper, documented internal and external expenses incurred by the Development Entity (without mark-up for overhead or profit) in connection with the following:

(a) the achievement of the Commercial Closing Date and the pursuit of Financial Close;

(b) satisfying conditions to NTP1 and NTP2; and

(c) to the extent that the Department has issued NTP1 or NTP2, carrying out any Work that the Development Entity is permitted to perform under this PPA following issuance of NTP1 or NTP2 (as relevant).

## 5. MISCELLANEOUS COMPENSATION PROVISIONS

### 5.1 Set Off on Termination

The Department is not entitled to set off any amount against the Department Termination Sum or the Extended Force Majeure Termination Sum if the effect of exercising such right of set off would be to reduce the amount payable to the Development Entity to less than an amount equal to the Lenders' Liabilities.

### 5.2 Timing of Payment of Termination Sum

(a) Any Termination Sum shall be due and payable by the Department forty (40) Business Days after such amount is finally agreed or determined.

(b) To the extent that the Development Entity Default Termination Sum or Financial Close Termination Sum is less than zero, then the amount equal to the Development Entity Default Termination Sum or Financial Close Termination Sum (as relevant) shall be due and payable by the Development Entity to the Department forty (40) Business Days after such amount is finally agreed or determined.

### 5.3 Transfer of Key Assets

As a condition precedent to the payment of any Termination Sum, the Department may require the Development Entity to transfer its rights, title and interest in and to the Key Assets to the Department.

### 5.4 Exclusivity of Remedy

Any Termination Sum irrevocably paid by the Department to the Development Entity shall be in full and final settlement of each Party's rights and claims against the other for breaches and/or termination of this PPA or any other Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

(a) any antecedent liability of either Party to the other that arose prior to the Early Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in the calculation of the Termination Sum; and

(b) any liabilities arising in respect of any breach by either Party after the Early Termination Date of any obligation under this PPA that survives the Early Termination Date, to the extent not taken into account in the calculation of any Termination Sum.

## SCHEDULE 7

## NONCOMPLIANCE POINTS TABLE

### Table 7.1 – Noncompliance Events Relating to D&C Work

| Noncompliance Event Category | Noncompliance Event ID | Each breach or failure to comply with the following obligations constitutes a Noncompliance Event: | Noncompliance Points | Cure Period | Interval of Recurrence |
|---|---|---|---|---|---|
| Notification | 1 | Notify the Department of the occurrence of any Noncompliance Event in this Schedule 7 (Noncompliance Points Table) in accordance with Article 11 (Noncompliance Events) of the PPA. | 5 | None | 24 hours |
| Notification | 2 | Notify the Department of the occurrence of any material breach of Governmental Approvals caused by the Development Entity. | 5 | 1 Business Day | 1 Business Day |
| Approvals and Oversight | 3 | Comply in any material respect with the nondiscrimination provisions of the PPA, including without limitation Schedule 15 (Additional Federal Requirements) of the PPA. | 3 | 1 Business Day | 1 Business Day |
| Approvals and Oversight | 4 | Carry out internal audits of the Project Management Plan at the times and in the manner prescribed in the Project Management Plan and in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 5 Business Days | 2 Business Days |
| Approvals and Oversight | 5 | Comply with the requirements to provide advance notice, unrestricted access to records, unrestricted access to Project Sites, and unrestricted access to off-site locations where materials are sourced or Elements fabricated, or provide Reasonable Efforts to support the Department or any Governmental Entity with regard to their rights to audit, review, inspect, or test in accordance with the Project Documents. | 4 | 1 Business Day | 2 Business Days |
| Approvals and Oversight | 6 | Exercise Reasonable Efforts to encourage DBE participation in the D&C Work. | 2 | 30 days | 14 days |
| Approvals and Oversight | 7 | Comply with the requirements of the Project Documents with respect to Environmental Approvals and comply with the requirements of such Environmental Approvals. | 5 | 2 Business Days | 1 Business Day |
| Approvals and Oversight | 8 | Correct deficiencies raised in any Notice of Violation (NOV) within the timeframe established in such NOV. | 4 | None | 24 hours |
| Reporting, Submittals, and Document Management | 9 | Comply with the requirements of the Document and Data Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 3 | 2 Business Days | 1 Business Day |

| | | | | | |
|---|---|---|---|---|---|
| Project Delivery Protocols | 10 | Comply with the requirements of Section 5.2 (Utilities) of this PPA and Section 6 (Utilities) of the Technical Provisions. | 4 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 11 | Comply with the requirements of Section 21.1(f) of the PPA. | 3 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 12 | Cause the continuous employment in connection with the Work of any of the Key Personnel complying with the qualifications and licensing requirements, working locations or the time periods specified in the Project Documents. | 3 | 3 Business Days | 5 Business Days |
| Reporting, Submittals, and Document Management | 13 | Comply with the requirements of the Project Documents relating to inspections and inspection reporting. | 5 | 2 Business Days | 1 Business Day |
| Reporting, Submittals, and Document Management | 14 | Establish, maintain, and update the Project Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 15 | Comply with the requirements of the Department – Development Entity Communication Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 16 | Comply with the requirements of the Public Information and Communications Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 17 | Comply with the requirements of the CRP – Development Entity Communication Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 18 | Conduct, attend or follow due process in connection with any meeting required under the Project Documents or the Project Management Plan. | 1 | None | None |
| Project Delivery Protocols | 19 | Comply with the requirements of the Quality Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 10 Business Days | 1 Business Day |
| Project Delivery Protocols | 20 | Comply with the requirements of the Risk Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 21 | Comply in any material respect with the requirements of Section 2 (Project Management) of the Technical Provisions respecting safety or comply in any material respect with the Safety Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 24 hours | 4 hours |
| Project Delivery Protocols | 22 | Comply with the requirements of the Emergency Management and Disaster Recovery Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 4 hours | 4 hours |

| | | | | | |
|---|---|---|---|---|---|
| Project Delivery Protocols | 23 | Comply in any material respect with the requirements of the Project Management Plan not otherwise listed in this Schedule 7 (Noncompliance Points Table) of the PPA in accordance with Section 2 (Project Management) of the Technical Provisions. | 3 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 24 | Comply with the requirements with respect to the development, submittal, and updates of the Project Schedule set out in Section 2 (Project Management) of the Technical Provisions. | 2 | 1 Business Day | 1 Business Day |
| Project Delivery Protocols | 25 | Comply with the requirements of the Comprehensive Environmental Protection Plan (CEPP) in accordance with Section 2 (Project Management) and Section 4.5 (Comprehensive Environmental Protection Plan) of the Technical Provisions. | 3 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 26 | Comply with the requirements of Section 4 (Environmental) of the Technical Provisions with respect to environmental mitigation. | 3 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 27 | Comply with the requirements of the Waste Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 28 | Implement a Directive Letter in accordance with Section 10.2 (Directive Letter) of the PPA. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 29 | Comply with the requirements of the Utility Relocation Plan in accordance with Section 2 (Project Management) of the Technical Provisions and the requirements of Section 6 (Utilities) of the Technical Provisions. | 3 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 30 | Comply with the requirements of the ROW Acquisition Plan in accordance with Section 2 (Project Management) of the Technical Provisions and Section 7 (Right-of-Way) of the Technical Provisions. | 5 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 31 | Comply with the requirements of the Affected Third Parties Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 24 hours | 24 hours |
| Project Delivery Protocols | 32 | Comply with the requirements of the Transportation Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 3 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 33 | Comply with the requirements of the Traffic Control Plan with respect to a Replacement Bridge in accordance with Section 16 (Maintenance and Protection of Traffic) of the Technical Provisions. | 4 | 24 hours | 24 hours |

| | | | | | |
|---|---|---|---|---|---|
| Project Delivery Protocols | 34 | Comply with the requirements of the Context Sensitive Design and Aesthetics Master Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 35 | Comply in any material respect with the maintenance and protection of traffic requirements respecting traffic control devices for short term operations or the requirements for three or more consecutive channelizing devices, stop and yield signs, temporary signals, or arrow panels in accordance with Section 16.4 (Traffic Management Requirements during Construction Period) of the Technical Provisions | 5 | 2 hours | 2 hours |
| Project Delivery Protocols | 36 | Comply in any material respect with the maintenance and protection of traffic requirements respecting traffic control devices for long term operations in accordance with Section 16.4 (Traffic Management Requirements during Construction Period) of the Technical Provisions. | 4 | 24 hours | 24 hours |
| Project Delivery Protocols | 37 | Comply with the requirements of Attachment 10-1 of the Technical Provisions, and any such failure results in a School Summer Recess Unavailability Event. | 5 | None | 1 Business Day |
| Project Delivery Protocols | 38 | Comply with the requirements of Section 16 (Maintenance and Protection of Traffic) of the Technical Provisions, and any such failure results in a Calendar Event Unavailability Event. | 5 | None | 24 hours |
| Project Delivery Protocols | 39 | Comply with the requirements of Section 16.3.1.2 of the Technical Provisions in respect of Construction Work inactivity for any type of Closure. | 5 | None | 1 Business Day |
| Project Delivery Protocols | 40 | Obtain the approval of the Department for the Closure of any roadway beneath a Replacement Bridge in accordance with the requirements of Section 16.1 (General Requirements) of the Technical Provisions. | 5 | 1 hour | 30 minutes |
| Performance Standards | 41 | Avoid encroaching on private property without prior, proper authorization. | 5 | None | 8 hours |
| Performance Standards | 42 | Employ Reasonable Efforts to effectuate any remedial actions requested by the Department pursuant to Section 8.9 (Poor Maintenance Performance) of the PPA. | 4 | 10 Business Days | 5 Business Days |
| Performance Standards | 43 | Maintain a fully operational utility service except as specifically permitted by the Utility Owner and by any affected third party. | 3 | 24 hours | 24 hours |
| Project Delivery Protocols | 44 | Comply with the order of the Department to suspend Construction Work in accordance with Section 7.9 (Suspension of Construction Work) of the PPA. | 5 | None | 4 hours |

| | | | | | |
|---|---|---|---|---|---|
| Project Delivery Protocol | 45 | Achieve Final Acceptance in respect of any Replacement Bridge within sixty (60) days of achievement of Substantial Completion in respect of such Replacement Bridge. | 3 | None | 5 Business Days |

## Table 7.2 – Noncompliance Events Relating to Maintenance Work

| Noncompliance Event Category | Noncompliance Event ID | Each breach or failure to comply with the following obligations constitutes a Noncompliance Event: | Noncompliance Points | Cure Period | Interval of Recurrence |
|---|---|---|---|---|---|
| Notification | 1 | Notify the Department of the occurrence of any Noncompliance Event in this Schedule 7 (Noncompliance Points Table) in accordance with Article 11 (Noncompliance Events) of the PPA. | 5 | None | 24 hours |
| Notification | 2 | Notify the Department of the occurrence of any material breach of Governmental Approvals caused by the Development Entity. | 5 | 1 Business Day | 1 Business Day |
| Notification | 3 | Notify the Department immediately if any field observations performed by the Development Entity reveal deficiencies sufficiently critical to warrant immediate actions, traffic restrictions or Closure. Deliver report confirming observation and assessment according to the timeframe established in coordination with the Department. | 5 | None | 24 hours |
| Approvals and Oversight | 4 | Comply in any material respect with the nondiscrimination provisions of the PPA, including without limitation Schedule 15 (Additional Federal Requirements) of the PPA. | 3 | 1 Business Day | 1 Business Day |
| Approvals and Oversight | 5 | Carry out internal audits of the Project Management Plan at the times and in the manner prescribed in the Project Management Plan and in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 5 Business Days | 2 Business Days |
| Approvals and Oversight | 6 | Comply with the requirements to provide advance notice, unrestricted access to records, unrestricted access to Project Sites, and unrestricted access to off-site locations where materials are sourced or Elements fabricated, or provide Reasonable Efforts to support the Department or any Governmental Entity with regard to their rights to audit, review, inspect, or test in accordance with the Project Documents. | 4 | 1 Business Day | 2 Business Days |
| Approvals and Oversight | 7 | Comply with the requirements of the Project Documents with respect to Environmental Approvals or comply with the requirements of such Environmental Approvals. | 3 | 2 Business Days | 1 Business Day |
| Notification | 8 | Correct deficiencies raised in any NOV within the timeframe established in such NOV. | 4 | None | 24 hours |
| Project Delivery Protocols | 9 | Comply with the requirements of Section 21.1(f) of the PPA. | 3 | 5 Business Days | 1 Business Day |

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| Project Delivery Protocols | 10 | Cause the continuous employment in connection with the Work of any of the Key Personnel complying with the qualifications and licensing requirements, working locations or the time periods specified in the Project Documents. | 3 | 10 Business Days | 5 Business Days |
| Reporting, Submittals, and Document Management | 11 | Establish, maintain, and update the Project Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 3 Business Days | 1 Business Day |
| Reporting, Submittals, and Document Management | 12 | Establish, submit, and update the Maintenance Management Plan (including all subcomponent plans and systems) in accordance with Section 17.4 (Maintenance Management Plan) of the Technical Provisions. | 2 | 3 Business Days | 1 Business Days |
| Project Delivery Protocols | 13 | Comply with the requirements of the Project Documents relating to inspections and inspection reporting including without limitation the requirements of Section 17.5 (Inspections) of the Technical Provisions. | 5 | None | 1 Business Day |
| Reporting, Submittals, and Document Management | 14 | Comply with the requirements of the Document and Data Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions, including without limitation the requirements respecting the Maintenance Management Information System in accordance with Section 2 (Project Management) and Section 17 (Maintenance Work) of the Technical Provisions. | 3 | 2 Business Days | 1 Business Day |
| Reporting, Submittals, and Document Management | 15 | Comply with the reporting requirements of the Project Documents, including without limitation the requirements of Section 17.6 (Reporting Requirements) of the Technical Provisions. | 2 | None | 1 Business Day |
| Project Delivery Protocols | 16 | Comply with the requirements of the Public Information and Communications Plan in accordance with Section 2 (Project Management) and Section 3 (Public Information and Communications) of the Technical Provisions. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 17 | Comply with the requirements of the Department – Development Entity Communication Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 18 | Conduct, attend or follow due process in connection with any meeting required under the Project Documents or the Project Management Plan. | 1 | None | None |

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| Project Delivery Protocols | 19 | Comply with the requirements of the Quality Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions, including without limitation the quality requirements of the Maintenance Management Plan in accordance with Section 2 (Project Management) and Section 17 (Maintenance Work) of the Technical Provisions. | 5 | 7 days | 24 hours |
| Project Delivery Protocols | 20 | Comply with the requirements of the Risk Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 7 days | 24 hours |
| Project Delivery Protocols | 21 | Comply in any material respect with the requirements of Section 2 (Project Management) and Section 17 (Maintenance Work) of the Technical Provisions with respect to safety, or comply in any material respect with the Safety Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 24 hours | 4 hour |
| Project Delivery Protocols | 22 | Comply with the order of the Department to suspend Maintenance Work in accordance with Section 8.10 (Suspension of Maintenance Work) of the PPA. | 5 | None | 4 hours |
| Project Delivery Protocols | 23 | Comply with the requirements of the Emergency Management and Disaster Recovery Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 4 hours | 4 hours |
| Project Delivery Protocols | 24 | Comply in any material respect with the requirements of the Project Management Plan not otherwise listed in this Schedule 7 (Noncompliance Points Table) of the PPA in accordance with Section 2 (Project Management) of the Technical Provisions. | 3 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 25 | Comply with the requirements pertaining to scheduling and notifications for changes in the scheduling of Maintenance Work and Closures in accordance with Section 17 (Maintenance Work) of the Technical Provisions. | 2 | None | 24 hours |
| Project Delivery Protocols | 26 | Comply with the requirements of the CEPP in accordance with Section 2 (Project Management) and Section 4.5(Comprehensive Environmental Protection Plan) of the Technical Provisions. | 3 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 27 | Comply with the requirements of Section 4 (Environmental) of the Technical Provisions with respect to environmental mitigation. | 3 | 2 Business Days | 1 Business Day |
| Project Delivery Protocols | 28 | Comply with the requirements of the Waste Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 2 | 2 Business Days | 1 Business Day |

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| Project Delivery Protocols | 29 | Implement a Directive Letter in accordance with Section 10.2 (Directive Letter) of the PPA. | 4 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 30 | Comply with the requirements of the Affected Third Parties Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 5 | 24 hours | 24 hours |
| Project Delivery Protocols | 31 | Comply with the requirements of the Transportation Management Plan in accordance with Section 2 (Project Management) of the Technical Provisions. | 3 | 5 Business Days | 1 Business Day |
| Project Delivery Protocols | 32 | Comply with the requirements of the Traffic Control Plan with respect to a Replacement Bridge in accordance with Section 16 (Maintenance and Protection of Traffic) of the Technical Provisions. | 4 | 24 hours | 24 hours |
| Project Delivery Protocols | 33 | Comply with the maintenance and protection of traffic requirements in accordance with Section 16.5 (Traffic Management Requirements during Maintenance Period) of the Technical Provisions. | 5 | 2 hours | 2 hours |
| Project Delivery Protocols | 34 | Comply with the requirements of Section 17.1.5 (Planned Maintenance and Permitted Closures) of the Technical Provisions, and any such failure to comply results in a School Summer Recess Unavailability Event. | 5 | None | 24 hours |
| Project Delivery Protocols | 35 | Comply with the requirements of Section 17.1.5 (Planned Maintenance and Permitted Closures) of the Technical Provisions, and any such failure results in a Calendar Event Unavailability Event. | 5 | None | 24 hours |
| Project Delivery Protocols | 36 | Obtain the approval of the Department for the Closure of any roadway beneath a Replacement Bridge in accordance with the requirements of Section 16.1 (General Requirements) of the Technical Provisions. | 5 | None | 30 minutes |
| Performance Standards | 37 | Comply with the requirements in Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions. | Per Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions | Per Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions | Per Table 17-1 (Maintenance Performance Requirements) of the Technical Provisions |
| Performance Standards | 38 | Develop and implement corrective and preventative action plan to remedy the persistent occurrence of Noncompliance Events in accordance with Section 17 (Maintenance Work) of the Technical Provisions. | 2 | None | 1 Business Day |
| Performance Standards | 39 | Cooperate with Utilities in accordance with Section 8.2(b) (Utility Accommodation) of the PPA. | 3 | 1 Business Day | 1 Business Day |
| Performance Standards | 40 | Maintain a fully operational utility service except as specifically permitted by the Utility Owner and by any affected third party. | 5 | 4 hours | 4 hours |

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| Performance Standards | 41 | Avoid encroaching on private property without prior, proper authorization. | 5 | None | 8 hours |
| Performance Standards | 42 | Employ Reasonable Efforts to effectuate any remedial actions requested by the Department pursuant to Section 8.9 (Poor Maintenance Performance) of the PPA. | 4 | 10 Business Days | 5 Business Days |
| Performance Standards | 43 | Coordinate with the Department in the planning and execution of Maintenance Work, in accordance with Section 17 (Maintenance Work) of the Technical Provisions. | 3 | 5 Business Days | 1 Business Day |
| Performance Standards | 44 | Have no latent defects after Early Handback Elements are returned to the Department. (The Cure Period shall commence upon discovery of such latent defect.) | 5 | 90 days | 30 days |
| Performance Standards | 45 | Meet the Handback Requirements in accordance with Section 8.6 (Handback Requirements) of the PPA. | 5 | 5 Business Days | 1 Business Day |
| Performance Standards | 46 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in a Replacement Bridge causing the percentage of Replacement Bridges to have achieved NBIS Bridge Rating of at least seven (7) to be less than 98%. | 5 | 30 days | 14 days |
| Performance Standards | 47 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in a Replacement Bridge achieving an NBIS Bridge Rating of five (5). | 10 | 30 days | 14 days |
| Performance Standards | 48 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in a Replacement Bridge achieving an NBIS Bridge Rating of four (4). | 15 | 30 days | 7 days |
| Performance Standards | 49 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in a Replacement Bridge achieving an NBIS Bridge Rating of three (3). | 20 | 30 days | 7 days |
| Performance Standards | 50 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in a Replacement Bridge achieving an NBIS Bridge Rating of two (2). | 25 | 30 days | 7 days |
| Performance Standards | 51 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in a Replacement Bridge achieving an NBIS Bridge Rating of one (1). | 30 | 30 days | 7 days |

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| Performance Standards | 52 | Comply with Section 17.2.2 of the Technical Provisions, and any such failure results in any superstructure Element on any Replacement Bridge achieving an NBIS Bridge Rating of less than seven (7). | 5 | 30 days | 14 days |

## SCHEDULE 8

## PAYMENT MECHANISM

### 1. PAYMENT

### 1.1 Milestone Payments

The Milestone Payment in respect of each Milestone shall be calculated using the following formula:

$$MP = MMP - MPD$$

where:

(a) MP = Milestone Payment;

(b) MMP = for each applicable Milestone (as set out in Table 1 (Scheduled Milestone Payments) below), the lower of (x) an amount equal to the Cumulative Maximum Milestone Payment applicable to the relevant Milestone, and (y) an amount equal to fifty percent (50%) of the total amounts paid to the D&C Contractor (in accordance with the terms of the D&C Contract) prior to the occurrence of the relevant Milestone, in each case minus an amount equal to [A + B] where "A" means the aggregate of all Milestone Payments that previously became due and payable by the Department to the Development Entity and "B" means the aggregate of all Milestone Payment Deductions applicable to each previous Milestone; and

(c) MPD = the Milestone Payment Deduction calculated in accordance with Section 2.1 (Milestone Payment Deduction) of this Schedule 8 (Payment Mechanism).

**Table 1 Scheduled Milestone Payments**

| Milestone | Scheduled Milestone Payment | Cumulative Maximum Milestone Payment |
|---|---|---|
| NTP1 plus 12 months | [*Relevant amount from Form J-1*] ("**A**") | A |
| Each month thereafter until the next Milestone below | Zero | A |
| NTP1 plus 18 months | [*Relevant amount from Form J-1*] ("**B**") | A + B |
| Each month thereafter until the next Milestone below | Zero | A + B |
| NTP1 plus 24 months | [*Relevant amount from Form J-1*] ("**C**") | A + B + C |
| Each month thereafter until the next Milestone below | Zero | A + B + C |
| NTP1 plus 30 months | [*Relevant amount from Form J-1*] ("**D**") | A + B + C + D |

| | | |
|---|---|---|
| Each month thereafter until the next Milestone below | Zero | A + B + C + D |
| NTP1 plus 36 months | [*Relevant amount from Form J-1*] ("**E**") | A + B + C + D + E |
| Each month thereafter until the next Milestone below | Zero | A + B + C + D + E |
| Earlier of NTP1 plus 42 months and Substantial Project Completion | [*Relevant amount from Form J-1*] ("**F**") | A + B + C + D + E + F |
| Each month thereafter until Substantial Project Completion | Zero | A + B + C + D + E + F |

## 1.2 Availability Payments

The Availability Payment (AP) for any Month (m) in Calendar Year (y) during the Term shall be calculated using the following formula:

$$AP_{m,y} = \left[ MAP_{m,y} \times \left( \frac{RB_{sc,m-1}}{RB_t} \right) \times CDF_{m-1} \right] - MMPD_{m-1}$$

where:

(a) $MAP_{m,y}$ = the Maximum Availability Payment for Month (m) in Calendar Year (y) calculated as:

$$MAP_{m,y} = \left( \frac{d_{m,y}}{d_y} \right) \times MAP_y$$

where:

(i) $d_{m,y}$ = the number of days in Month (m) in Calendar Year (y) from the start of Month (m) to the end of Month (m) (or the Termination Date if earlier);

(ii) $d_y$ = the number of days in Calendar Year (y);

(iii) $MAP_y$ = the Maximum Availability Payment for any Calendar Year (y) during the Term calculated as follows:

$$MAP_y = Fixed + Indexed$$

where:

(A) *Fixed* = $[●][12]; and

[12] This is the portion of the Base MAP included in the Financial Proposal that is not subject to indexation.

(B) *Indexed* = $[●][13], indexed in accordance with Section 2.6 (Indexation) of this Schedule 8 (Payment Mechanism).[14]

(b) $RB_{sc,m-1}$ = the number of Replacement Bridges for which Substantial Completion has occurred by the end of the Month (m-1) immediately preceding Month (m) and which is not a Handback Bridge as of such date;

(c) $RB_t$ = the total number of Replacement Bridges in the Project;

(d) $MMPD_{m-1}$ = the Monthly Maintenance Payment Deduction for Month (m-1) calculated in accordance with Section 2.2 (Payment Deductions on Availability Payments) of this Schedule 8 (Payment Mechanism); and

(e) $CDF_{m-1}$ = the relevant Completion Deduction Factor for Month (m-1) corresponding to the total number of $RB_{sc}$ at the end of the Month (m-1) immediately preceding Month (m) as set forth in Table 2 below;

**provided**, that the Completion Deduction Factor shall not be applicable following the D&C Work Completion Date; **provided**, **further**, that following Substantial Completion of the first fifty (50) Replacement Bridges, the Department shall make a one-off lump-sum payment to the Development Entity in an amount equal to the aggregate of the Availability Payments (calculated in accordance with this Section 1.2 (Availability Payments) at a Completion Deduction Factor of sixty-five percent (65%)) payable by the Department in each month preceding Substantial Completion of the first fifty (50) Replacement Bridges, such amount to be included in the next Invoice to be issued to the Department by the Development Entity in accordance with Section 14.3 (Invoicing and Monthly Performance Reports) of this PPA; and **provided**, **still further**, that $AP_{m,y}$ shall in no event be less than zero (0).

For the avoidance of doubt, the total number of Availability Payments for each Replacement Bridge that has reached Substantial Completion shall not exceed the number of months remaining in the Term following the Substantial Completion Date for such Replacement Bridge.

**Table 2 Completion Deduction Factor**

| **Total number of $RB_{sc}$** | **Availability Payments Completion Deduction Factor** |
|---|---|
| 0 to 50 | 0.0% |
| 51 to 552 | 65.0% |
| 553 to ($RB_t$-1) | 97.5% |
| Equal to $RB_t$ | 100.0% |

[13] This is the portion of the Base MAP included in the Financial Proposal/Form J-2 of the ITP that is subject to indexation.
[14] To be updated at Financial Close in accordance with Schedule 2 of the PPA.

## 2. PAYMENT DEDUCTIONS

### 2.1 Payment Deductions on Milestone Payments

The Milestone Payment Deduction in respect of each Milestone Payment shall be calculated as follows:

$$MPD = ACND + ACUD$$

where:

(a) MPD = the Milestone Payment Deduction;

(b) ACND = the Aggregate Construction Noncompliance Deduction (ACND) calculated as follows:

$$ACND = NCPV \times \sum_{j=1}^{n} NCP_{j,p}$$

where:

(i) NCPV = the unit value of $3,000 for each Noncompliance Point accrued under Table 7.1 (Noncompliance Events Relating to D&C Work) of Schedule 7 (Noncompliance Points Table), subject to indexation in accordance with Section 2.6 (Indexation) of this Schedule 8 (Payment Mechanism);

(ii) $NCP_{j,p}$ = the number of Noncompliance Points accrued during period (p) in accordance with Article 11 (Noncompliance Events) and Table 7.1 (Noncompliance Events Relating to D&C Work) of Schedule 7 (Noncompliance Points Table) in respect of each Noncompliance Event set out in Table 7.1 (Noncompliance Events Relating to D&C Work) of Schedule 7 (Noncompliance Points Table) (j) that occurred during period (p);

(iii) n = total number (n) of Noncompliance Events set out in Table 7.1 (Noncompliance Events Relating to D&C Work) of Schedule 7 (Noncompliance Points Table) that occurred in period (p);

(c) ACUD = the Aggregate Construction Unavailability Deduction (ACUD) calculated as follows:

$$ACUD = \sum_{k=1}^{n} UV_{RBc,k,p}$$

where:

(i) $UV_{RBc,k,p}$ = for each Replacement Bridge which has not achieved Substantial Completion (RBc), an amount equal to the aggregate of:

(A) in the case of a Detour Unavailability Event (k), the corresponding Detour Unavailability Value multiplied by the total number of detour

miles incurred as a result of such Detour Unavailability Event; **provided** that the Detour Unavailability Value shall be $0 until the total number of Detour Unavailability Events for such Replacement Bridge exceeds the number of days in the Maximum Allowable Detour Period for such Replacement Bridge; or

(B) in the case of a Lane Closure Unavailability Event (k), the corresponding Lane Closure Unavailability Value multiplied by the total number of traffic lanes (in any direction) subject to Closure as a result of such Lane Closure Unavailability Event (for the avoidance of doubt, the Lane Closure Unavailability Value shall at all times be $0 if the number of traffic lanes not subject to Closure are at least equal to the relevant "Minimum Number of Lanes" indicated for such Replacement Bridge on Attachment 10-1 of the Technical Provisions);

in each case assessed during period (p); **provided** that in no event shall the value of $UV_{RBc,k,p}$ in any given day exceed:

(1) $25,000; or

(2) to the extent that the relevant Detour Unavailability Event or Lane Closure Unavailability Event occurred as a direct of a Relief Event, an Emergency or an Incident that in each case was not attributable to any breach of this PPA or any negligent act or negligent omission of a Development Entity-Related Party, an amount calculated as if the relevant Replacement Bridge had achieved Substantial Completion and using the following formula:

$$\frac{MAP_y}{RB_t \times d_y}$$

and increasing to $25,000 to the extent that any Reinstatement Work (as defined in Section 19.14 (Reinstatement Work) required to be undertaken as a result of the relevant Relief Event, Emergency or Incident is not completed within the period anticipated in the relevant Reinstatement Plan (as defined in Section 19.14 (Reinstatement Work); and

(ii) n = total number (n) of Detour Unavailability Events and Lane Closure Unavailability Events that occurred in such period (p); and

(d) p =

(i) in respect of the first Milestone Payment, the period commencing on the Commercial Closing Date and ending on the occurrence of the first Milestone; and

(ii) in respect of each subsequent Milestone Payment, the period commencing on the date which the prior Milestone Payment occurred and ending on the occurrence of the Milestone related to the relevant Milestone Payment;

**provided**, that the Milestone Payment Deduction for any Milestone Payment shall not exceed the relevant Maximum Milestone Payment.

## 2.2 Payment Deductions on Availability Payments

The Monthly Maintenance Payment Deduction (MMPD) applicable to each Replacement Bridge which has achieved Substantial Completion for any Month (m) in Calendar Year (y) during the Term shall be calculated as follows:

$$MMPD_{m,y} = MMND_{m,y} + MMUD_{m,y}$$

where:

(a) $MMPD_{m,y}$ = the Monthly Maintenance Payment Deduction for Month (m) in Calendar Year (y);

(b) $MMND_{m,y}$ = the Monthly Maintenance Noncompliance Deduction (MMND) for Month (m) in Calendar Year (y) calculated as follows:

$$MMND_{m,y} = NCPV \times \sum_{v=1}^{n} NCP_{v,m}$$

where:

(i) NCPV = the unit value of $2,000 for each Noncompliance Point accrued under Table 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table), subject to indexation in accordance with Section 2.6 (Indexation) of this Schedule 8 (Payment Mechanism);

(ii) $NCP_{v,m}$ = the number of Noncompliance Points accrued in Month (m) in accordance with Article 11 (Noncompliance Events) and Table 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table) in respect of each Noncompliance Event set out in Table 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table) (v) that occurred during Month (m) of Calendar Year (y); and

(iii) n = total number (n) of Noncompliance Events set out in Table 7.2 (Noncompliance Events Relating to Maintenance Work) of Schedule 7 (Noncompliance Points Table) that occurred in Month (m) of Calendar Year (y); and

(c) $MMUD_{m,y}$ = the Monthly Maintenance Unavailability Deduction (MMUD) for Month (m) in Calendar Year (y) calculated as follows:

$$MMUD_{m,y} = \sum_{w=1}^{n} UV_{RBsc,w}$$

where:

(i) $UV_{RBsc,w}$ = for each Replacement Bridge which has achieved Substantial Completion (RBsc), an amount equal to the aggregate of:

(A) in the case of a Detour Unavailability Event (w), the corresponding Detour Unavailability Value multiplied by the total number of detour miles incurred as a result of such Detour Unavailability Event; and

(B) in the case of a Lane Closure Unavailability Event (w), the corresponding Lane Closure Unavailability Value multiplied by the total number of traffic lanes (in any direction) subject to Closure as a result of such Lane Closure Unavailability Event;

in each case assessed during Month (m) of Calendar Year (y); **provided** that in no event shall the value of $UV_{RBsc,w}$ in any given day exceed:

(1) $25,000; or

(2) to the extent that the relevant Detour Unavailability Event or Lane Closure Unavailability Event occurred as a direct of a Relief Event, an Emergency or an Incident that in each case was not attributable to any breach of this PPA or any negligent act or negligent omission of a Development Entity-Related Party, an amount calculated using the following formula:

$$\frac{MAP_y}{RB_t \times d_y}$$

and increasing to $25,000 to the extent that any Reinstatement Work (as defined in Section 19.14 (Reinstatement Work) required to be undertaken as a result of the relevant Relief Event, Emergency or Incident is not completed within the period anticipated in the relevant Reinstatement Plan (as defined in Section 19.14 (Reinstatement Work); and

(ii) n = the total number (n) of Unavailability Events in Month (m) of Calendar Year (y).

## 2.3 Closures and Unavailability Events

(a) Each Closure shall be deemed to start when the event may reasonably be inferred to have started. Each Closure shall be deemed to end when the circumstances giving rise to the Closure no longer apply and the lanes affected by the Closure have been re-opened to traffic.

(b) The Department shall be entitled to assess one or more Unavailability Event(s) for any Closure that is not a Permitted Closure. No Unavailability Event(s) shall be assessed with respect to any Permitted Closure as further described in Section 2.4 (Permitted Closures) of this Schedule 8 (Payment Mechanism).

(c) Depending upon the duration of the Closure, one or more Unavailability Event(s) may be assessed for each Closure. The first such Unavailability Event shall commence on the Day during which the Closure is deemed to have started and the last such Unavailability Event shall finish on the Day during which the Closure is deemed to have ended.

(d) Where a Closure of less than 24 hours duration spans two consecutive Days, the Department shall assess an Unavailability Event for each Day.

**2.4 Permitted Closures**

(a) Closures arising as a direct result of:

(i) a Compensation Event;

(ii) Planned Maintenance;

(iii) subject to Section 2.4(b) below, an Emergency or an Incident; or

(iv) Permissible Unplanned Maintenance;

shall be deemed to be **Permitted Closures** for which the Department will not have the right to assess any Unavailability Event; **provided**, that the Development Entity is using its Reasonable Efforts to:

(v) mitigate the impact of the relevant Closure;

(vi) reopen the affected portion(s) of the Replacement Bridge as quickly as possible to traffic;

(vii) minimize the impact of the Development Entity's activities to traffic flow during such Closure; and

(viii) in respect of an Emergency or an Incident, respond to the Emergency or Incident in accordance with any relevant requirements of the Project Documents.

(b) A Closure arising as a direct result of an Emergency or an Incident shall only be deemed to be a Permitted Closure to the extent that it does not arise as the direct result of:

(i) any breach of a Project Document caused by the Development Entity or any other Development Entity-Related Entity;

(ii) any willful misconduct or negligent act or omission of the Development Entity or any other Development Entity-Related Entity; or

(iii) any risk that the Development Entity is required to insure against pursuant to the terms of the Project Documents.

## 2.5 Unavailability Values

(a) For each Replacement Bridge, each corresponding Unavailability Value is set out in Attachment 10-1 of the Technical Provisions under the heading "Unavailability Values".

(b) On each Indexation Review Date, each Unavailability Value shall be indexed in accordance with Section 2.6 (Indexation) of this Schedule 8 (Payment Mechanism).

## 2.6 Indexation

(a) On each Indexation Review Date, each Indexable Element shall be adjusted by applying to it the Indexation Formula set forth in Section 2.6(c) below.

(b) On each occasion that an Indexable Element is to be adjusted in accordance with this Section 2.6(b), the Indexation Formula shall be applied to the Indexable Element applicable immediately before the relevant Indexation Review Date.

(c) For the purposes of calculating indexation pursuant to Section 2.6(a) above, the following definitions apply:

(i) **Indexation Formula** means $IE_m = IE_{base} \times \left(\frac{b}{a}\right)$;

(ii) $\mathbf{IE_m}$ means the Indexable Element applicable on or immediately after the relevant Indexation Review Date;

(iii) $\mathbf{IE_{base}}$ means the Indexable Element applicable as of the Indexation Base Date;

(iv) **a** means the value of CPI as of the Indexation Base Date; and

(v) **b** means the value of CPI as of the relevant Indexation Review Date.

## SCHEDULE 9

## INSURANCE COVERAGE REQUIREMENTS

### 1. CONSTRUCTION PERIOD INSURANCE

### 1.1 "All Risk" Builders' Risk

(a) At all times from the issuance of the first NTP3 until D&C Work Completion, the Development Entity shall procure and maintain, or cause to be procured and maintained, Builders' Risk insurance for "all risks" of direct physical loss or damage including, but not limited to the following perils: loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, ice flow, explosion, riot, vandalism and malicious mischief, civil commotion, aircraft, vehicle impact, and smoke including loss of materials while waterborne or under water. Such policy shall contain extensions of coverage that are typical for a project of the nature of the Project including, but not limited to those listed below and including coverage for physical damage resulting from faulty workmanship or faulty materials (but not for repairing the faulty workmanship or faulty materials themselves).

(b) The policy shall provide coverage up to either the full replacement cost of bridges under construction at any given time or with a loss limit based on a Probable Maximum Loss (PML) study of the covered property, as agreed to by the Department. In no case shall the limit of insurance provided be less than $15 million. In addition, coverage will be provided, on a sublimited basis for the exposures noted below, as follows:

(i) Flood and Earthquake - $5 million each;

(ii) Professional Fees, Expediting Expenses, Property in Transit, Property Stored Offsite - $1 million each;

(iii) Demolition and Debris Removal - 25% of loss amount with maximum of $1 million;

(iv) Increased Cost of Construction - 25% of loss amount with maximum of $1 million;

(v) Soft Costs (including, but not limited to, engineering and architectural fees, legal costs and related permitting charges, etc. ) - $1 million; and

(vi) Existing Department Property - $5 million.

"Soft Cost" coverage for design fees, attorney's fees, revised government approvals, etc. shall also be included on a sublimited basis.

(c) The policy shall cover all bridge structures, roads, property, buildings and other structures, materials, supplies, foundations, pilings, machinery and equipment that are a part of or related to the portion or elements of the Project under construction, as well as the works of improvement, including permanent and temporary structures, works and materials and any goods intended for incorporation into the Project. Coverage shall be

extended to include, with appropriate sublimit as noted above, materials, equipment and property in transit or storage.

(d) The Department will consider self-insurance alternatives provided that the Development Entity has a reasonable plan for ensuring appropriate funding for timely restoration of any damaged structures, roads, etc. In addition, the Department will consider forms combining Builder's Risk and All-Risk Property and/or combining Commercial General Liability if such forms are the most effective manner to provide appropriate insurances in compliance with Sections 1.1, 1.2, 2.1 and 2.2 (as applicable) of this Schedule 9 (Insurance Coverage Requirements).

**1.2 Commercial General Liability**

(a) At all times from the issuance of NTP2 until D&C Work Completion, the Development Entity shall procure and keep in force commercial general liability insurance (together with any excess or umbrella liability) against claims for personal injury, bodily injury, death or property damage occurring as a result of work or other activities associated with the Project. The Development Entity shall maintain coverage on an "occurrence" basis and coverage shall include premises and operations, products and completed operations, independent contractors, broad form property damage, contractual liability and other coverage extensions typical of a project of this type and scope. Coverage shall be extended for non-owned and hired automobile liability unless coverage is provided separately under Section 1.4 below.

(b) The policy shall have limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate with the General Aggregate applying on a per project basis (with all Work under this PPA to be considered a single project) and per location basis (with all Project Sites in the Project to be considered a single location). Coverage at this level shall be provided throughout the period from the issuance of NTP2 until D&C Work Completion and the Department and other Indemnified Parties as provided for in the PPA shall be named as additional insureds under the policy solely with respect to the Project.

**1.3 Workers' Compensation and Employers' Liability Insurance**

At all times from the issuance of NTP2 until D&C Work Completion, the Development Entity shall procure and keep in force Workers' Compensation insurance, as required by any Governmental Entity or legal requirement, including Employers' Liability coverage with limits of not less than $1,000,000. This shall include, as required, coverage for any claims under the United States Longshore and Harbor Workers' Compensation Act and the Jones Act.

**1.4 Automobile Liability Insurance**

Should the Development Entity have any owned or leased vehicles, at all times from the issuance of NTP2 until D&C Work Completion, the Development Entity shall procure and keep in force automobile liability insurance with a limit of at least $1,000,000 shall be procured and maintained covering all owned, non-owned, hired, or borrowed vehicles on or off-site. Coverage shall be extended to the Department and other Indemnified Parties as required, but solely in respect of the Project.

## 1.5 Umbrella/Excess Liability Insurance

At all times from the issuance of NTP2 until D&C Work Completion, the Development Entity shall procure and cause to be kept in force, in excess of underlying limits noted above for commercial general liability, employer's liability and automobile liability, a following-form umbrella/excess liability policy with limits of at least $25 million per occurrence, $25 million general aggregate, applicable on an annual basis, and $25 million completed operations aggregate. The Department and other Indemnified Parties as provided in the PPA shall be additional insureds under the policy solely with respect to the Project and coverage shall be written on an occurrence basis.

## 1.6 Professional Errors and Omissions

(a) As of the issuance of NTP1, the Development Entity shall cause the D&C Contractor (responsible for the design and construction of the Project) to carry, or require their Lead Engineering Firm to carry, Professional Liability insurance providing protection from claims arising from acts, errors or omissions arising from design, engineering, surveying, inspection and related work undertaken in connection with the Project.

(b) Coverage may be provided on a claims-made basis and may be provided either through a project-specific professional liability insurance policy covering all such professionals working on the project or through utilization of the D&C Contractor's or Lead Engineering Firm's practice professional liability policy, provided that, in either instance, coverage must remain in force from the date of this PPA to the earlier of six years after Substantial Project Completion or ten years after the date of this PPA.

(c) The policy must have a limit of at least $10 million per claim and in the aggregate.

(d) Should the Development Entity choose to allow the D&C Contractor's or Lead Engineering Firm's practice policy satisfy the Professional Liability Insurance requirement, such coverage must be continuously carried for the period outlined above. If the 'practice policy' option is selected, any other subconsultants or professionals engaged on the project must, in turn, carry their own professional liability insurance from the date they start work on the Project until either six years after the occurrence of Substantial Project Completion or ten years after the date they start work, whichever comes first. Such sub consultants and other professionals shall carry professional liability limits, on a claims-made basis, as follows:

| Estimated Contract Value | Minimum Limit Required |
|---|---|
| $10 million or more | $10 million per claim/aggregate |
| $5 million to $9.99 million | $5 million per claim/aggregate |
| $500,000 to $5 million | $2 million per claim/aggregate |
| <$500,000 | $1 million per claim/aggregate |

## 1.7 Contractor's Pollution Liability Insurance

At all times from the issuance of NTP2 until D&C Work Completion, the Development Entity shall procure and maintain, or cause the D&C Contractor to procure and maintain, Contractor's Pollution Liability Insurance covering activities associated with the project with a limit of at least $5,000,000. Coverage shall include third-party property damage and bodily injury and environmental impairment/clean-up costs. Such insurance shall include the Development Entity

and the D&C Contractor as Named Insureds and list the Department and the other Indemnified Parties as Additional Insureds, but solely in respect of the Project. Coverage may be written on a claims-made basis and shall be carried for the period from the issuance of NTP2 until six years after D&C Work Completion.

## 1.8 Insurance Required of D&C Contractor

In addition to the insurances required above of the Development Entity, the following insurances shall be required of the D&C Contractor at all times from the issuance of NTP2 until D&C Work Completion:

(a) Commercial General Liability Insurance protecting against claims for personal injury, bodily injury, death or property damage occurring as a result of work or other activities associated with the Project. The D&C Contractor shall maintain coverage on an "occurrence" basis and coverage shall include premises and operations, products and completed operations, independent contractors, broad form property damage, contractual liability and other coverage extensions typical of a project of this type and scope. Completed Operations coverage shall be maintained for a period of six (6) years after the D&C Work Completion Date. Coverage shall be extended for non-owned and hired automobile liability unless coverage is provided separately pursuant to clause (c) of this Section 1.8. The policy shall have limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate with the General Aggregate applying on a per project basis (with all Work under this PPA to be considered a single project) and per location basis (with all Project Sites in the Project to be considered a single location). Coverage at this level shall be provided throughout the period from issuance of NTP2 until D&C Work Completion and the Department, the Development Entity and other Indemnified Parties as provided for in the PPA shall be named as additional insureds under the policy solely with respect to the Project;

(b) Workers' Compensation and Employers' Liability Insurance as required by any Governmental Entity or legal requirement, including Employers' Liability with limits of not less than $1,000,000;

(c) Automobile Liability Insurance for any owned or leased vehicles with a combined single limit of at least $1,000,000 shall be procured and maintained covering all owned, non-owned, hired, or borrowed vehicles on- or off-site. Coverage shall be extended to protect the Department, the Development Entity and other Indemnified Parties, but solely in respect of the Project, and the Department, the Development Entity and other Indemnified Parties as provided for in the PPA shall be named as additional insureds under the policy solely with respect to the Project; and

(d) Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for commercial general liability, employer's liability and automobile liability, a following-form umbrella/excess liability policy with limits of at least $50 million per occurrence, $50 million general aggregate, reinstated annually, and $50 million completed operations aggregate. The Department, the Development Entity and other Indemnified Parties as provided in Article 19 (Insurance) of the PPA shall be additional insureds under the policy solely with respect to the Project and coverage shall be written on an occurrence basis.

## 1.9 Option to Procure Project-Specific Coverage

As noted in Article 19 (Insurance) of this PPA, the Development Entity and the D&C Contractor shall retain the option to procure a consolidated or coordinated insurance program covering the activities of the Development Entity, the D&C Contractor, and other contractors and consultants working at any Project Site; **provided** that the activities of such other contractors and consultants shall not be required to be covered in the event they maintain their own insurance policies compliant with the relevant terms in this Schedule 9 (Insurance Coverage Requirements). If such coverage is purchased and includes both the Development Entity and the D&C Contractor as Named Insureds, the requirement for separate insurance programs and limits as noted above will be waived, however, the Commercial General Liability Insurance Completed Operations coverage must be continued for a period of at least six (6) years after the D&C Work Completion Date. Such project-specific insurance must provide each of the coverages noted above in Sections 1.2 (Commercial General Liability), 1.3 (Workers' Compensation and Employers' Liability Insurance), 1.4 (Automobile Liability Insurance), and 1.5 (Umbrella/Excess Liability Insurance). Should such an approach be utilized by the Development Entity, the limit for the Umbrella/Excess Liability shall be at least $75 million per occurrence, $75 million general aggregate, reinstated annually and $75 million completed operations aggregate and aggregate reinstated annually. If such consolidated insurance program does not provide all required insurances (e.g., only Commercial General Liability is provided on a consolidated or coordinated basis), then the Development Entity and D&C Contractor must separately comply with all other insurance requirements. As an alternative, the Development Entity, the D&C Contractor and the O&M Contractor may all be insured together under a consolidated or coordinated insurance program, provided it covers all of their activities and each is a Named Insured on the policy(ies). Should such an approach be utilized, then such an approach shall be deemed to comply with the requirements of Sections 2.2 (Commercial General Liability), 2.3 (Workers' Compensation and Employers' Liability Insurance), 2.4 (Automobile Liability Insurance) and 2.5 (Umbrella/Excess Liability Insurance) so long as the limit for the Umbrella/Excess Liability shall be at least $75 million per occurrence and aggregate reinstated annually. The Department will consider other similar alternatives provided that all insurance requirements are met in some manner.

## 1.10 Other Construction Insurance Coverage Required of Other Contractors and Consultants

(a) If the Development Entity/D&C Contractor determines that they will not purchase a consolidated or coordinated, project-specific insurance program covering all project participants, then the following additional insurance requirements shall apply from issuance of NTP2 until D&C Work Completion to all other contractors and consultants (other than the D&C Contractor) working on site:

(i) Commercial General Liability Insurance including premises and operation, products/completed operations, contractual liability, etc. with limits of $1,000,000 per occurrence and $2,000,000 aggregate applicable on a per project basis (with all Work under this PPA to be considered a single project).

(ii) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation coverage and employer's liability limits of $1,000,000.

(iii) Automobile Liability Insurance with at least $1,000,000 combined single limit.

(b) For those contractors or consultants with estimated contract values above $5,000,000, such contractors and consultants shall additionally be required to carry $5,000,000 of

umbrella/excess liability insurance above the underlying commercial general liability, employer's liability and automobile liability limits noted above.

(c) If any aircraft or watercraft is utilized in the course of completing construction, appropriate aircraft liability and/or hull and protection and indemnity insurance will be procured and maintained in an amount not less than $5,000,000.

(d) Railroad Protective Liability Insurance, as required by any railroads, if such coverage is not already provided under the 'Commercial General Liability' insurance referred to above.

## 2. MAINTENANCE PERIOD INSURANCE

### 2.1 "All Risk" Property

(a) At all times from the commencement of the first Maintenance Period, the Development Entity shall procure and maintain "All Risk" Property Insurance as the term is used in the insurance industry (including, but not limited to the following perils: loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, explosion, riot, vandalism and malicious mischief, civil commotion, aircraft, vehicle impact and smoke and such other risks). The policy shall contain extensions of coverage typical of policies covering such property including, but not limited to, "soft costs," extra/expediting expenses, property in transit and property stored offsite, each of which may be subject to a sublimit of at least $1 million. The policy shall be written in an amount not less than the Probable Maximum Loss for the Project, as agreed by the Department, but in no case for less than $15 million. Flood and Earthquake sublimits of $5 million each are acceptable.

(b) The Department will consider self-insurance alternatives provided that the Development Entity has a reasonable plan for ensuring appropriate funding for timely restoration of any damaged structures, roads, etc.

### 2.2 Commercial General Liability

(a) At all times from the commencement of the first Maintenance Period, the Development Entity shall procure and keep in force commercial general liability insurance (together with any excess or umbrella liability) against claims for personal injury, bodily injury, death or property damage occurring as a result of work or other activities associated with the Project. The Development Entity shall maintain coverage on an "occurrence" basis and coverage shall include premises and operations, products and completed operations, independent contractors, broad form property damage, contractual liability and other coverage extensions typical of a project of this type and scope. Coverage shall be extended for non-owned and hired automobile liability unless coverage is provided separately under Section 2.4 below.

(b) The policy shall have limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate with the General Aggregate applying on a per project basis. Coverage at this level shall be provided from the commencement of the first Maintenance Period until the last day of the Term and the Department and other Indemnified Parties as provided for in the PPA shall be named as additional insureds under the policy, but solely in respect of the Project.

## 2.3 Workers' Compensation and Employers' Liability Insurance

At all times from the commencement of the first Maintenance Period, the Development Entity shall procure and keep in force Workers' Compensation insurance, as required by any Governmental Entity or legal requirement, including Employers' Liability coverage with limits of not less than $1,000,000.

## 2.4 Automobile Liability Insurance

Should the Development Entity have any owned or leased vehicles, at all times from the commencement of the first Maintenance Period, the Development Entity shall procure and keep in force automobile liability insurance with a limit of at least $1,000,000 shall be procured and maintained covering all owned, non-owned, hired, or borrowed vehicles on- or off-site. Coverage shall be extended to the Department and other Indemnified Parties as required, but solely in respect of the Project.

## 2.5 Umbrella/Excess Liability Insurance

At all times from the commencement of the first Maintenance Period, the Development Entity shall procure and cause to be kept in force, in excess of underlying limits noted above for commercial general liability, employer's liability and automobile liability, a following-form umbrella/excess liability policy with limits of at least $50 million. The Department and other Indemnified Parties as provided in the PPA shall be additional insureds under the policy, but solely in respect of the Project, and coverage shall be written on an occurrence basis.

## 2.6 Professional Errors and Omissions

At all times from the commencement of the first Maintenance Period, the Development Entity shall cause any architects, engineers, or other professionals providing services in respect of the Maintenance Work to carry Professional Liability insurance providing protection from claims arising from acts, errors or omissions arising from design, engineering, surveying, inspection and related work undertaken in connection with the Project. Coverage may be provided on a claims-made basis and shall be carried for the period of any design work and for six years after completion of the work. The limits required shall be as follows:

| Estimated Contract Value | Minimum Limit Required |
|---|---|
| $10 million or more | $10 million per claim/aggregate |
| $5 million to $9.99 million | $ 5 million per claim/aggregate |
| $500,000 to $5 million | $ 2 million per claim/aggregate |
| <$500,000 | $ 1 million per claim/aggregate |

## 2.7 Environmental

At all times from the commencement of the first Maintenance Period, the Development Entity shall procure and cause to be kept in force Pollution Legal Liability insurance covering all locations and activities, with $5,000,000 per claim and in the aggregate of limits. Coverage may be written on a claims-made basis and should include third-party bodily injury and property damage, as well as off-site clean-up costs and related coverage extensions. The Department and other Indemnified Parties shall be added as insureds, but solely in respect of the Project.

## 2.8 Insurance Requirements on Other Contractors and Consultants during each Maintenance Period

(a) Any contractor or consultant (including architects, engineers and design consultants) utilized by the Development Entity in respect of the Maintenance Work shall be required at all times from the commencement of the first Maintenance Period to procure and maintain the following insurance coverages, with the Development Entity, the Department and other Indemnified Parties as additional insureds, but solely in respect of the Project, as appropriate:

(i) Commercial General Liability Insurance including premises and operation, products/completed operations, contractual liability, and other typical coverage provisions with limits of $1,000,000 per occurrence and $2,000,000 aggregate applicable on a per project basis (with all Work under this PPA to be considered a single project) and per location basis (with all Project Sites in the Project to be considered a single location), if applicable.

(ii) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation coverage and employer's liability limits of $1,000,000.

(iii) Automobile Liability Insurance with a limit of at least $1,000,000 combined single limit.

(b) For those contractors or consultants with estimated annual contract values above $2,000,000, such contractors and consultants shall additionally be required to carry $5,000,000 of umbrella/excess liability insurance above the underlying commercial general liability, employer's liability and automobile liability limits noted above.

(c) If any aircraft or watercraft is utilized in the course of completing construction, appropriate aircraft liability and/or hull and protection and indemnity insurance will be procured and maintained in an amount not less than $5,000,000.

(d) Railroad Protective Liability Insurance, as required by any railroads, if such coverage is not already provided under the 'Commercial General Liability' insurance referred to above.

## SCHEDULE 10

## DISPUTES REVIEW BOARD

## PART 1

## FORM OF DISPUTES REVIEW BOARD AGREEMENT

**THIS DISPUTES REVIEW BOARD AGREEMENT** (**DRB Agreement**) is made and entered into this [ ] day of [ ], 201[ ], among The Pennsylvania Department of Transportation (the **Department**), [●] (the Development Entity), and [ ] (collectively, the **Board Members**), with reference to the following facts:

(A) The Department and the Development Entity have entered into that certain Public-Private Transportation Partnership Agreement dated [ ] (the **PPA**). Pursuant to the PPA, the Development Entity has agreed, among other things, to design, construct, finance and maintain the Pennsylvania Rapid Bridge Replacement Project (**Project**).

(B) Article 30 (Dispute Resolution Procedures) of the PPA provides for the establishment and operation of a Technical Disputes Review Board to assist in resolving any Dispute of a technical nature and a Financial Disputes Review Board to assist in resolving any Dispute of a financial nature, in each case that may arise among the Department, the Development Entity and others in respect to the Project.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants and agreements contained herein, the parties hereto agree as follows:

### 1. ESTABLISHMENT OF BOARD

(a) The [Financial Dispute]/[Technical Dispute] Review Board (the **Board**) shall begin operation upon execution of this DRB Agreement by the Department, the Development Entity and all three Board Members. In the case of the Financial Disputes Review Board, the Board Members' tenure shall terminate upon completion of all work required to be performed by the Board hereunder unless sooner terminated in accordance with this DRB Agreement or applicable law. In the case of the Technical Disputes Review Board, the initial Board Members' tenure shall terminate six (6) months after D&C Work Completion (unless sooner terminated in accordance with this DRB Agreement or applicable law), with new Board Members to be appointed from such date through the Maintenance Period.

(b) Each member of the Board represents, warrants and covenants on his/her behalf that he/she complies with the criteria and limitations for membership described in Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.

(c) All three Board Members must have submitted and received approval of disclosure statements according to the requirements of Section 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.

(d) If during the term of this DRB Agreement, a Board Member has a discussion regarding employment or enters into any agreement for employment with the Department, the Development

Entity or a Development Entity-Related Entity, the Board Member shall promptly disclose such discussion or agreement to both the Department and the Development Entity and the Board Member shall be disqualified from serving on the Board.

## 2. BOARD RESPONSIBILITIES

(a) The Board shall fairly and impartially consider and provide written decisions for resolution of disputes in accordance with Article 30 (Dispute Resolution Procedures) of the PPA and Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board Procedures Disputes Review Board) attached thereto. The Board Members shall perform the services necessary to participate in the Board's actions in accordance with this DRB Agreement.

(b) Board Members will be kept informed monthly of Project-related activities and other developments by means of regular progress reports, minutes of progress meetings, and other relevant information prepared by the Department and the Development Entity.

(c) All Board Members are to act independently in the consideration of facts and conditions surrounding any Dispute. Seeking the Board Members' advice or consultation, ex parte, is expressly prohibited; **provided**, **however**, that either the Department or the Development Entity may seek such advice or consultation from the entire Board, at a Board meeting, after first giving notice to all interested parties. A Board Member who has ex parte contact with the Department or the Development Entity or a representative of either party shall be subject to removal from the Board for cause.

(d) Board Members may withdraw from the Board upon delivery of written notice of withdrawal to the Department, the Development Entity and the other Board Members, which notice shall specify a withdrawal date at least 30 days following the date of delivery of the notice. In addition, a Board Member may be terminated by the Department or the Development Entity if at any time that Board Member fails to meet the relevant qualifications set out in Sections 1.2 (Board Membership) through 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of, or is otherwise disqualified pursuant to Section 1.10 (Disqualification and Replacement of Board Members) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA. Should the need arise to appoint a replacement Board Member, the replacement member shall be appointed in the same manner as provided by the PPA for appointment of the original member. The selection of a replacement Board Member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 30 days thereafter. The change in Board membership shall be evidenced by the new member's signature on this DRB Agreement.

(e) The personal services of the Board Member are a condition to receiving payment hereunder. No Board Member shall assign any of his or her work pursuant to this DRB Agreement without the prior written consent of both the Department and the Development Entity.

(f) Each Board Member will keep matters related to the DRB Agreement confidential.

(g) Each Board Member, in the performance of his or her duties on the Board, is acting as an independent contractor and not as an employee of either the Department or the Development Entity. No Board Member will be entitled to any employee benefits.

## 3. HEARINGS AND DECISIONS

(a) Each Dispute under the PPA shall be heard and decided by the Board in accordance with the procedures and timelines established in Section 30.4 (Disputes Review Board) of the PPA.

(b) Within the limits set by Section 30.4 (Disputes Review Board) of the PPA, the Board shall have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures. Each party involved in the Dispute shall retain the right to discovery, within the parameters set by the Board.

## 4. PROVISION OF DOCUMENTS TO BOARD

(a) The Department shall furnish each Board Member one copy of Project-related documents in accordance with Section 2.2 (The Department's Responsibilities) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.

(b) The Development Entity shall furnish to each Board Member one copy of all Project-related documents it might have, other than those furnished by the Department, in accordance with Section 2.1 (The Development Entity's Responsibilities) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.

## 5. PAYMENT

(a) The Department and the Development Entity shall each pay its portion of the costs related to the services rendered by each Board Member in accordance with Section 3 (Basis of Payment) of Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) to the PPA.

(b) Invoices for payment for Board Member work completed under this DRB Agreement shall be submitted monthly. Such invoices shall be in a format approved by the Department and the Development Entity and accompanied by a general description of activities performed during the relevant period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Board Member together with direct, reasonable, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.

(c) Each Board Member shall keep available for inspection, for a period of five years after final payment, the cost records and accounts pertaining to this DRB Agreement.

## 6. MISCELLANEOUS

(a) This DRB Agreement shall commence upon execution hereof by the Development Entity, the Department and all three Board Members. The foregoing is subject to the right of the Department and the Development Entity to terminate the services of Board Members as specified herein.

(b) This DRB Agreement shall terminate automatically upon termination of the PPA.

(c) Capitalized terms used but not defined herein shall have the meanings set out in the PPA.

(d) The parties to this DRB Agreement intend for Article 30 (Dispute Resolution Procedures) and Part 2 (Disputes Review Board Procedures) of Schedule 10 to the PPA and the other terms of this DRB Agreement to be complementary. Except as otherwise specifically provided herein, in the

event of any conflict between this DRB Agreement and said Article 30 (Dispute Resolution Procedures) and Part 2 (Disputes Review Board Procedures) of Schedule 10 to the PPA, Article 30 (Dispute Resolution Procedures) and Part 2 (Disputes Review Board Procedures) of Schedule 10 to the PPA shall control.

(e) Notices hereunder shall be sent as provided in Section 32.10 (Notices and Communications) of the PPA. The addresses for the Board Members are set out on the signature pages hereof.

(f) Each of the parties hereto irrevocably submits to the exclusive jurisdiction of any Commonwealth Court of Pennsylvania or U.S. Federal court sitting in the City of Harrisburg, Pennsylvania for the settlement of any dispute in connection with this DRB Agreement. Such courts are the most appropriate and convenient courts to settle any such dispute and each of the parties hereto waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this DRB Agreement.

(g) EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS DRB AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. THIS DRB AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

(h) The Development Entity irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier in relation to any proceedings before any court located in the Commonwealth of Pennsylvania. Each of the Board Members irrevocably appoints the person named below as its respective agent for service of process in any proceedings before any court located in the Commonwealth:

(i) [Board Member #1] _____ irrevocably appoints _____ as its agent for service of process;

(ii) [Board Member #2] irrevocably appoints _____ as its agent for service of process; and

(iii) [Board Member #3] irrevocably appoints _____ as its agent for service of process.

This clause does not affect any other method of service allowed by applicable law.

(i) If any person appointed as process agent is unable for any reason to act as agent for service of process, the Development Entity or the relevant Board Member, as the case may be, must promptly appoint another agent on terms acceptable to the Department. Failing this, the Department may appoint another agent for this purpose. The Development Entity and each of the Board Members agree that failure by its respective process agent to notify it of any process will not invalidate the relevant proceedings. This clause does not affect any other method of service allowed by law.

(j) This DRB Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Commonwealth of Pennsylvania (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

**IN WITNESS WHEREOF**, the parties hereto have executed this DRB Agreement as of the day and year first above written.

**Board Members**

**MEMBER #1**

_____
Signature

Name/Address:

_____

_____

_____

**MEMBER #2**

_____
Signature

Name/Address:

_____

_____

_____

**Development Entity** **[●]**

APPROVED AS TO FORM

By:_____

THE DEPARTMENT

ATTEST:

By:_____

Name: _____

Title: _____

APPROVED AS TO FORM

By:_____

**PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

By: _____

Name:_____

Title:_____

## PART 2

## DISPUTES REVIEW BOARD PROCEDURES

### 1. ESTABLISHMENT OF DISPUTES REVIEW BOARD

#### 1.1 Purpose

The Parties shall establish the Technical Disputes Review Board and Financial Disputes Review Board to provide special expertise and assist in and facilitate the timely and equitable resolution of Disputes between the Department and the Development Entity as set out under Section 30.4 (Disputes Review Board) of the PPA and any Disputes Review Board Agreement for the Technical Disputes Review Board and any Disputes Review Board Agreement for Financial Disputes Review Board.

#### 1.2 Board Membership

Each Disputes Review Board will consist of one member selected by the Department, one member selected by the Development Entity, and a third member selected in accordance with Section 1.8 below. The third member will act as chairman. Once established, each Disputes Review Board will remain active and in full force and effect until all Disputes submitted to such Disputes Review Board have been decided by it.

#### 1.3 Neutral and Impartial

The members of each Disputes Review Board shall be neutral, act impartially, and not have any conflict of interest (as further provided in Section 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board).

#### 1.4 Experience Criteria for any Disputes Review Board Members

(a) Each party-selected member of the Technical Disputes Review Board shall be a nationally recognized expert in matters pertinent to the technical nature of the Project.

(b) Each party-selected member of the Financial Disputes Review Board shall be a nationally recognized expert in matters pertinent to financial issues relevant to the Project.

(c) The Chair of each Disputes Review Board shall be a nationally recognized expert in matters pertinent to the resolution of commercial disputes outside of litigation and shall have served on at least one Disputes Review Board, preferably as Chair.

#### 1.5 Additional Criteria Applicable to any Disputes Review Board Members

In addition to the criteria set out in Section 1.4 (Experience Criteria for any Disputes Review Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board), the criteria for membership for all members of any Disputes Review Board includes the following:

(a) No member shall have an ownership interest in any party involved in the PPA, or a financial interest in the PPA, except for payment for services on any Disputes Review Board; **provided**, that for purposes of determining conflicts of interests and disqualification, the term **member** shall include the member's current primary or full-time employer, and **involved** shall mean having a contractual relationship with the Department or the Development Entity at any tier.

(b) Except for fee-based consulting services on other projects, no member shall have been previously employed by, or have had financial ties to, any party involved in the PPA within a period of eight (8) years prior to award of the PPA.

(c) No member shall have provided to either Party fee-based consulting services within the two (2) years prior to award of the PPA, where the consulting fees paid by that Party have exceeded 20% of that member's total consulting revenue in either year.

(d) No member shall have had a close professional or personal relationship with any key member of any party involved in the PPA which, in the judgment of either Party, could suggest partiality, or give an appearance of impropriety.

(e) No member shall have had prior involvement in the Project, of a nature which could compromise his or her ability to participate impartially in the activities of either board.

(f) Each member shall have completed any Disputes Review Board training course provided by the Department for the Project.

(g) During his or her tenure as a member of any Disputes Review Board, no member shall be employed, including fee-based consulting services, by any party involved in this PPA except with express approval of both Parties.

(h) During his or her tenure as a member of any Disputes Review Board, no member shall engage in any discussion or make any agreement with any Party regarding employment after the Project is completed.

(i) No member shall currently be a member of any other Disputes Review Board that involves issues related to either of the Parties.

### 1.6 Disclosure Statement

Before their appointments are final, the first two (2) prospective members of any Disputes Review Board shall submit complete disclosure statements for the approval of both the Department and the Development Entity. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships (including indirect relationships through the prospective member's primary or full-time employer) to this Project and with all Parties involved in this PPA. This disclosure shall also include any financial relationship relative to the criteria in Section 1.5 (Additional Criteria Applicable to any Disputes Review Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board), and disclosure of close relationships, either professional or personal, with all key members of all Parties to this PPA. The third member of any Disputes Review Board shall supply such a statement to the first two (2) members and to the Department and the Development Entity before his or her appointment is final.

## 1.7 Selection of First Two Members

The Department and the Development Entity shall each select a proposed member for each Disputes Review Board and convey the selected member's name and reference information to the other Party within three (3) weeks after execution of the PPA. If either Party reasonably believes that the member appointed by the other Party does not meet the criteria for membership as set out in this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board), that Party shall notify the other Party of such failure and the reason therefor. If either Party's member fails to meet the criteria, the other Party may require substitution of that member pursuant to Section 1.10 (Disqualification and Replacement of Board Members) of this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board).

## 1.8 Nomination and Approval of Third Member

Immediately after the Department and the Development Entity selections for a Disputes Review Board are final, the Department will provide a list of five (5) proposed members acceptable to both Parties and will notify the first two (2) members of such Disputes Review Board to begin the process of selecting the third member from this list. The first two (2) members shall select the third member from the list provided by the Department and shall ensure that the third member meets all of the relevant criteria listed above. The first two (2) members shall select the third member within two (2) weeks after they receive the notice from the Department to begin the selection process.

If the first two (2) members of any Disputes Review Board do not select a third member within these two (2) weeks after their selections are final, the Department and the Development Entity shall select the third member by mutual agreement. In so doing, the Parties may, but are not required to, consider other nominees offered by the first two (2) members of any Disputes Review Board. In the event of failure to agree on the appointment of the third member of the relevant Disputes Review Board within two weeks following such four-week period, such person may be appointed by the International Institute for Conflict Prevention and Resolution, upon the request of either Party.

## 1.9 Execution of Three-Party Agreement

The Department, the Development Entity and all three members of any Disputes Review Board shall execute its respective Disputes Review Board Agreement substantially in the form attached as Part 1 (Form of Disputes Review Board Agreement) of Schedule 10 within four (4) weeks after the selection of the third member.

## 1.10 Disqualification and Replacement of Board Members

If (i) any member of any Disputes Review Board has a discussion regarding employment or enters into any employment agreement with the Development Entity, the Department or any Contractor on the Project during his or her tenure on any Disputes Review Board, (ii) any member of any Disputes Review Board is discovered not to meet the relevant qualifications set out in this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) or (iii) any member cannot continue to serve because of death, illness or permanent disability, that member shall be disqualified from serving on any Disputes Review Board. In the event of such a disqualification, a replacement member meeting the qualifications in this Part 2 (Disputes Review Board Procedures) of Schedule 10 (Disputes Review Board) will be selected by the Department if the disqualified member was originally selected by the Department, by the

Development Entity if the disqualified member was originally selected by the Development Entity or by both the Department and the Development Entity if the disqualified member was the third member.

## 2. THE DEPARTMENT AND THE DEVELOPMENT ENTITY RESPONSIBILITIES

### 2.1 The Development Entity's Responsibilities

Except for its participation in any Disputes Review Board's activities as provided in its Disputes Review Board Agreement, the Development Entity will not solicit advice or consultation from any Disputes Review Board or any member on matters dealing in any way with the Project, the conduct of the Work or resolution of problems.

The Development Entity shall furnish to each Disputes Review Board member a set of all pertinent documents which are or may become necessary for any Disputes Review Board to perform its function, except documents furnished by the Department. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates, or other documents used in the performance of the Work or in justifying or substantiating the Development Entity's position regarding a particular Dispute. The Development Entity shall furnish a copy of such documents to the Department.

### 2.2 The Department's Responsibilities

Except for its participation in any Disputes Review Board's activities as provided in its Disputes Review Board Agreement, the Department will not solicit advice or consultation from any Disputes Review Board or any members on matters dealing in any way with the Project, the conduct of the Work or resolution of problems.

The Department shall furnish the following services and items:

(a) Contract-Related Documents: The Department shall furnish each Disputes Review Board member and the Development Entity a copy of all Project Documents, written instructions issued by the Department to the Development Entity, or other documents pertinent to the performance of the PPA and necessary for either board to perform its function.

(b) Coordination and Services: The Department, in cooperation with the Development Entity, shall coordinate the operations of any Disputes Review Board. The Department shall arrange or provide conference facilities at or near a Project Site, provide any Disputes Review Board training course, for the Project, and provide secretarial and copying services for any Disputes Review Board.

### 2.3 Reports to any Disputes Review Board

The Department and the Development Entity shall provide any Disputes Review Board members monthly with regular progress reports, minutes of progress meetings, and other relevant information they each prepare in order to keep any Disputes Review Board informed of Project-related activity and other developments.

## 3. BASIS OF PAYMENT

The Department and the Development Entity are each responsible to pay the fees and expenses of any Disputes Review Board member it selected without recourse to the other Party. The Development Entity shall also pay the fees and expenses invoiced by the third member of any Disputes Review Board, after approval by both Parties, and the Development Entity will then invoice the Department for 50% of the payment it made to the third member of any Disputes Review Board. The Department will review and process payment of the invoice promptly upon receipt.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services for meetings with any Disputes Review Board for any Dispute hearing, and will bear the cost of these services. If any Disputes Review Board desires special services, such as, but not limited to, legal consultation, accounting, and data research, both Parties must agree, and the costs will be shared by them as mutually agreed.

## SCHEDULE 11

## INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

**1. DEPARTMENT**

[●]

**2. DEVELOPMENT ENTITY**

[●]

## SCHEDULE 12

## DEPARTMENT FINANCIAL CLOSE RESPONSIBILITIES

For the purposes of Section 2.3(j) (Department Financial Close Responsibilities) of this PPA, the Department's responsibilities shall, to the extent that the Development Entity proposes to utilize PABs to finance the Project, and subject always to the Development Entity's timely co-operation with the Department and PEDFA, be limited to the following:

1. procuring from PEDFA a blanket letter of representation addressed to the Depository Trust Company;

2. authorizing (or procuring authorization for) the Development Entity to include in the preliminary and final official statement for the PABs the relevant information with respect to PEDFA and the Commonwealth at the time of the publication of such offering materials and providing such documents and information required to comply with the disclosure requirements under Applicable Law, including providing customary certificates and opinions regarding such disclosure and entering into continuing disclosure agreements related to the PABs;

3. procuring from PEDFA the provision of customary assistance during the process in a timely manner (including, without limitation, input on the drafting of customary financing documents, as needed and following appropriate notice from the Development Entity, and the negotiation in good faith and, following that, execution of the same, as applicable);

4. assistance with obtaining any necessary approvals from Governmental Entities directly linked with the issuance of the PABs;

5. to the extent that any fees, costs and expenses payable to PEDFA by the Development Entity in connection with the issuance of PABs are greater than an amount equal to the lesser of (x) $500,000 and (y) 0.2% of the par value of the PABs issued, the Department shall be responsible for the excess amount and shall make a payment directly to PEDFA for such excess amount; and

6. providing direct assistance during the process, including facilitating in the sale of the PABs, and procuring from the Commonwealth the provision of assistance during the process as needed.

## SCHEDULE 13

## MONTHLY PERFORMANCE REPORT

Monthly Performance Report

[DATE]

I, [NAME], authorized signatory of [●], deliver this monthly performance report (the **Monthly Performance Report**) in connection with the Pennsylvania Rapid Bridge Replacement Project Public-Private Transportation Agreement, entered into by and between The Pennsylvania Department of Transportation and [●] on [DATE], (the **PPA**). Terms defined in the PPA have the same meanings when used in this Monthly Performance Report except where otherwise defined. This Monthly Performance Report is delivered pursuant to [Section 14.1 (Mobilization Fund and Milestone Payments) and][15] Section 14.3 (Invoicing and Monthly Performance Reports) of the PPA.

On behalf of the Development Entity, I hereby certify the following with respect to the period from [DATE] to [DATE] (the **Reporting Period**):

1. Monthly Maintenance Payment Deductions

   (a) The Monthly Maintenance Noncompliance Deduction for the Reporting Period is equal to $[_____].

   (b) The Monthly Maintenance Unavailability Deduction for the Reporting Period is equal to $[_____].

   (c) The aggregate sum of the amounts stated in 1(a) and 1(b) above is equal to $[_____].

2. [Milestone Payment Deductions

   (a) The Aggregate Construction Noncompliance Deduction for the Reporting Period is equal to $[_____].

   (b) The Aggregate Construction Unavailability Deduction for the Reporting Period is equal to $[_____].

   (c) The aggregate sum of the amounts stated in 2(a) and 2(b) above is equal to $[_____].

   (d) The aggregate sum of the amount set out in 2(c) above and each such amount set out in each other Monthly Performance Report with a "Reporting Period" occurring after the occurrence of the immediately preceding Milestone (as applicable) is equal to $[_____].][16]

3. Appended to this Monthly Performance Report as Annex 1 is a detailed summary of the calculation of each of the amounts set out in Sections 1 and 2 above, using the methodology set

[15] Delete following the occurrence of all Milestones.
[16] Delete following the occurrence of all Milestones.

out in Schedule 8 (Payment Mechanism) to the PPA, and setting forth each of the component calculations required thereby.

4. Appended to this Monthly Performance Report as Annex 2 is:

(a) a description of each Noncompliance Event, Unavailability Event and Closure (as relevant) resulting in a Monthly Maintenance Payment Deduction[ or Milestone Payment Deduction] [17] in respect of the Reporting Period;

(b) a description of each Permitted Closure that occurred during the Reporting Period;

(c) the start and end (in date and time) of each Noncompliance Event, Unavailability Event, Closure and Permitted Closure (including the Noncompliance Start Date and Noncompliance Rectification Date) that occurred during the Reporting Period, each determined in accordance with the PPA;

(d) a statement of any adjustments to reflect previous over-payments and/or under-payments;

(e) any other information that could be used by the Department to verify the amounts stated in Sections 1 and 2 above; and

(f) to the extent not already provided hereunder, all other information required under Section 17.6 (Reporting Requirements) of the Technical Provisions.

I have executed and delivered this Monthly Performance Report as of the first date written above, and all matters certified herein are true, correct and complete on such date.

_____

**[●]**

Name: [NAME]

Title:

[17] Delete following the occurrence of all Milestones.

# ANNEX 1

# CALCULATION SUMMARY

# ANNEX 2

# EVENTS AND ADJUSTMENTS

# SCHEDULE 14

# CERTAIN PUBLIC POLICY REQUIREMENTS

## PART 1

## DAVIS-BACON ACT

Notwithstanding any exemption described in Section IV (Davis-Bacon and Related Act Provisions) of Attachment 2 (FHWA Form 1273) of Schedule 15 (Additional Federal Requirements) of this PPA or otherwise provided by law, any Replacement Bridge located on any roadway functionally classified as a local road or rural minor collector shall be subject to such Section as if such roadway were functionally classified as federal-aid highway.

## PART 2

## CONTRACTOR RESPONSIBILITY PROVISIONS

1. The Development Entity shall certify in writing, for itself and any Contractor required to be disclosed or approved by the Commonwealth (prior to the performance of any portion of the Work by any Contractor), that as of the date of the Development Entity's execution of this PPA or such Contractor's execution of any relevant Contract (as applicable), the Development Entity and any such Contractor is not under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Development Entity cannot so certify in respect of any such Contractor, then it agrees to submit, along with such Contract, a written explanation of why such certification cannot be made.

2. The Development Entity shall also certify in writing, for itself and any Contractor required to be disclosed or approved by the Commonwealth (prior to the performance of any portion of the Work by any Contractor) that as of the date of the Development Entity's execution of this PPA or such Contractor's execution of any relevant Contract (as applicable), the Development Entity and each such Contractor 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 Development Entity's obligations pursuant to these provisions are ongoing from and after the effective date of this PPA through the termination date thereof. Accordingly, the Development Entity shall have an obligation to inform the Commonwealth if, at any time during the term of this PPA, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Development Entity, any of its Contractors 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 Development Entity agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Development Entity or any Contractor's compliance with the terms of this PPA or any other agreement between such Contractor and the Commonwealth, that results in the suspension or debarment of the Development Entity or such 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 Development Entity shall not be responsible for investigative costs for investigations that do not result in its or any Contractor's suspension or debarment.

5. The Development Entity may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at http://www.dgs.state.pa.us/ or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

6. For purposes of these Contractor Responsibility Provisions, the following terms shall have the meanings found in this Paragraph 6.

   a. "Contract" means Contract (as defined under this PPA), excluding contracts with Suppliers.

   b. "Contractor" means Contractor (as defined under this PPA), excluding Suppliers.

## PART 3

## ANTI-POLLUTION MEASURES

### PART I, SECTION A
### PENNSYLVANIA STATUTES

Act Relating to Abandoned Mines, Act of May 7, 1935, 52 Pa. Stat. §§ 809 et seq., as amended.

Act Relating to Black Powder, Act of May 31, 1974, 73 Pa. Stat. §§ 169 et seq., as amended.

Act Relating to Camp Regulation, Act of Nov. 10, 1959, 35 Pa. Stat. §§ 3001 et seq., as amended.

Act Relating to Cave-in or Subsidence of Surface Above Mines, Act of July 2, 1937, 52 Pa. Stat. §§ 1407 et seq., as amended.

Act Relating to Caving-in, Collapse, Subsidence, Act of May 27, 1921, 52 Pa. Stat. §§ 661 et seq., as amended.

Act Relating to Coal Land Improvement, Act of July 19, 1965, 52 Pa. Stat. § § 30.101 et seq., as amended.

Act Relating to Coal Mine Subsidence Insurance Fund, Act of Aug. 23, 1961, 52 Pa. Stat. §§ 3201 et seq., as amended.

Act Relating to Coal Stripping, Act of June 18, 1941, 52 Pa. Stat. §§ 1471 et seq., as amended.

Act Relating to Coal Under State Lands, Act of June 1, 1933, 52 Pa. Stat. §§ 1501 et seq., as amended.

Act Relating to Control and Drainage of Water from Coal Formations, Act of July 7, 1955, 52 Pa. Stat. §§ 682 et seq., as amended.

Act Relating to Delaware River Pollution, Act of Apr. 19, 1945, 32 Pa. Stat. §§ 815.31 et seq., as amended.

Act Relating to Discharge of Coal into Banks of Streams, Act of June 27, 1913, 52 Pa. Stat. §§ 631 et seq., as amended.

Act Relating to Excavation and Demolition, Act of Dec. 10, 1974, 73 Pa. Stat. §§ 176 et seq., as amended.

Act Relating to Explosives, Act of July 1, 1937, 73 Pa. Stat. §§ 151 et seq., as amended.

Act Relating to Explosives, Act of July 10, 1957, 73 Pa. Stat. §§ 164 et seq., as amended.

Act Relating to Flood Control, Act of Aug. 7, 1936, 32 Pa. Stat. §§ 653 et seq., as amended.

Act Relating to General Safety, Act of May 18, 1937, 43 Pa. Stat. §§ 25-1 et seq., as amended.

Act Relating to Hazardous Materials Transport, Act of June 30, 1984, 75 Pa. C.S.A. §§ 8301 et seq., as amended.

Act Relating to Junkyards along Highways, Act of July 28, 1966, 36 Pa. Stat. § § 2719.1 et seq., as amended.

Act Relating to Land Use, Act of Jan. 13, 1966, 16 Pa. Stat. § § 11941 et seq., as amended.

Act Relating to Maps and Plans, Act of June 15, 1911, 52 Pa. Stat. §§ 823, as amended.

Act Relating to Mine Fires and Subsidence, Act of April 3, 1968, 52 Pa. Stat. §§ 30.201 et seq., as amended.

Act Relating to Mining Safety Zones, Act of Dec. 22, 1959, 52 Pa. Stat. §§ 3101 et seq., as amended.

Act Relating to Noise Pollution, Act of June 2, 1988, 35 Pa. Stat. §§ 4501 et seq., as amended.

Act Relating to Pollution Control Devices, Act of March 4, 1971, 72 Pa. Stat. § § 7602.1 et seq., as amended.

Act Relating to Pollution From Abandoned Mines, Act of Dec. 15, 1965, 35 Pa. Stat. §§ 760.1 et seq., as amended.

Act Relating to Potomac River Pollution, Act of May 29, 1945, 32 Pa. Stat. § § 741 et seq., as amended.

Act Relating to Preservation and Acquisition of Land for Open Space Uses, Act of Jan. 19, 1968, 32 Pa. Stat. §§ 5001 et seq., as amended.

Act Relating to Public Eating and Drinking Places, Act of May 23, 1945, 35 Pa. Stat. §§ 655.1 et seq., as amended.

Act Relating to Schuylkill River Pollution, Act of Apr. 19, 1945, 32 Pa. Stat. §§ 815.31 et seq., as amended.

Act Relating to Stream Clearance, Act of June 5, 1947, 32 Pa. Stat. §§ 701 et seq., as amended.

Act Relating to Water Power and Water Supply Permits, Act of June 14, 1923, 32 Pa. Stat. §§ 591 et seq., as amended.

Act Relating to Weather Modification, Act of Jan. 19, 1968, 3 Pa. Stat. § § 1101 et seq. as amended.

Administrative Code of April 9, 1929, 71 Pa. Stat. § § 194, 510 et seq., as amended.

Agricultural Liming Material Act of March 17, 1978, 3 Pa. Stat. §§ 132-1 et seq., as amended.

Air Pollution Control Act of Jan. 8, 1960, 35 Pa. Stat. §§ 4001 et seq., as amended.

Anthracite Strip Mining and Conservation Act of June 27, 1947, 52 Pa. Stat. § § 681.1 et seq., as amended.

The Bituminous Mine Subsidence and Land Conservation Act of Apr. 27, 1966, 52 Pa. Stat. §§ 1406.1 et seq., as amended.

Bluff Recession and Setback Act of May 13, 1980, 32 Pa. Stat. §§ 5201 et seq., as amended.

Brandywine River Valley Compact Act of Sept. 9, 1959, 32 Pa. Stat. §§ 818 et seq., as amended.

Cave Protection Act of Nov. 21, 1990, 32 Pa. Stat. §§ 5601 et seq., as amended.

Chesapeake Bay Commission Agreement, Act of June 25, 1985, 32 Pa. Stat. §§ 820.11 et seq., as amended.

The Clean Streams Law of June 22, 1937, 35 Pa. Stat. §§ 691.1 et seq., as amended.

Coal and Gas Resource Coordination Act of Dec. 18, 1984, 58 Pa. Stat. §§ 501 et seq., as amended.

The Coal Mine Sealing Act of June 30, 1947, 52 Pa. Stat. §§ 28.1 et seq., as amended.

Coal Refuse Disposal Control Act of September 24, 1968, 52 Pa. Stat. §§ 30.51 et seq., as amended.

Conservation and Natural Resources Act of June 28, 1995, 71 Pa. Stat. §§ 1340.101 et seq., as amended.

Conservation District Law, Act of May 15, 1945, 3 Pa. Stat. §§ 849 et seq., as amended.

The Crimes Code, Act of Dec. 6, 1972, 18 Pa. C.S.A. §§ 101 et seq., as amended.

Dam Safety and Encroachments Act of Nov. 26, 1978, 32 Pa. Stat. §§ 693.1 et seq. as amended.

Delaware River Basin Compact, Act of July 7, 1961, 32 Pa. Stat. § § 815.101 et seq., as amended.

Fish and Boat Code, Act of October 16, 1980, 30 Pa. C.S.A. §§ 101 et seq., as amended.

Flood Plain Management Act of Oct. 4, 1978, section 302 and 402, 32 Pa. Stat. §§ 679 et seq., as amended.

The Game and Wildlife Code, Act of July 8, 1986, 34 Pa. C.S.A. §§ 101 et seq., as amended.

Great Lakes Protection Fund Act of July 6, 1989, 32 Pa. Stat. §§ 817.11 et seq., as amended.

Hazardous Material Emergency Planning and Response Act of Dec. 7, 1990, 35 Pa. Stat. §§ 6022.101 et seq., as amended.

Hazardous Sites Cleanup Act of Oct. 18, 1988, 35 Pa. Stat. §§ 6020.101 et seq., as amended.

Highway Vegetation Control Act of Dec. 20, 1983, 36 Pa. Stat. §§ 2720.1 et seq., as amended.

History Code, Act of May 26, 1988, 37 Pa. C.S.A. §§ 101 et seq., as amended.

Interstate Mining Compact, Act of May 5, 1966, 52 Pa. Stat. §§ 3251 et seq., as amended.

Land Recycling and Environmental Remediation Standards Act of May 19, 1995, 35 Pa. Stat. §§ 6026.101 et seq., as amended.

Land and Water Conservation and Reclamation Act of Jan. 19, 1968, 32 Pa. Stat. §§ 5101 et seq., as amended.

Low-Level Radioactive Waste Disposal Act of February 9, 1988, 35 Pa. Stat. §§ 7130.101 et seq.

Noncoal Surface Mining Conservation and Reclamation Act of Dec. 19, 1984, 52 Pa. Stat. §§ 3301 et seq., as amended.

Noxious Weed Control Law, Act of April 7, 1982, 3 Pa. Stat. §§ 255.1 et seq., as amended.

Nutrient Management Act of May 20, 1993, 3 Pa. Stat. § § 1701 et seq.

Ohio River Valley Water Sanitation Compact, Act of Apr. 2, 1945, 32 Pa. Stat. §§ 816.1 et seq., as amended.

Oil and Gas Act of Dec. 19, 1984, 58 Pa. Stat. §§ 601.101 et seq., as amended.

Oil and Gas Conservation Law, Act of July 25, 1961, 58 Pa. Stat. §§ 401 et seq., as amended.

Oil Spill Responder Liability Act of June 11, 1992, 35 Pa. Stat. §§ 6023.1 et seq., as amended.

Pennsylvania Anthracite Coal Mine Act of Nov. 10, 1965, 52 Pa. Stat. §§70-101 et seq., as amended.

Pennsylvania Appalachian Trail Act of Apr. 28, 1978, 64 Pa. Stat. §§ 801 et seq., as amended.

Pennsylvania Bituminous Coal Mine Act of July 17, 1961, 52 Pa. Stat. §§ 701-101 et seq., as amended.

Pennsylvania Fertilizer Law of May 29, 1956, 3 Pa. Stat. §§ 68.1 et seq., as amended.

Pennsylvania Occupational Disease Act of June 21, 1939, 77 Pa. Stat. §§ 1201 et seq., as amended.

Pennsylvania Pesticide Control Act of 1973, Act of March 1, 1974, 3 Pa. Stat. §§ 111.21 et seq., as amended.

Pennsylvania Safe Drinking Water Act of May 1, 1984, 35 Pa. Stat §§ 721.1 et seq., as amended.

Pennsylvania Scenic Rivers Act of Dec. 5, 1972, 32 Pa. Stat. §§ 820.21 et seq., as amended.

Pennsylvania Sewage Facilities Act of Jan. 24, 1966, 35 Pa. Stat. §§ 750.1 et seq., as amended.

Pennsylvania Solid Waste Management Act of July 7, 1980, 35 Pa. Stat. §§ 6018.101 et seq., as amended.

Pennsylvania Solid Waste-Resource Recovery Development Act of July 20, 1974, 35 Pa. Stat. §§ 755.1 et seq., as amended.

Pennsylvania Used Oil Recycling Act of Apr. 9, 1982, 58 Pa. Stat. §§ 471 et seq., as amended.

Pennsylvania Workmen's Compensation Act of June 2, 1915, 77 Pa. Stat. §§ 1 et seq., as amended.

Phosphate Detergent Act of July 5, 1989, 35 Pa. Stat. §§ 722.1 et seq., as amended.

Plant Pest Act of Dec. 16, 1992, 3 Pa. Stat. §§ 258.1 et seq.

Plumbing System Lead Ban and Notification Act of July 6, 1989, 35 Pa. Stat. §§ 723.1 et seq., as amended.

Project 70 Land Acquisition and Borrowing Act of June 22, 1964, 72 Pa. Stat. §§ 3946.1 et seq., as amended.

The Public Bathing Law, Act of June 23, 1931, 35 Pa. Stat. §§ 672 et seq., as amended.

Publicly Owned Treatment Works Penalty Law, Act of March 26, 1992, 35 Pa. Stat. §§ 752.1 et seq., as amended.

Radiation Protection Act of July 10, 1984, 35 Pa. Stat. §§ 7110.101 et seq., as amended.

Rails to Trails Act of Dec. 18, 1990, 32 Pa. Stat. §§ 5611 et seq.

Seasonal Farm Labor Act of June 23, 1978, 43 Pa. Stat. §§ 1301.101 et seq., as amended.

Sewage System Cleaner Control Act of May 28, 1992, 35 Pa. Stat. §§ 770.1 et seq., as amended.

Sewage Treatment Plant and Waterworks Operators' Certification Act of Nov. 18, 1968, 63 Pa. Stat. §§ 1004 et seq., as amended.

Site Development Act of May 6, 1968, 73 Pa. Stat. §§ 361 et seq., as amended.

Snowmobile Law, Act of June 17, 1976, 75 Pa. C.S.A. §§ 7701 et seq., as amended.

State Highway Law, Act of June 1, 1945, 36 Pa. Stat. §§ 670-101 et seq., as amended.

Storage Tank and Spill Prevention Act of July 6, 1989, 35 Pa. Stat. §§ 6021.101 et seq., as amended.

Storm Water Management Act of Oct. 4, 1978, 32 Pa. Stat. §§ 680.1 et seq., as amended.

Surface Mining Conservation and Reclamation Act of May 31, 1946, 52 Pa. Stat. §§ 1396.1 et seq., as amended.

Susquehanna River Basin Compact, Act of July 17, 1968, 32 Pa. Stat. §§ 820.1 et seq., as amended.

Vehicle Code, Act of June 17, 1976, 75 Pa. C.S.A. §§ 101 et seq., as amended.

Water Power and Water Supply Act of June 14, 1923, 32 Pa. Stat. § 597, as amended.

Water Well Drillers License Act of May 29, 1956, 32 Pa. Stat. §§ 645.1 et seq., as amended.

Wheeling Creek Watershed Protection and Flood Prevention District Compact, Act of Aug. 2, 1967, 32 Pa. Stat. §§ 819.1 et seq., as amended.

Wild Resource Conservation Act of June 23, 1982, 32 Pa. Stat. §§ 5301 et seq., as amended.

## PART I, SECTION B
## PENNSYLVANIA REGULATIONS

Pursuant to the above statutes, regulations are promulgated by State agencies and are published in the Pennsylvania Code (PA. Code). The following are the sections of the PA. Code that are assigned to the following State agencies:

Pennsylvania Department of Environmental Protection—Title 25 of the PA. Code;

Pennsylvania Department of Conservation and Natural Resources—Title 17 of the PA. Code;

Pennsylvania Department of Transportation—Title 67 of the PA. Code;

Pennsylvania Department of Labor and Industry—Title 34 of the PA. Code;

Pennsylvania Department of Agriculture—Title 7 of the PA. Code;

Pennsylvania Historical and Museum Commission—Title 46 of the PA. Code;

Public Utility Commission—Title 52 of the PA. Code;

Pennsylvania Fish and Boat Commission—Title 58, Part II of the PA. Code;

Pennsylvania Game Commission—Title 58, Part III of the PA. Code;

Delaware River Commission—Title 4 of the PA. Code.

## PART II
## FEDERAL STATUTES AND REGULATIONS

Abandoned Mine Reclamation Act of 1990, 30 U.S.C.[18] §§ 1231 et seq.

Acid Precipitation Act of 1980, 42 U.S.C. §§ 8901-8905, 8911, 8912.

Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1915, as amended.
40 C.F.R[19]. Part 122

Agricultural Act of 1970, 16 U.S.C. §§ 1501-1510.

Airport and Airway Development Act of 1970, 49 U.S.C. §§ 1701-1703, 1711-1727.

Anadromous Fish Conservation Act, 16 U.S.C. §§ 757a-757g et seq., as amended.

Appalachian Regional Development Act of 1965, 40 app. §1, 2, 101-109, 201-208, 211-214, 221-225, 226, 301-304, 401-405, as amended.

Asbestos Hazard Emergency Response Act of 1986 (See Toxic Substances Control Act, Sections 201-214 (15 U.S.C. §§ 2641-2654)).

Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq., as amended.

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| 10 C.F.R. Parts | 1, 2, 4, 10, 15, 19, 20, 21, 25, 26, 30-36, 39, 40, 50, 52-55, 60-62, 70-76, 95, 100,110, 150, 171, 605, 707, 710, 730, 760, 768, 770-777, 779, 782, 785-791, 799, 810, 820, 862, 960, 962, 1004, 1009, 1017, 1046, 1047 |
| 32 C.F.R. Part | 518 |
| 37 C.F.R. Part | 5 |
| 40 C.F.R. Parts | 23, 191, 192 |
| 48 C.F.R. Parts | 901, 910, 912, 917, 919-933, 935-937, 942-945, 949-952 |

Aviation Safety and Noise Abatement Act of 1979, 49 App. U.S.C. §§ 47501 et seq., as amended.

Bankhead-Jones Farm Tenant Act, 7 U.S.C. §§ 1000 et seq., as amended.

Clean Air Act 42 U.S.C. §§ 7401 et seq., as amended.

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| 40 C.F.R. Parts | 2, 6, 9, 15, 22, 23, 30, 31, 34, 35, 40, 42, 45, 46, 50, 51, 52, 55, 56, 57, 58, 60, 61, 62, 63, 65, 67, 69, 70, 72-74, 76-78, 80, 81, 82, 85, 86, 87, 88, 89, 90, 93, 122-124, 144, 145, 233, 270, 271, 450, 600, 613, 771, 1500, 1503-1507 |
| 10 C.F.R. Parts | 101, 201 |
| 14 C.F.R. Parts | 34, 1216 |
| 18 C.F.R. Parts | 101, 201 |
| 19 C.F.R. Part | 12 |
| 23 C.F.R. Part | 450 |
| 29 C.F.R. Part | 24 |

Clean Vessel Act of 1992, Pub. L. 102-587, Title V, 106 Stat. 5086.

Coastal Wetlands Planning, Protection and Restoration Act, 16 U.S.C. §§ 3951-3956

Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1464, as amended.

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[18] U.S.C. refers to the United States Code.

[19] Pursuant to the above statutes, regulations are promulgated by the Federal agencies and are published in the Code of Federal Regulations (C.F.R.).

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. §§ 9601 et seq., as amended.
40 C.F.R. Parts 9, 51, 279, 300

Department of Transportation Act, 49 U.S.C. §§ 503, 20302, 20304, 20305, 20701-20703, 20901, 20902, 21302, as amended.

Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., as amended.
40 C.F.R. Part 17

Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, as amended.

Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. §§ 791-798, as amended.
10 C.F.R. Parts 303, 305
18 C.F.R. Parts 157, 270, 271, 275, 290, 292

Environmental Quality Improvement Act of 1970, 42 U.S.C. §§ 4371-4375, as amended.
40 C.F.R. Parts 1500-1508, 1515

Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. §§ 1932, 2204f, 3224, 3319d, 2279c, 1101, 7201-7491.

Federal Aid in Fish Restoration Act (of 1950), 16 U.S.C. §§ 777 et seq., as amended.
43 C.F.R. Part 17
*Note: also known as "Fish Restoration and Management Projects Act" and the "Dingell-Johnson Sport Fish Restoration Act".*

Federal Facility Compliance Act of 1992, Pub. L. 102-386, 106 Stat. 1505.

Federal-Aid Highway Act, 23 U.S.C.A. §§101 et seq., as amended.

Federal Aid in Wildlife Restoration Act, 16 U.S.C. §§ 669, 669a-669i, as amended.

Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y, as amended.
19 C.F.R. Part 12
29 C.F.R. Part 1440
40 C.F.R. Parts 2, 16, 23, 30-32, 34, 35, 152, 153, 155-158, 160, 162, 166, 168, 169, 170-173

Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1785, as amended.
7 C.F.R. Part 1
36 C.F.R. Parts 222, 242, 251, 254
43 C.F.R. Parts 37, 1600, 1820, 1860, 1880, 2090, 2200, 2210, 2300, 2540, 2710, 2740, 2800, 2810, 2910, 2920, 3000, 3110, 3120, 3130, 3140, 3150, 3160, 3200, 3400, 3410, 3420, 3430, 3450, 3460, 3470, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580, 3590, 3730, 3800, 3830, 4100, 4200, 4300, 4700, 5000, 8000, 8200, 8300, 8340, 8350, 8360, 8370, 8560, 9180, 9210, 9260

Federal Power Act, 16 U.S.C. §§ 791a et seq., as amended.
10 C.F.R. Part 205
18 C.F.R. Parts 1b, 2, 3, 4, 6, 8, 9, 11, 12, 16, 20, 24, 32-35, 45, 46, 101, 116, 125, 131, 141, 154, 225, 290, 292, 294, 375, 381, 385
33 C.F.R. Parts 208, 209, 221, 222

Federal Water Project Recreation Act, 16 U.S.C. §§ 460l-5, 460l-12 to -21, 662, as amended.
36 C.F.R. Part 297
43 C.F.R. Part 17

Fish and Game Sanctuary Act, 16 U.S.C. §§ 694-694b

Fish and Wildlife Act of 1956, 15 U.S.C. §§ 713c-3; 16 U.C.S.A. §§ 742a-742j, as amended.
30 C.F.R. Part 773
33 C.F.R. Part 209
43 C.F.R. Parts 17, 21
50 C.F.R. Parts 25-33, 70, 71

16 U.S.C. §§ 742a – 742j
50 C.F.R. Parts 10, 19, 20, 36, 217, 250, 251, 260

Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, as amended.
30 C.F.R. Part 773
33 C.F.R. Part 209
43 C.F.R. Parts 17, 21
50 C.F.R. Parts 25-33, 70, 71

Flood Control, 33 U.S.C. §§ 701 et seq., as amended
7 C.F.R. Parts 622, 624, 654
33 C.F.R. Parts 208, 222

Fishermen's Protective Act of 1967 (Pelly Amendment), 22 U.S.C. §§ 1971 – 1980, as amended.
22 C.F.R. Part 33
50 C.F.R. Part 611

Food Quality Protection Act of 1996, 7 U.S.C. §§ 136-136y.

Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§ 1600-1614, as amended.

Forest Ecosystems and Atmospheric Pollution Control Act of 1988, 16 U.S.C. § 1641.

Game and Wildlife Act, 16 U.S.C. §§ 141 b, 715d-1, 715d-3, 715e, 715e-1, 715k-1, 715s, 718b – 718e, as amended.

Geothermal Energy Research, Development, and Demonstration Act of 1974 (GERDDA), 30 U.S.C. §§ 1101, 1102, 1121-1126, 1141-1144, 1161-1164, as amended.

Global Climate Protection Act of 1987, 15 U.S.C. § 2901, as amended.

Hazardous Material Transportation Act, 46 U.S.C. § 170; 49 U.S.C. §§ 103, 104, 106; 49 App. §§ 1471, 1472, 1801- 1819, as amended.

Hazardous Substance Response Revenue Act of 1980, 26 U.S.C. §§ 4611, 4612, 4661, 4662.

Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. §§ 5101-5127, as amended.

Hazardous Materials Transportation Uniform Safety Act of 1990, 49 App. §§ 1801-1819, 2509.

Intermodal Surface Transportation Efficiency Act of 1991 (see Transportation Equity Act of the 21st Century (TEA 21)).

Lacey Act Amendments of 1981 16 U.S.C. §§ 3371 et seq., as amended.

Land and Water Conservation Fund Act of 1965, 16 U.S.C. §§460d, 460l-4 – 460l-11, as amended.

Lead-Based Paint Exposure Reduction Act, 15 U.S.C. §§ 2681-2692.

Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4801, 4811, 4821, 4822, 4831, 4841-4843, as amended.

Lead Contamination Control Act of 1988, 42 U.S.C. §§ 201 note, 247b-1, 300j-4, 300j-21 to -26.

Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. §§ 2021b-2021j, as amended.

Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. §§ 1801 et seq., as amended.

Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401-1445, as amended.

Migratory Bird Conservation Act, 16 U.S.C. §§ 715-715r, as amended.

Migratory Bird Treaty Act, 16 U.S.C. §§703-708, 709a, 710, 711.

Mining and Mineral Resources Research Institutes Act, 30 U.S.C. 1221-1230.

Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 475, 528, 531, as amended.

National Climate Program Act, 15 U.S.C. §§ 2901-2908, as amended.

National Coastal Monitoring Act, 33 U.S.C. §§ 2801-2805.

National Contaminated Sediment Assessment and Management Act, 33 U.S.C. §§ 1271.

National Emission Standards Act, 42 U.S.C. §§7521-7550, as amended.

National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 306, as amended.

National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, 4331-4335, 4341-4347, as amended.

National Invasive Species Act of 1996, 16 U.S.C. §§ 4701-4751.

National Ocean Pollution Planning Act of 1978, 33 U.S.C. §§ 1701-1709, as amended.

National Trails System Act, 16 U.S.C. §§ 1241-1249, as amended.

National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§ 668dd, 668ee, 715s, as amended.

Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918.

Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101 -1 0270, as amended.

Oil Pollution Act, 1961, 33 U.S.C. §§ 1001-1015, as amended.

Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2761, as amended.

Organotin Antifouling Paint Control Act of 1988, 33 U.S.C. §§ 2401-2410, as amended.

Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. §§ 1801-1866, as amended.

Pollution Prevention Act of 1990, 42 U.S.C. §§ 13101-13109.

Public Health Service Act, 42 U.S.C. §§ 300f-300j-11.

Radon Gas and Indoor Air Quality Research Act of 1986, 42 U.S.C. § 7401.

Recreation Use of Conservation Areas Act, 16 U.S.C. § 560k.

Refuse Act of 1899, 33 U.S.C. §§ 401 et seq., as amended.

Renewable Resources extension Act of 1978, 16 U.S.C. §§ 1671-1676 as amended.

Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6991.

River and Harbor Act of 1958, 33 U.S.C. §610 as amended.

Safe Drinking Water Act (see Public Health Service Act Sections 1401-1451 (42 U.S.C. §§ 300f - 300j-11, as amended)).

Shore Protection Act of 1988, 33 U.S.C. §§2601-2609, 2622, 2623.

Soil and Water Resources Conservation Act of 1977, 16 U.S.C. §§ 2001-2009, as amended.

Soil Conservation and Domestic Allotment Act, 16 U.S.C. §§ 590a et seq., as amended.

Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq., as amended.

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201 et seq., as amended.

Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, as amended.

Transportation Equity Act of the 21st Century (TEA 21), Pub. L. 105-178, 112 Stat. 107, as amended.

Travel and Transportation Reform Act of 1998, 5 U.S.C. §§ 5701 et seq.

United States Public Vessel Medical Waste Anti-Dumping Act of 1988, 33 U.S.C. §§ 2501-2504.

Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. §§ 7901 - 7942.

Water Bank Act, 16 U.S.C. §§ 1301-1311, as amended.

Water Pollution Prevention and Control Act, 33 U.S.C. §§ 1251 et seq., as amended.
*Commonly known as the Clean Water Act.*

14 C.F.R. Part 1204

40 C.F.R. Parts 7, 9, 15, 30 - 32, 34, 104, 108, 110, 113, 116, 117, 122, 124, 125, 129, 130, 131 - 133, 136, 144, 145, 270, 271, 401, 403, 405 - 413, 415, 417 - 429, 436, 440, 443, 446, 447, 454, 457-460, 501, 503

Water Resources Research Act of 1984, 42 U.S.C. §§ 10301-10309.

Water Resources Development Act of 1996, 33 U.S.C. §§ 467-467j.

Watershed Protection and Flood Prevention Act, 16 U.S.C. §§ 1001-1008; 33 U.S.C. § 701 b.

Wetlands Loan Act, 16 U.S.C. §§ 715k-3-715k-5, as amended.

Wilderness Act, 16 U.S.C. §§ 1331-1336, as amended.

Wood Residue Utilization Act of 1980, 16 U.S.C. §§ 1681-1687

## PART 4

## CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the 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 procurement process.

In furtherance of this policy, the Development Entity shall agree, and shall ensure that each Contractor agrees, to the following:

**1.** The Development Entity and each Contractor shall maintain the highest standards of honesty and integrity during the performance of this PPA and any relevant Contract (as applicable) and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to the Development Entity or such Contractor or that govern contracting with the Commonwealth.

**2.** The Development Entity and each 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 Development Entity and such Contractor's employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all of the Development Entity and Contractor's employees (as applicable).

**3.** The Development Entity and each Contractor, and their respective affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa. C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

**4.** The Development Entity and each Contractor, and their respective affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

**5.** The Development Entity and each Contractor, their respective affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

**6.** The Development Entity and each Contractor, and their respective affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

**7.** The Development Entity and each Contractor, and their affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in

connection with the performance of work under any relevant Contract, except as provided in such Contract.

**8.** The Development Entity and each Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to such financial interest (such consent not to be unreasonably withheld). The Development Entity shall disclose any such financial interest (if any) to the Commonwealth prior to the performance of any portion of the Work by it or any relevant Contractor.

**9.** The Development Entity and each Contractor, and their affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, the Development Entity under this PPA or by such Contractor under any relevant Contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this PPA or any such Contract (as applicable). Any information, documents, reports, data, or records secured by the Development Entity or such Contractor from the Commonwealth or a third party in connection with the performance of this PPA or any relevant Contract (as applicable) shall be kept confidential unless disclosure of such information is:

a. Approved in writing by the Commonwealth prior to its disclosure; or

b. Directed by a court or other tribunal of competent jurisdiction unless this PPA or the relevant Contract requires prior Commonwealth approval; or

c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or

d. Necessary for purposes of the Development Entity or Contractor's internal assessment and review; or

e. Deemed necessary by the Development Entity or Contractor in any action to enforce the provisions of this PPA or any relevant Contract or to defend or prosecute claims by or against parties other than the Commonwealth; or

f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or

g. Otherwise required by law.

**10.** The Development Entity certifies, and shall cause each Contractor to certify (prior to the performance of any portion of the Work by such Contractor) that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by it or any of its affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

**(1)** obtaining;

**(2)** attempting to obtain; or

**(3)** performing a public contract or subcontract.

The Development Entity or Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

c. Violation of federal or state antitrust statutes.

d. Violation of any federal or state law regulating campaign contributions.

e. Violation of any federal or state environmental law.

f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*

h. Violation of any federal or state law prohibiting discrimination in employment.

i. Debarment by any agency or department of the federal government or by any other state.

j. Any other crime involving moral turpitude or business honesty or integrity.

**11.** The Development Entity and each Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Employee activities of the Development Entity and each Contractor prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subject such employees to the registration and reporting requirements of the law. Actions by outside lobbyists on either the Development Entity or Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

**12.** When the Development Entity has reason to believe that any breach by it or by any Contractor of ethical standards as set forth in law, the Governor's Code of Conduct, or in these 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, the Development Entity shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

**13.** The Development Entity and each Contractor, by execution of this PPA and any relevant Contract and by the submission of any bills, invoices or requests for payment pursuant to this PPA or any such Contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions during any contract negotiations or during the term of this PPA or any such Contract.

**14.** The Development Entity and each Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Development Entity or Contractor non-compliance with these provisions. The Development Entity and each Contractor agrees to make identified Development Entity or Contractor employees available for interviews at reasonable times and places. The Development Entity and each Contractor, upon the inquiry or request of the Office of 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 Inspector General to the Development Entity or each Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Development Entity and each Contractor's business or financial records, documents or files of any type or form that refers to or concern this PPA or any relevant Contract.

**15.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may debar and suspend the Development Entity and any Contractor from doing business with the Commonwealth. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

**16.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.

b. "Contract" means Contract (as defined under this PPA), excluding contracts with Suppliers.

c. "Contractor" means Contractor (as defined under this PPA), excluding Suppliers.

d. "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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of the Contract.

e. "Financial interest" means:

**(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. “Immediate family” means a spouse and any unemancipated child.

h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

**SCHEDULE 15**

**ADDITIONAL FEDERAL REQUIREMENTS**


| **Exhibit Description** | **No. of Pages** |
|---|---|
| Attachment 1 – Federal Provisions | 2 |
| Attachment 2 – FHWA Form 1273 | 21 |
| Attachment 3 – Wage Determination of the Secretary of Labor | 13 |
| Attachment 4 – Equal Employment Opportunity | 6 |
| Attachment 5 – Affirmative Action | 3 |
| Attachment 6 – Debarment and Suspension Certification | 1 |
| Attachment 7 – Lobbying Certification | 2 |
| Attachment 8 – Compliance with Buy America Requirements | 2 |
| Attachment 9 – Disadvantaged Business Enterprises | 10 |
| Attachment 10 – Americans with Disabilities Act | 1 |
| Attachment 11 – Title VI Assurances | 2 |


*For the avoidance of doubt, each of the following provisions set out in Appendix C of Publication (PUB) 408/2011 and Special Provisions (Change No. 6, effective April 4,2014)), as the same may be amended from time to time, shall not apply to this PPA, and the terms of this Schedule 15 shall apply instead: Designated Special Provision 8 (F. A. R.—Required Contract Provisions Federal-Aid Construction Contracts), Designated Special Provision 7 (Disadvantaged Business Enterprise Requirements), Designated Special Provision 12 (Executive Order 11246); and Designated Special Provision 3 (Americans with Disabilities Act).*

## ATTACHMENT 1 TO Schedule 15

## FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES

GENERAL. — The D&C 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 Schedule 15. The requirements of Sections VI.1 and VI.2 of FHWA Form 1273 (Attachment 2 to Schedule 15 to the PPA) are inapplicable to the PPA. Whenever in said required contract provisions references are made to:

(a) "Department contracting officer", "Department resident engineer", or "authorized representative of the Department", such references shall be construed to mean the Department or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder" or "prospective primary participant", such references shall be construed to mean the Development Entity or its authorized representative and/or the D&C Contractor or its authorized representative, as may be appropriate under the circumstances;

(c) "contract" or "prime contract", such references shall be construed to mean the D&C Contract;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor", such references shall be construed to mean, as appropriate, Contractors other than the D&C Contractor; and

(e) "department", "agency" or "department or agency entering into this transaction", such references shall be construed to mean the Department, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination", and Section VI, "Subletting or Assigning the Contract", of the Form 1273 required contract provisions, the Development Entity shall cause the contractor to comply with the following:

> The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of $10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted

bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the D&C Work. Pertinent sections of said Code are incorporated within other sections of the PPA and the Department Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

a. FHWA federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in federal aid highway construction projects, and the cumulative annual production amount of such materials for use in federal aid highway construction does not exceed the amount of such materials produced in such project for use in federal aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), the Development Entity and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Development Entity and Contractors which are directly pertinent to any grantee, subgrantee or financing contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), the Development Entity and its Contractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. The Development Entity agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

**ATTACHMENT 2 TO Schedule 15**

**REQUIRED CONTRACT PROVISIONS**
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA FORM 1273**

I. General
II. Nondiscrimination
III. Nonsegregated 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. Compliance with Government-wide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

## I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (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).

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.

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). 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 bid proposal or request for proposal 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).

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.

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. The term federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the USDOL 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 out under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 out under 28 CFR 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective

action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under federal and Commonwealth 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. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set out 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, 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 out 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 out in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the Department's USDOT-approved DBE program are incorporated by reference.

b. 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 applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-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 contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

## III. NONSEGREGATED FACILITIES

This provision is applicable to all federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

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 set out initially as Attachment 3 hereto (as the same determination may be revised by the Secretary of Labor from time to time) 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 out 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, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Wage and Hour 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 Wage and Hour Administrator for determination. The Wage and Hour 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**

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**

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 at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor 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 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 §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, 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 the full wages earned, other than permissible deductions as set out in Regulations, 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 out 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 section 1001 of title 18 and section 231 of title 31 of the United States Code.

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 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 or the contracting agency, 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**

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 Commonwealth 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 Commonwealth 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 Wage and Hour 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 Commonwealth 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.

d. Apprentices and Trainees (programs of the USDOT).

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. 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.

**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.** Unless the PPA otherwise provides, 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.

**9. Disputes concerning labor standards.** 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 out in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor 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 federal 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 federal 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

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.

**2. Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set out 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 out in paragraph (1.) of this section, in the sum of $10 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 out in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting 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 out in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set out in paragraph (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 out in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" 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 Commonwealth regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(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.

2. The contract amount upon which the requirements set out 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. 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.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## 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, Commonwealth, and local laws governing safety, health, and sanitation (23 CFR 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.

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 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).

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 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in

connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 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

This provision is applicable to all federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## 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.

### 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.

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.

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.

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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition

to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default.

* * * * *

**2. 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) 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, Commonwealth or local) transaction or contract under a public transaction; violation of federal or Commonwealth antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, Commonwealth or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, Commonwealth or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**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 is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

**ATTACHMENT 3 TO Schedule 15**
**FEDERAL PREVAILING WAGE RATE**

**(Subject to change)**

General Decision Number: PA140004 07/18/2014 PA4

Superseded General Decision Number: PA20130004

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.

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HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (excluding sewer grouting projects and excluding sewage and water treatment plant projects)

| Modification Number | Publication Date |
|---|---|
| 0 | 01/03/2014 |
| 1 | 01/24/2014 |
| 2 | 02/07/2014 |
| 3 | 02/14/2014 |
| 4 | 02/28/2014 |
| 5 | 03/07/2014 |
| 6 | 03/14/2014 |
| 7 | 03/21/2014 |
| 8 | 05/09/2014 |
| 9 | 05/16/2014 |
| 10 | 05/30/2014 |
| 11 | 06/06/2014 |
| 12 | 06/20/2014 |
| 13 | 06/27/2014 |
| 14 | 07/18/2014 |

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BOIL0013-005 01/01/2011

CENTRE, FRANKLIN, POTTER, CLINTON, FULTON, HUNTINDON AND MIFFLIN COUNTIES

| | Rates | Fringes |
|---|---|---|
| BOILERMAKER..... | $37.35 | 30.02 |

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BOIL0154-004 06/01/2012

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

| | Rates | Fringes |
|---|---|---|
| BOILERMAKER..... | $36.17 | 24.99 |

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BOIL0744-003 07/01/2008

ERIE COUNTY

| | Rates | Fringes |
|---|---|---|
| BOILERMAKER..... | $35.34 | 18.48 |

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BRPA0009-023 02/01/2014

BEAVER COUNTY

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER..... | $28.94 | 17.95 |

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BRPA0009-024 02/01/2014

WASHINGTON (Cross Creek, Hanover, Jefferson, Mt Pleasant, Nottingham, Peters, Robinson, Smith, Union Twps) COUNTY

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER..... | $31.14 | 17.60 |

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BRPA0009-025 02/01/2014

BUTLER, LAWRENCE, AND MERCER COUNTIES

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER..... | $28.95 | 17.82 |

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BRPA0009-032 02/01/2014

FAYETTE (Jefferson & Washington Twps), GREENE (Except Cumberland, Dunkirk, Greene, Monongahelia Twps), INDIANA, AND WESTMORELAND (Rostraver Twp) COUNTIES

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER..... | $30.41 | 17.60 |

BRPA0009-033 02/01/2014

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 | $30.39 | 17.71 |

BRPA0009-034 05/01/2014

ERIE COUNTY

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER | $27.27 | 16.64 |

CARP2235-005 01/01/2014

| | Rates | Fringes |
|---|---|---|
| PILEDRIVERMAN | | |
| Piledriverman (welder) | $31.75 | 15.35 |
| Piledriverman | $31.45 | 15.35 |

CARP2235-006 01/01/2007

| | Rates | Fringes |
|---|---|---|
| Diver | $40.40 | 10.77 |
| Tender | $26.93 | 10.77 |

CARP2274-001 01/01/2014

CARPENTER (ALLEGHENY, ARMSTRONG, BEAVER, BUTLER, ERIE, FAYETTE, GREENE, LAWRENCE, MERCER, WASHINGTON, AND WESTMORELAND COUNTIES)

| | Rates | Fringes |
|---|---|---|
| Carpenter (Welders) | $30.92 | 15.42 |
| Carpenters | $30.22 | 15.42 |

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)

| | Rates | Fringes |
|---|---|---|
| Carpenter (Welders) | $30.68 | 15.42 |
| Carpenters | $29.97 | 15.42 |

ELEC0005-006 12/20/2013

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 ..... | $37.26 | 23.15 |

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* ELEC0056-004 06/03/2014

ERIE, FOREST AND WARREN COUNTIES

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $31.89 | 22.42 |

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ELEC0126-005 06/02/2014

ALLEGHENY, ARMSTRONG, BEAVER, BEDFORD, BLAIR, CAMBRIA, CENTRE, CLARION, CLEARFIELD, FAYETTE, FULTON, GREENE, HUNTINGDON, INDIANA, JEFFERSON, SOMERSET, WASHINGTON AND WESTMORELAND

| | Rates | Fringes |
|---|---|---|
| Line Construction: | | |
| Groundman ..... | $26.61 | 26.25%+7.50 |
| Lineman ..... | $44.35 | 26.25%+7.50 |
| Truck driver ..... | $28.83 | 26.25%+7.50 |
| Winch truck operator ..... | $31.05 | 26.25%+7.50 |

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ELEC0126-007 06/02/2014

FRANKLIN AND MIFFLIN COUNTIES

| | Rates | Fringes |
|---|---|---|
| Line Construction: | | |
| Groundman ..... | $25.61 | 26.25%+7.50 |
| Lineman ..... | $42.68 | 26.25%+7.50 |
| Truck driver ..... | $27.74 | 26.25%+7.50 |
| Winch truck operator ..... | $29.88 | 26.25%+7.50 |

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ELEC0143-007 06/01/2014

FRANKLIN and MIFFLIN COUNTIES

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $28.75 | 20.43 |

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ELEC0712-003 12/31/2012

CRAWFORD, BEAVER, LAWRENCE AND MERCER COUNTIES

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $32.57 | 20.73 |

ELEC0812-008 06/01/2014

CLINTON COUNTY

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $31.79 | 16.75 |

ELEC0812-009 06/01/2014

POTTER COUNTY

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $33.01 | 16.79 |

ELEC0812-011 06/01/2014

CENTRE COUNTY (Burnside, Curtin, Liberty, Howard, Marion, Walker, Miles, Haines Townships)

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $31.79 | 16.75 |

ELEC1319-004 09/05/2011

BUTLER, CAMERON, CLINTON, CRAWFORD, ELK, ERIE, FOREST, LAWRENCE, MCKEAN, MERCER, VENANGO, WARREN AND POTTER COUNTIES

| | Rates | Fringes |
|---|---|---|
| Line Construction: | | |
| Groundmen ..... | $28.46 | 10.13 |
| Heavy Equipment Operator ..... | $45.45 | 14.40 |
| Linemen ..... | $45.91 | 18.45 |
| Truck Drivers ..... | $29.84 | 10.24 |

ENGI0066-016 05/01/2014

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)

| | Rates | Fringes |
|---|---|---|
| GROUP 1 ..... | $29.04 | 17.79 |
| GROUP 2 ..... | $28.78 | 17.79 |
| GROUP 3 ..... | $25.13 | 17.79 |
| GROUP 4 ..... | $24.67 | 17.79 |
| GROUP 5 ..... | $24.42 | 17.79 |

Power equipment operators:

(BEDFORD, CAMERON, CLINTON, FOREST, FRANKLIN, FULTON, HUNTINGDON, MIFFLIN, AND POTTER COUNTIES)

| | Rates | Fringes |
|---|---|---|
| GROUP 1 | $28.75 | 17.79 |
| GROUP 2 | $28.47 | 17.79 |
| GROUP 3 | $24.83 | 17.79 |
| GROUP 4 | $24.34 | 17.79 |
| GROUP 5 | $24.13 | 17.79 |

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; Prespliter Drill (self contained); Refrigeration Plant (soil Stabilization) 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.), Tunnel Machine (Mark XXI Jarva or similar), Vermeer Saw, Whirley, Mechanic, Compactor with blade

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); hillift (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 (Mechanical); 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);

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IRON0003-001 06/01/2014

ALLEGHENY, FAYETTE, WESTMORELAND, CAMBRIA, INDIANA, ARMSTRONG, BUTLER, BEAVER, CLARION, AND WASHINGTON COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| IRONWORKER ..... | $32.43 | 26.73 |

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IRON0003-007 06/01/2014

BLAIR, CAMERON, CENTRE, CLEARFIELD, CLINTON, ELK, JEFFERSON, MCKEAN, AND POTTER COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| IRONWORKER ..... | $27.15 | 25.08 |

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IRON0003-011 06/01/2014

CRAWFORD, ERIE, FOREST, AND WARREN COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| IRONWORKER ..... | $28.04 | 25.08 |

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IRON0207-002 06/01/2013

LAWRENCE, MERCER, AND VENANGO COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| IRONWORKER ..... | $28.06 | 19.36 |

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IRON0404-008 07/01/2013

FRANKLIN (Remainder), HUNTINGDON (Remainder), AND MIFFLIN COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| IRONWORKER, STRUCTURAL ..... | $30.02 | 26.10 |

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IRON0549-002 12/01/2012

GREENE COUNTY

| | **Rates** | **Fringes** |
|---|---|---|

| | | |
|---|---|---|
| IRONWORKER ..... | $30.45 | 16.04 |

IRON0568-004 05/01/2014

BEDFORD, FRANKLIN (Southwest 1/3), FULTON, HUNTINGDON (Western 2/3), AND SOMERSET COUNTIES

| | Rates | Fringes |
|---|---|---|
| IRONWORKER | | |
| Sheeter, Bucker-Up..... | $28.73 | 15.61 |
| Structural, Ornamental, Reinforcing, Machinery Mover, Rigger & Machinery Erector, Welder, Fence Erector..... | $28.48 | 15.61 |

LABO1058-001 01/01/2014

LABORER (BEDFORD, CAMERON, CENTRE, CLINTON, CRAWFORD, FOREST, FRANKLIN, FULTON, HUNTINGDON, JEFFERSON, MIFFLIN, AND POTTER COUNTIES)

| | Rates | Fringes |
|---|---|---|
| GROUP 1..... | $24.13 | 17.70 |
| GROUP 2..... | $24.29 | 17.70 |
| GROUP 3..... | $24.78 | 17.70 |
| GROUP 4..... | $25.23 | 17.70 |
| GROUP 5..... | $25.64 | 17.70 |
| GROUP 6..... | $22.48 | 17.70 |
| GROUP 7..... | $25.13 | 17.70 |
| GROUP 8..... | $26.63 | 17.70 |

Laborers: (ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CLARION, CLEARFIELD, ELK, ERIE, FAYETTE, GREENE, INDIANA, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON, AND WESTMORELAND COUNTIES)

| | Rates | Fringes |
|---|---|---|
| GROUP 1..... | $24.23 | 17.70 |
| GROUP 2..... | $24.39 | 17.70 |
| GROUP 3..... | $24.78 | 17.70 |
| GROUP 4..... | $25.23 | 17.70 |
| GROUP 5..... | $25.64 | 17.70 |
| GROUP 6..... | $22.48 | 17.70 |
| GROUP 7..... | $25.23 | 17.70 |
| GROUP 8..... | $26.73 | 17.70 |

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 Surfacer, 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

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* PAIN0021-019 05/01/2014

CLINTON COUNTY

| | Rates | Fringes |
|---|---|---|
| Painters: | | |
| Bridge..... | $32.25 | 15.80 |
| Brush and Roller ..... | $25.95 | 15.80 |
| Spray ..... | $27.95 | 15.80 |

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* PAIN0021-024 05/01/2014

FRANKLIN COUNTY

| | Rates | Fringes |
|---|---|---|
| PAINTER | | |
| Brush | $23.47 | 12.30 |

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PAIN0057-014 06/01/2013

ALLEGHENY, FAYETTE, GREEN, WASHINGTON COUNTIES

| | Rates | Fringes |
|---|---|---|
| Painters: | | |
| Bridge | $32.48 | 14.81 |
| Brush and Roller | $26.78 | 14.81 |
| Spray | $26.78 | 14.81 |

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PAIN0057-015 06/01/2013

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 | $32.48 | 14.81 |
| Brush and Roller | $26.78 | 14.81 |
| Spray | $26.78 | 14.81 |

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PAIN0057-022 05/01/2014

| | Rates | Fringes |
|---|---|---|
| Painters: (ERIE, McKEAN, AND WARREN (Including Columbus and Freehold twps) COUNTIES) | | |
| Bridges,Stacks,Towers | $23.34 | 15.45 |
| Brush and Roller | $21.34 | 15.45 |
| Spray and Sandblasting | $22.09 | 15.45 |

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PAIN0057-027 06/01/2014

CAMERON, CRAWFORD, POTTER, WARREN, (Excluding Columbus and Freehold twps)

| | Rates | Fringes |
|---|---|---|
| Brush and Roller | $25.99 | 14.97 |

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PLAS0526-002 01/01/2014

| | Rates | Fringes |
|---|---|---|
| CEMENT MASON/CONCRETE FINISHER | $29.45 | 16.29 |
| Beaver, Cameron, Clarion, Crawford, Elk, Forest, Lawrence, McKean, Potter, Venango and Warren Counties | $29.45 | 16.29 |

| | | |
|---|---|---|
| Bedford, Blair, Cambria, Centre, Clinton, Huntingdon, Mifflin and Somerset Counties | $29.45 | 16.29 |
| All Other Counties | $29.45 | 16.29 |

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PLUM0027-001 06/01/2013

ALLEGHENY, ARMSTRONG, GREENE (Except extreme Eastern portion), 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) | $37.60 | 18.57 |

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PLUM0047-005 05/01/2013

BEAVER, BUTLER, MCKEAN, MERCER, VENANGO, CLARION, LAWRENCE, FOREST, WARREN, CRAWFORD, AND ERIE COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| Plumbers and Pipefitters (Bridge Drain Pipe) | $38.52 | 20.11 |

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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 |

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TEAM0040-001 01/01/2014

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)

| | **Rates** | **Fringes** |
|---|---|---|
| GROUP 1 | $26.71 | 15.01 |
| GROUP 2 | $26.85 | 15.09 |
| GROUP 3 | $27.35 | 15.37 |

Truck drivers: (BEDFORD, CAMERON, CLAIRON, CLINTON, ELK, FOREST, FRANKLIN, FULTON, HUNTINGDON, MIFFLIN, AND POTTER COUNTIES)

| | **Rates** | **Fringes** |
|---|---|---|

| | | |
|---|---|---|
| GROUP 1 ..... | $26.55 | 14.90 |
| GROUP 2 ..... | $26.72 | 15.00 |
| GROUP 3 ..... | $27.21 | 15.27 |

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 warehouseman

GROUP 2 - Tandem - Tri-Axle - Semi-Tractor Trailer (combination) (3 axles or more including steering axle)

GROUP 3 - 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, Payloder, Tournawagons, and similar equipment when not self-loaded); Tar and Asphalt Distributors Trucks, Heavy Duty Trailer, such as Low Boy, High Boy

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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 union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011 The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows 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.

The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-

union data Example:  SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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 DECISION

General Decision Number: PA140006 07/25/2014 PA6

Superseded General Decision Number: PA20130006

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania.

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HEAVY AND HIGHWAY CONSTRUCTION PROJECTS

Modification Number Publication Date

| Modification Number | Publication Date |
|---|---|
| 0 | 01/03/2014 |
| 1 | 02/28/2014 |
| 2 | 03/07/2014 |
| 3 | 05/23/2014 |
| 4 | 05/30/2014 |
| 5 | 06/06/2014 |
| 6 | 06/13/2014 |
| 7 | 06/27/2014 |
| 8 | 07/04/2014 |
| 9 | 07/18/2014 |
| 10 | 07/25/2014 |

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BOIL0013-003 01/01/2011

| | Rates | Fringes |
|---|---|---|
| BOILERMAKER..... | $37.35 | 30.02 |

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CARP0454-003 05/01/2014

| | Rates | Fringes |
|---|---|---|
| PILEDRIVERMAN..... | $40.55 | 30.62 |

Footnote: PAID HOLIDAYS: Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day (provided the employee works the day before the holiday and the day after the holiday).

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CARP0845-005 05/01/2014

BUCKS, CHESTER, DELAWARE, AND MONTGOMERY COUNTIES

| | Rates | Fringes |
|---|---|---|
| Carpenter..... | $41.56 | 25.59 |

FOOTNOTE: A. PAID HOLIDAY: LABOR DAY

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CARP1906-001 05/01/2014

| | Rates | Fringes |
|---|---|---|
| MILLWRIGHT..... | $37.26 | 29.74 |

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ELEC0098-001 04/28/2013

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 ..... | $49.65 | 59.5%+1.49 |

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ELEC0102-003 06/02/2014

BUCKS COUNTY (Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, 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 Bublin Borough east of State Highway 313 Rates Fringes

| | Rates | Fringes |
|---|---|---|

| | | |
|---|---|---|
| ELECTRICIAN ..... | $51.17 | 56.2% |

ELEC0126-002 06/02/2014

CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, AND REMAINDER OF BUCKS COUNTY

| | Rates | Fringes |
|---|---|---|
| Line Construction: | | |
| Groundman ..... | $30.98 | 26.25%+7.50 |
| Lineman ..... | $51.64 | 26.25%+7.50 |
| Truck driver ..... | $33.57 | 26.25%+7.50 |
| Winch truck operator ..... | $36.15 | 26.25%+7.50 |

* ELEC0269-001 01/01/2014

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 ..... | $47.96 | 27.78 |

* ELEC0269-002 01/01/2014

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: | | |
| Groundman, Truck Driver, and Winch Operator ..... | $38.37 | 22.22 |
| Lineman, Cable Splicer, Heavy Equipment Operator ..... | $47.96 | 27.78 |

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 |

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ELEC0375-001 12/01/2013

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 ..... | $38.92 | 14.55 |

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ELEC0380-001 09/04/2013

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 ..... | $39.86 | 29.79 |

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ELEC0654-001 07/30/2012

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 ..... | $39.23 | 23.19 |

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ELEC0743-001 09/01/2010

CHESTER (Coatesville, Honey Brook, South Coventy, Valley, Wallace, Warwich, West Brandywine, West Clan, and West Nantmeal Twps); AND MONTGOMERY (Douglas, Pottstown, Upper Pottsgrove, and West Pottsgrove, Twps) COUNTIES

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $37.87 | 3%+15.50 |

New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

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ELEC0743-007 02/01/2014

CHESTER COUNTY (The portion of Sadsbury and West Sadsbury Township north of U.S. Highway 30)

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN ..... | $33.37 | 18.50 |

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* ENGI0542-005 05/01/2014

Power equipment operators:

(HEAVY, HIGHWAY, AND WATER LINE CONSTRUCTION (Off Plant Site))

| | Rates | Fringes |
|---|---|---|
| GROUP 1 ..... | $41.81 | 26.05 |
| GROUP 1a ..... | $44.82 | 26.93 |
| GROUP 2 ..... | $41.57 | 25.97 |
| GROUP 2a ..... | $44.56 | 26.87 |
| GROUP 3 ..... | $37.48 | 24.77 |
| GROUP 4 ..... | $37.18 | 24.68 |
| GROUP 5 ..... | $35.46 | 24.17 |
| GROUP 6 ..... | $34.47 | 23.88 |

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, Vermeer 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 boilers, 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 boilers, Machine similar to the above, including remote control equipment.

GROUP 4: Seaman, Pulverizer 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 machines 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

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IRON0068-003 07/01/2011

BUCKS COUNTY (Remainder)

| | Rates | Fringes |
|---|---|---|
| Ironworkers:..... | $34.35 | 18.78 |

Structural, Ornamental, and Reinforcing

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IRON0401-001 07/01/2013

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..... | $44.70 | 28.60 |

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IRON0405-001 07/01/2014

BUCKS (Includes the towns of Bensalem, Breadysville, Bristol, Churchville, Cornwell Heights, Davisville, Eddington, Festerville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southhampton, Transville, Trevose, 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, Diamaond 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 ..... | $40.73 | 26.60 |

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 four 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.

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IRON0405-003 07/01/2014

BUCKS COUNTY (Includes the towns of Bensalem, Breadysville, Bristol, Churchville, Cornwells Heights, Davisville, Eddington, Feasterville, Hartsville, Johnsville, Line Lexington, Neshaminy, Southhampton, Tradesville, Trevose, Unionville, Warminster, 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 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)..... | $38.00 | 26.60 |

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 four 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.

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IRON0420-007 07/01/2014

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: | | |
| Projects $200,000,000 and greater, all work ..... | $31.70 | 25.00 |
| Projects less than $200,000,000..... | $30.70 | 25.00 |

IRON0451-004 07/01/2013

CHESTER (Remainder of County), AND DELAWARE (Remainder of County) COUNTIES

| | Rates | Fringes |
|---|---|---|
| Ironworkers: (Structural, Ornamental, and Reinforcing) | $33.60 | 25.90 |

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.

LABO0413-003 05/01/2014

Rates Fringes

LABORER

| | Rates | Fringes |
|---|---|---|
| GROUP 1 | $26.90 | 23.97 |
| GROUP 2 | $27.10 | 23.97 |
| GROUP 3 | $27.10 | 23.97 |
| GROUP 4 | $21.70 | 23.97 |
| GROUP 5 | $27.75 | 23.97 |
| GROUP 6 | $27.80 | 23.97 |
| GROUP 7 | $27.65 | 23.97 |
| GROUP 8 | $27.40 | 23.97 |
| GROUP 9 | $27.25 | 23.97 |
| GROUP10 | $27.30 | 23.97 |
| GROUP11 | $27.30 | 23.97 |
| GROUP12 | $31.03 | 23.97 |
| GROUP13 | $27.15 | 23.97 |

LABORERS CLASSIFICATIONS

GROUP 1: Yardwork Laborers; Scale Mixermen; Bunermen; 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

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LABO0413-005 04/01/2014

| | Rates | Fringes |
|---|---|---|
| Landscaping Farm Tractor Driver, Hydroseeder Nozzleman, Mulcher Nozzleman ..... | $19.89 | 21.17+A |

FOOTNOTE:

A. PAID HOLIDAYS: Independence Day, Labor Day, and Thanksgiving Day

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PAIN0021-003 05/01/2014

| | Rates | Fringes |
|---|---|---|
| Painters: | | |
| Bridge..... | $48.43 | 22.01 |
| All Other Work ..... | $38.91 | 21.98 |

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PLAS0592-008 05/01/2014

| | Rates | Fringes |
|---|---|---|
| CEMENT MASON/CONCRETE FINISHER..... | $32.25 | 29.16 |

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PLUM0420-001 05/01/2013

| | Rates | Fringes |
|---|---|---|
| Steamfitter | | |
| Bucks, Chester, Delaware, Montgomery and Philadelphia Counties..... | $48.03 | 27.73 |

PLUM0690-008 05/01/2014

| | Rates | Fringes |
|---|---|---|
| PLUMBER..... | $46.18 | 29.56 |

TEAM0107-002 05/01/2012

| | Rates | Fringes |
|---|---|---|
| Truck drivers: | | |
| GROUP 1..... | $28.17 | 14.82+a+b |
| GROUP 2..... | $28.27 | 14.82+a+b |
| GROUP 3..... | $28.52 | 14.82+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, straddle (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.

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 union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011 The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows 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. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date. Survey wage rates will remain in effect and will not change until a new survey is conducted.

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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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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 DECISION

General Decision Number: PA140014 07/25/2014 PA14

Superseded General Decision Number: PA20130014

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.

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HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (Excluding Sewer

Grouting Projects and Excluding Sewage and Water Treatment Plant Projects)

| Modification Number | Publication Date |
|---|---|
| 0 | 01/03/2014 |
| 1 | 05/23/2014 |
| 2 | 05/30/2014 |
| 3 | 06/13/2014 |
| 4 | 06/27/2014 |
| 5 | 07/04/2014 |
| 6 | 07/18/2014 |
| 7 | 07/25/2014 |

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BOIL0013-003 01/01/2011

| | Rates | Fringes |
|---|---|---|
| BOILERMAKER..... | $37.35 | 30.02 |

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CARP0076-011 05/01/2013

COLUMBIA, MONTOUR, NORTHUMBERLAND, SCHUYLKILL, SNYDER, UNION, the lower part of Luzerne county, Carbon County, Banks, Lusanna, Lehigh, Packer, Kidder townships, and part of Penn Forest

| | Rates | Fringes |
|---|---|---|
| MILLWRIGHT..... | $32.16 | 15.59 |

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CARP0191-002 05/01/2008

YORK COUNTY

| | Rates | Fringes |
|---|---|---|

| | | |
|---|---|---|
| MILLWRIGHT..... | $26.56 | 13.02 |

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CARP0287-009 05/01/2008

ADAMS, CUMBERLAND, DAUPHIN, JUNIATA, LANCASTER, LEBANON, PERRY, NEW CUMBERLAND ARMY DEPOT AND HARRISBURG YORK STATE AIRPORT IN YORK COUNTY

| | Rates | Fringes |
|---|---|---|
| MILLWRIGHT..... | $26.56 | 13.02 |

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CARP0454-008 05/01/2014

Lehigh and Northampton Counties

| | Rates | Fringes |
|---|---|---|
| PILEDRIVERMAN..... | $40.55 | 30.62 |

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CARP0492-002 06/01/2010

BERKS COUNTY

| | Rates | Fringes |
|---|---|---|
| MILLWRIGHT..... | $26.71 | 11.02 |

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CARP0600-005 05/01/2014

LEHIGH AND NORTHAMPTON COUNTIES

| | Rates | Fringes |
|---|---|---|
| CARPENTER ..... | $31.54 | 23.69 |

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CARP1906-002 05/01/2014

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..... | $35.24 | 27.74 |

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CARP2274-002 05/01/2013

EXCEPT LEHIGH AND NORTHAMPTON COUNTIES

| | Rates | Fringes |
|---|---|---|
| CARPENTER ..... | $27.92 | 12.58 |

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CARP2274-003 05/01/2013

Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Luzerne, Lycoming, Monroe, Montour, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York

| | Rates | Fringes |
|---|---|---|
| PILEDRIVERMAN | $27.92 | 12.58 |

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ELEC0126-001 06/02/2014

| | Rates | Fringes |
|---|---|---|
| Line Construction: | | |
| Groundman | $25.61 | 26.25%+7.50 |
| Lineman | $42.68 | 26.25%+7.50 |
| Truck driver | $27.74 | 26.25%+7.50 |
| Winch truck operator | $29.88 | 26.25%+7.50 |

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ELEC1319-001 09/05/2011

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 Operators | $45.45 | 14.40 |
| Groundman | $28.46 | 10.13 |
| Lineman | $45.91 | 18.45 |
| Truck drivers | $29.84 | 10.24 |

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* ENGI0542-004 05/01/2013

Rates Fringes

Power equipment operators:

(HIGHWAY CONSTRUCTION AND WATER LINES CONSTRUCTION (OFF PLANT SITE))

| | Rates | Fringes |
|---|---|---|
| GROUP 1 | $30.09 | 20.76 |
| GROUP 1a | $32.34 | 21.44 |
| GROUP 2 | $28.91 | 20.42 |
| GROUP 3 | $28.21 | 20.22 |
| GROUP 4 | $27.75 | 20.10 |
| GROUP 5 | $27.25 | 19.94 |
| GROUP 6 | $30.33 | 20.82 |
| GROUP 6a | $32.58 | 21.48 |

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, Vermeer 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.) l00 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 WASTE REMOVAL***

Add 20 per cent to basic hourly rate for all classifications

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* ENGI0542-022 05/01/2013

Rates Fringes

Power equipment operators:

(HEAVY CONSTRUCTION:)

| | Rates | Fringes |
|---|---|---|
| GROUP 1 | $32.06 | 21.35+A |
| GROUP 1a | $34.31 | 22.01+A |
| GROUP 2 | $31.77 | 21.27+A |

| | | |
|---|---|---|
| GROUP 2a ..... | $34.02 | 21.94+A |
| GROUP 3 ..... | $28.85 | 20.41+A |
| GROUP 4 ..... | $27.71 | 20.08+A |
| GROUP 5 ..... | $27.26 | 19.95+A |
| GROUP 6 ..... | $26.39 | 19.68+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.

***TOXIC/HAZXARDOUS 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).

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IRON0404-006 07/01/2013

ADAMS, CUMBERLAND, DAUPHIN, LEBANON (Western 3/4), LANCASTER (Western part), LYCOMING, MONTOUR, NORTHUMBERLAND, JUNIATA, PERRY, SCHUYLKILL (Western tip to include the twps. of Fearnot, Good Spring, Hegins, Jolett, Klingerstown, Muir, Pittman Haas, Rough and Ready, Sacramento, Spring Glen, Suedberg, Tower City, and Valley View), SNYDER, UNION, AND YORK COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| Ironworkers: | $30.02 | 26.10 |

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IRON0420-006 07/01/2014

BERKS, LANCASTER (Eastern Part), LEBANON (Eastern 1/4), LEHIGH (Fogelsville), AND SCHUYKILL (Remainder) COUNTIES

| | **Rates** | **Fringes** |
|---|---|---|
| Ironworkers: | | |
| Projects less than $200,000,000 | $30.70 | 25.00 |
| STRUCTURAL, ORNAMENTAL, AND REINFORCING: | | |
| Projects $200,000,000 and greater, (all work) | $31.70 | 25.00 |

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IRON0420-010 07/01/2014

LEHIGH (Except Fogelsville) and NORTHAMPTON

| | **Rates** | **Fringes** |
|---|---|---|
| Ironworkers: | | |
| Projects Over 25 Million Dollars | $31.70 | 25.00 |
| Projects Under 25 Million Dollars | $30.70 | 25.00 |

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IRON0489-002 07/01/2013

BRADFORD, COLUMBIA, LACKAWANNA, LUZERNE, MONROE (Tobyhanna Depot only), PIKE, SULLIVAN, TIOGA, SUSQUEHANNA, WAYNE, WYOMING, CARBON (Northern tip - McAdoo), LYCOMING (Southern tip - Hughsville)

| | **Rates** | **Fringes** |
|---|---|---|
| Ironworkers: | | |
| Structural and Ornamental | $28.92 | 25.25 |

IRON0489-008 07/01/2013

CARBON and MONROE (Except Tobyhanna Army Depot)

| | Rates | Fringes |
|---|---|---|
| Ironworkers | $28.92 | 25.25 |

* LABO0158-001 05/01/2014

| | Rates | Fringes |
|---|---|---|
| Laborers: | | |
| GROUP 1 | $18.66 | 14.65 |
| GROUP 2 | $25.28 | 14.65 |
| GROUP 3 | $22.27 | 14.65 |
| GROUP 4 | $22.62 | 14.65 |
| GROUP 5 | $23.29 | 14.65 |
| GROUP 6 | $22.71 | 14.65 |
| GROUP 7 | $23.00 | 14.65 |
| GROUP 8 | $23.48 | 14.65 |

LABORERS CLASSIFICATIONS

GROUP 1: Flag person

GROUP 2: Hazardous/Toxic/Asbestos Waste Handler, Lead Paint Handler

GROUP 3: 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, asphalt tamper, lute or screed man, pneumatic and electric tool operators, jackhammers, 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 with Rebar, and Concrete Surfacer.

FREE AIR TUNNELS AND ROCK SHAFTS

GROUP 6: Outside laborers 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 05/01/2014

ADAMS, CUMBERLAND, DAUPHIN, LANCASTER, PERRY, AND YORK COUNTIES

| | Rates | Fringes |
|---|---|---|
| Painters: | | |
| Bridge | $30.35 | 12.30 |
| Brush | $23.47 | 12.30 |
| Spray, Sandblast | $25.35 | 12.30 |

PAIN0057-021 06/01/2013

JUNIATA COUNTY

| | Rates | Fringes |
|---|---|---|
| Painters: (Commercial) | | |
| Brush and Roller | $26.78 | 14.81 |
| Industrial Brush & Roller | $30.38 | 14.81 |
| Spray | $26.78 | 14.81 |
| Painters: (Industrial) | | |
| Bridge | $32.48 | 14.81 |
| Brush and Roller | $26.78 | 14.81 |
| Spray | $26.78 | 14.81 |

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 05/01/2014

MONROE COUNTY; (EXCEPT TOBYHANNA DEPOT)

| | Rates | Fringes |
|---|---|---|
| CEMENT MASON/CONCRETE FINISHER..... | $31.23 | 10.00 |

PLAS0592-005 05/01/2014

COLUMBIA COUNTY

| | Rates | Fringes |
|---|---|---|
| CEMENT MASON/CONCRETE FINISHER..... | $31.23 | 10.00 |

PLAS0592-017 05/01/2014

| | 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 ..... | $27.50 | 20.93 |

PLAS0592-018 05/01/2014

Rates Fringes

| | Rates | Fringes |
|---|---|---|
| Cement Mason/Concrete Finisher: Adams, Lancaster, and York Counties..... | $26.60 | 20.15 |
| PLASTERER: Adams, Berks (Portions of), Lancaster, and Lebanon Counties ..... | $23.48 | 19.45 |

PLAS9592-002 05/01/2014

MONROE COUNTY (TOBYHANNA ARMY DEPOT)

| | Rates | Fringes |
|---|---|---|
| CEMENT MASON/CONCRETE FINISHER..... | $31.23 | 10.00 |

TEAM0229-003 05/01/2014

| | 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 | $31.92 | 0.00 |
| GROUP 2 | $31.92 | 0.00 |
| GROUP 3 | $31.92 | 0.00 |
| Truck drivers: (BRADFORD AND TIOGA COUNTIES) | | |
| GROUP 1 | $20.39 | 11.53 |
| GROUP 2 | $20.39 | 11.53 |
| GROUP 3 | $20.39 | 11.53 |

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Flat Bed Truck (Single-Axle), Dump Trucks (Under 10 Yds Single Axle), Stake Body Truck (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.

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 union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005

07/01/2011 The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows 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. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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 DECISION

## ATTACHMENT 4 TO Schedule 15

## EQUAL EMPLOYMENT OPPORTUNITY

### Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

**1.** As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;

d. "Minority" includes:

Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

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

American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

**2.** Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and a notice which contains the applicable goals for minority and female participation and which is set out in the solicitations from which this contract resulted.

**3.** If the contractor 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 Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown 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 Hometown 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 Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

**4.** The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set out in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract 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 any federal procurement contracting officer. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

**5.** Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

**6.** In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

**7.** The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the PPA or by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any news media advertisements that that the contractor is "An Equal Opportunity Employer" for minorities and females, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later that one month prior to the date for the acceptance of applications for apprenticeships or other training by recruitment source, the contractor will send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

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 of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.

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 contractor's EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

**8.** Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

**9.** Goals for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of Executive Order 11246 if a particular group is employed in a substantially disparate manner (that is, even though the contractor has achieved its goals for women, the contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

**10.** The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

**11.** The contractor shall not enter into any subcontract with any person or firm debarred from federal government contracts pursuant to Executive Order 11246.

**12.** The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance

Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

**13.** The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Executive Order 11246, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

**14.** The contractor shall designate and make known to the Department 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 federal government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

**15.** Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**16.** In addition to the reporting requirements set out elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Federal –Aid Highway Construction Contractors Annual EEO Report) (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

**ATTACHMENT 5 TO Schedule 15**

**AFFIRMATIVE ACTION**

**SPECIAL PROVISION**
**000—1981**
**Notice of Requirement for Affirmative Action to**
**Ensure Equal Employment Opportunity (Executive Order 11246)**

**1. General.**

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set out in Attachment 4 of this Schedule 15, the contractor's attention is directed to the specific requirements for utilization of minorities and females as set out below.

**2. Goals.**

a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

| Goals for minority participation in each trade | Goals for female participation in each trade |
|---|---|
| **See Table 1 of this Attachment 5** | **6.9%** |

c. These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor 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 contractor also is subject to the goals for both its federally involved and non-federally involved construction. The contractor's compliance with Executive Order 11246 and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the required specifications set out 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 contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, Executive Order 11246 and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

**3. Subcontracting.**

The contractor shall provide written notification to the Department within ten Business Days of award of any construction subcontract in excess of $10,000 at any tier for construction work

under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

**4. Covered area.**

As used in this Attachment 5, the geographical area covered by these goals for female participation is the Commonwealth. The geographical area covered by these goals for other minorities are the counties in the Commonwealth and surrounding states as indicated in Table 1.

**5. Reports.**

The contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting requirements that he will be expected to fulfill.

**TABLE 1**

**GOALS FOR MINORITIES**

**BY ECONOMIC AREA**

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 Commonwealth. The goals are applicable to the Development Entity or any 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.

**Economic Areas**

| Area | Goal (Percent) |
|---|---|
| Scranton – Wilkes Barre, PA | |
| SMSA Counties: | |
| Northeast Pennsylvania | 0.6 |
| PA Lackawanna; PA Luzerne; PA Monroe | |
| Non-SMSA Counties | 0.5 |
| PA Columbia; PA Wayne; PA Wyoming | |
| Williamsport, PA | |
| SMSA Counties: | |
| Williamsport, PA | 1.0 |
| PA Lycoming | |
| Non-SMSA Counties | 0.7 |
| PA Cameron; PA Centre; PA Clearfield; PA Clinton; PA Elk; PA Jefferson; PA Montour; PA Northumberland; PA Snyder; PA Sullivan; PA Union | |
| Erie, PA | |
| SMSA Counties: | |
| Erie, PA | 2.8 |
| PA Erie | |
| Non-SMSA Counties | 1.8 |
| Pittsburgh, PA | |
| SMSA Counties | |
| Altoona, PA | 1.0 |
| PA Blair | |
| Johnstown, PA | 1.3 |
| PA Cambria; PA Somerset | |
| Pittsburgh, PA | 6.3 |
| PA Beaver; PA Washington; PA Westmoreland; PA Allegheny | |
| Non-SMSA Counties | 4.8 |
| PA Armstrong; PA Bedford PA Butler; PA Fayette; PA Greene; PA Indiana; MD Allegheny; MD Garrett; WV Mineral | |
| Harrisburg – York – Lancaster, PA | |
| SMSA Counties: | |
| Harrisburg, PA | 6.2 |
| PA Cumberland; PA Dauphin; PA Perry | |
| Lancaster, PA | 2.0 |
| PA Lancaster | |
| York, PA | 2.2 |
| PA Adams; PA York | |
| Non-SMSA Counties | 3.1 |
| PA Franklin; PA Fulton; | |

PA Clarion; PA Crawford;
PA Forest; PA Venango;
PA Warren

PA Huntingdon; PA Juniata;
PA Lebanon; PA Mifflin

Philadelphia, PA

SMSA Counties:
Allentown-Bethlehem-Easton, PA-NJ ..... 1.6
PA Carbon; PA Lehigh;
PA Northampton; NJ Warren..... 17.3
Philadelphia, PA-NJ
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

Buffalo, NY

Non-SMSA Counties ..... 6.3
PA McKean; PA Potter;
NY Allegany; NY Cattaraugus;
NY Chautauqua; NY Wyoming

Binghamton-Elmira, NY

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 Schuyler;
NY Tompkins

New York, NY

Non-SMSA Counties ..... 17.0
PA Pike; NJ Hunterdon; NJ Ocean;
NJ Sussex; NY Orange;
NY Sullivan; NY Ulster

Ohio

Non-SMSA Counties ..... 6.7
PA Lawrence; PA Mercer;
OH Columbiana; OH Cleveland

## ATTACHMENT 6 TO Schedule 15

## DEBARMENT AND SUSPENSION CERTIFICATION

1. By signing and submitting its proposal or bid, and by executing the PPA or Contract, each prospective Development Entity and Contractor (at all tiers) shall be deemed to have signed and delivered the following certification:

   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 them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, Commonwealth or local) transaction or contract under a public transaction; violation of federal or Commonwealth 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, Commonwealth or local) with commission of any of the offenses enumerated in paragraph 1 b of this certification; and

   d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, Commonwealth or local) terminated for cause or default.

2. Where the prospective Development Entity or Contractor 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 PPA or Contract, stating that it is unable to provide the certification and explaining the reasons for such inability.

## ATTACHMENT 7 TO Schedule 15

## CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the PPA or subcontract, each prospective Development Entity and Contractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective Development Entity/Contractor certifies, to the best of its knowledge and belief, that:

    a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of **ANY** federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

    b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed PPA or Contract.

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 Development Entity/Contractor shall require that the language of this certification be included in all lower tier Contracts which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: 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.]

**NOTE: THE DEVELOPMENT ENTITY AND EACH CONTRACTOR IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS**

**OVER $100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH CONTRACTOR BEING PAID $100,000 OR MORE.**

## ATTACHMENT 8 TO Schedule 15

## COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The Development Entity and each subcontractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this PPA 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. 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 steel and iron materials, provided the cost of such materials does not exceed 0.1 % of the D&C Contract Amount.

Concurrently with execution of the PPA, the Development Entity and each subcontractor has completed and submitted, or shall complete and submit, to the Department a Buy America Certificate, in format below. After submittal, the Development Entity and each subcontractor is bound by its original certification. However, in accordance with federal Applicable Law, the Development Entity and each subcontractor may have the opportunity to correct an inadvertent error in its certification. The Development Entity and each subcontractor may correct any certification of noncompliance or failure to properly complete this certification if the Development Entity or any subcontractor attests under penalty of perjury that it submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing such inadvertent or clerical error is on the Development Entity and each subcontractor. The Development Entity or a subcontractor's failure to sign the certification is not considered an inadvertent or clerical error.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this PPA be investigated, the Development Entity and each subcontractor has the burden of proof to establish that it is in compliance.

At the Development Entity's or any subcontractor's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, the Development Entity and each subcontractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. A request for a waiver by the Development Entity or any subcontractor shall be treated as a Development Entity Change Request under Section 10.6 (Development Entity Changes) of the PPA.

## BUY AMERICA CERTIFICATE

### Certificate of Compliance

[Development Entity/name of the subcontractor] hereby certifies that it will comply with the requirements of 23 CFR 635.410.

Date: _____

Signature: _____

[Development Entity or subcontractor's Name]: Title: _

Or

Certificate for Noncompliance

[Development Entity/name of the subcontractor] hereby certifies that it cannot comply with the requirements of 23 CFR 635.410, but may qualify for a waiver of such requirements pursuant to 23 CFR 635.410.

Date: _____

Signature: _____

[Development Entity or subcontractor's Name]: Title: _

## ATTACHMENT 9 TO Schedule 15

## DISADVANTAGED BUSINESS ENTERPRISES

### 1.0 DBE UTILIZATION

A Disadvantaged Business Enterprise (DBE) is a for-profit, small business concern that meets the definition set forth in 49 CFR Part 26 (for purposes of this Attachment 9, **Part 26**). The Department seeks to:

- Ensure non-discrimination in award and administration of the Department's contracts;
- Ensure that only firms that fully meet DBE eligibility standards are permitted to participate in the Department's DBE programs;
- Help remove barriers to the participation of DBEs in the performance of the Department's contracts;
- Create a level playing field on which DBEs can fairly compete for the Department's contracts; and
- Assist in the development of firms that can compete successfully in the construction industry outside the DBE program.

The Department and the Development Entity shall take all necessary and reasonable steps in accordance with the rules cited, and requirements set forth, in this Attachment 9, and shall otherwise comply with Part 26.The Development Entity shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of the Department's contracts. The Development Entity shall not use the requirements of these specifications to discriminate against any qualified company or group of companies. These requirements shall be made a part of all Contracts and agreements entered into as a result of this PPA.

### 1.1 Statutory/Regulatory Authority

Disadvantaged Business Enterprise (DBE) Program. The federal statutory authority for the DBE program is contained in the Surface Transportation Assistance Act of 1982 (Public Law 97-424, §105(f)), the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17, §106(c)), the Intermodal Surface Transportation Efficiency Act of 1991, the Transportation Equity Act of the 21st Century, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Public Law 109-59, §1101(b), and the Moving Ahead for Progress in the 21st Century Act (Public Law 112-141, §1101(b)). Regulations have been promulgated under Part 26.

### 1.2 Non-Compliance

In the event that any Contractor fails to comply with the requirements of Section 26.53 of Part 26, including, but not limited to, the requirement that such Contractor meet the DBE participation goal set forth in the PPA or, if the DBE goal has not been met, document that good faith efforts were made to meet the goal, then the Department may determine that such Contractor is not a

responsible bidder and, as such, may be subject to contractual and/or legal damages, penalties and sanctions including but not limited to ineligibility for the award of future contracts.

### 1.3 Eligibility

Federal-aid contracts are governed by the requirements and provisions provided in the statutory authority for DBEs cited under Section 1.1 (Statutory/Regulatory Authority) of this Attachment 9. Only those DBE firms that are certified by the Pennsylvania Unified Certification Program (**PA UCP**) in accordance with Section 26.81 of Part 26 shall be eligible to be used for DBE goal attainment. DBE certification is not an endorsement of the quality or performance of the business, but simply an acknowledgment of the firm's status as a DBE certified by the PA UCP. A list of certified DBE firms can be accessed via the following Department website: http://www.dot14.state.pa.us/ECMS/.

### 1.4 DBE Goals and Monitoring

This is a federal-aid contract with a single DBE contract goal and only DBE attainment will be counted towards meeting that goal. However, the utilization of SBEs and other small business concerns is also encouraged, and the Development Entity shall provide periodic reports and utilization worksheets regarding utilization of such firms, separate from the reports and utilization worksheets for DBE firms.

The Department has established a DBE race-conscious or DBE contract goal of 7.0% of the D&C Contract Amount. The Department will monitor the Contractor's attainments towards the DBE goal in accordance with Section 2.1 (DBE Utilization Reporting) of this Attachment 9.

The Department has established a contract utilization goal for DBEs as specified in the preceding paragraph. In executing the PPA, the Development Entity declares that it subscribes to the utilization goal and shall meet the goal or document that it could not meet them despite its good faith efforts. If the PPA is executed with DBE commitment(s) less than the established contract goal, the Development Entity shall thereafter continue to document good faith efforts to achieve the established goal.

### 1.5 Counting DBE Participation

The value of the D&C Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization serves a commercially useful function (**CUF**). A DBE prime contractor shall still provide opportunities for participation by other DBEs. D&C Work performed by DBEs will be counted as set forth below. If the Department determines that some or all of the DBE's work does not constitute a CUF, only the portion of the work considered to be a CUF shall be credited toward the goal.

A. Subcontractors. 100% of the value of the D&C Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such D&C Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Development Entity or Contractors or their affiliates will not be counted.

B. Manufacturers/Fabricators. 100% of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.

C. Regular Dealers. 60% of the expenditure to a DBE regular dealer will be counted toward the DBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of Section 26.55 of Part 26.

D. Brokers/Manufacturer's Representatives. 100% of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by a DBE broker/manufacturer's representative will be counted toward the DBE goal, provided they are determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

E. Services. 100% of fees or commissions charged by a DBE 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 the D&C Work will be counted toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Trucking Operations. The DBE trucking firm of record is the firm that is listed on the DBE Utilization Worksheet. The DBE must own and operate a least one registered, insured, and fully operational truck used for the performance of D&C Work and shall 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 the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE trucking operations for performance of D&C Work, and shall be responsible for (1) negotiating and executing long-term rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Development Entity; and (4) scheduling and dispatching trucks.

1. DBE Owned/Leased Trucks. 100% of the value of the trucking operations the DBE provides for the performance of D&C Work using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the DBE using drivers it employs, will be counted toward the DBE goal.

2. DBE Long-Term Leased Trucks. The DBE may lease trucks on a long-term basis from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.

3. Non-DBE Trucks. The DBE may lease trucks on a long-term basis from a non-DBE, including an owner-operator. 100% of the fee or commission the DBE receives as a result of the lease arrangement will be counted toward the DBE goal. The value of the trucking operations provided by the lessee will not be counted toward the DBE goal.

G. Joint Venture. 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 the Department

and a copy of which is to be furnished by the Development Entity before execution of the contract.

### 1.6 Conditions of Participation

DBE participation will be counted toward meeting the DBE contract goal, subject to all of the following conditions:

A. Commercially Useful Function. A DBE is considered to perform a CUF when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work. Regardless of whether an arrangement between the Development Entity and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the CUF requirement, that firm shall not be included in determining whether the DBE goal is met and shall not be included in DBE reports. If this occurs with respect to a firm identified as a DBE, the Development Entity shall receive no credit toward the DBE goal and may be required to replace the participation. 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. A DBE may rebut a determination by the Department that the DBE is not performing a CUF to the Department but the determination may not be appealed to Federal Highway Administration (FHWA) or USDOT.

B. Work Force. The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Development Entity, Contractors, or their Affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the D&C Contract, provided that the individual was independently recruited by the DBE in accordance with standard industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

C. Supervision. All D&C Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Development Entity, other subcontractors on the contract, or their affiliates. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the D&C Work.

D. Equipment. DBE subcontractors may supplement their equipment by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. The required documentation shall include copies of the long-term rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment. All lease agreements must afford the DBE firm exclusive control of the equipment during the course of the lease.

## 2.0 DBE Plan and Ongoing Good Faith Efforts

The Department expects continuing good faith efforts on the part of the Development Entity over the course of all D&C Work under the PPA to achieve the Project's DBE participation goal. Below are requirements and procedures consistent with the above laws and regulations and tailored to the unique aspects of design-build contracting:

A. The DBE participation goal for the Project is established in the PPA.

B. Only DBEs certified through the PA UCP in accordance with Part 26 shall be used to fulfill the established DBE goal for this PPA.

C. As described in the ITP, each Proposer is required to submit acceptable evidence of pre-Proposal good faith efforts to obtain DBE participation.

D. As described in the ITP, each Proposer is required to submit an acceptable DBE participation schedule that includes: (a) the name of each certified DBE that has agreed to participate in the Project (if any) and (b) the items of D&C Work to be performed or furnished and the expected percentage of the D&C Contract Amount to be paid to each such DBE for the D&C Work or supply. The DBE participation schedule must be updated to (a) include the name of each additional certified DBE that agrees to participate in the Project following the initial submittal of the DBE participation schedule prior to the performance of any D&C Work by such DBE and the items of D&C Work to be performed or furnished and the expected percentage of the D&C Contract Amount to be paid to each such DBE for the D&C Work or supply and (b) reflect any changes throughout the course of the D&C Work.

E. As described in the ITP, each Proposer is required to submit a DBE Plan as part of a responsive Proposal, describing the Proposer's plans to meet the Project's DBE goals, including an affirmation regarding its intention to use good faith efforts to achieve the Project's DBE participation goal. Pursuant to the ITP, the Development Entity will be required to submit documentation as specified in the DBE Plan to show that the Development Entity will meet the DBE goal for the Project. If the DBE goal is not being met, following review by the Department, the Development Entity must 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 Development Entity will undertake to meet its DBE commitments, and submit it to the Department's Representative for consultation and written approval.

F. In an effort to verify compliance with DBE requirements, the Department will evaluate throughout the course of the Development Entity's efforts in executing the DBE Plan and achieving the Project's DBE participation goal.

G. In determining whether the Development Entity has complied with good faith obligations under this Section, the Department will consider the quality, quantity, and intensity of the efforts that the Development Entity has made, consistent with the guidance set forth in Appendix A (Guidance Concerning Good Faith Efforts) of Part 26, and whether the Development Entity has complied with its DBE Plan. Consistent with such guidance and without limitation, below is a list of the types of actions the Department will consider as part of the Development Entity's good faith efforts to obtain DBE participation. It is not a mandatory checklist, nor is it intended to be exhaustive or exclusive:

1. Efforts made to solicit through all reasonable and available means (e.g., use of the DBE Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the D&C Work of the contract. The Development Entity should provide written notification, at least 15 calendar days before the bid opening, to allow the DBEs to respond to the solicitation. The Development Entity must determine with

certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

2. Efforts made to select portions of the D&C Work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

3. Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

4. Efforts made to negotiate in good faith with interested DBEs. It is the Development Entity's responsibility to make a portion of the D&C Work available to DBE subcontractors and suppliers and to select those portions of such work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the D&C Work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the D&C Work. The Development Entity using good business judgment will consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract DBE goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for the Development Entity's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of the Development Entity to perform the D&C Work with its own work force does not relieve the Development Entity of the responsibility to make good faith efforts to achieve the DBE contract goal. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Bidder’s determination of a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the DBE's efforts to meet the contract DBE goal.

6. Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.

7. Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

8. Efforts to effectively use the services of the Department's DBE 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.

The Development Entity shall document good faith efforts to ensure that DBEs have maximum opportunity to successfully bid and perform the D&C Work, and that the Development Entity meets its DBE goal. Each month, the Contractor shall submit current DBE utilization data, a summary of the of the work not yet completed nor subcontracted, and updated solicitation documentation showing appropriate DBEs solicited for the remaining work for formal review by the Department.

If at any time the Department determines that the Development Entity has failed to make sufficient good faith efforts to meet the DBE goal, the Department will, before exercising any remedies available for such failure, provide the Development Entity an opportunity for administrative reconsideration, by an official who did not take part in the original good faith efforts determination, that the Development Entity failed to undertake good faith efforts meet the DBE goal. As part of this reconsideration, the Development Entity shall have the opportunity to provide written documentation or argument and to meet in person with the Department's reconsideration official concerning the issue of whether it has documented adequate good faith efforts to meet the goal. The Department will send Development Entity a written decision on reconsideration, explaining the basis for finding that the Development Entity did or did not make adequate good faith efforts to meet the goal.

## 2.1 DBE Utilization Reporting

As stated in Section 1.4 (DBE Goals and Monitoring) of this Attachment 9, the PPA has a single DBE goal, and only DBE attainment will be counted towards meeting that goal. However, the utilization of SBEs and other small business concerns is also encouraged, and the Development Entity shall provide monthly reports to the Department regarding such utilization, as specified in Section 1.4 (DBE Goals and Monitoring) of this Attachment 9.

After NTP3, DBE utilization data shall be entered each month on the form of monthly progress report set forth as Appendix 2 (Monthly DBE/SBE Status Report) of this Attachment 9, not later than the 15$^{th}$ of the following month. Data shall be current through the end of the last full payroll week for that month, or as otherwise approved by the Authorized Department Representative to coordinate with payment submittals.

For each DBE, the Development Entity shall explain, in writing, the scope of D&C Work to be performed by the DBE and expressly indicate any item or component of the scope that is not completely performed by the DBE.

For each DBE trucking operation, the Development Entity shall also indicate the type of trucking operation to be performed, the number of trucks owned/leased, the number of trucks working on-site or off-site, rate per hour/ton/load/etc., duration or amount, and total dollar value of the proposed DBE commitment. The Development Entity shall provide copies of all lease agreements utilized by the DBE.

If the Development Entity has met or exceeded the established DBE goal for the PPA utilizing certified DBEs it is not necessary to submit documentation of good faith efforts.

If the Development Entity has not met the DBE goal, it shall submit the solicitation log, together with other documentation that substantiates good faith efforts. Such documentation shall include, at a minimum, all envelopes of solicitation inquires that were returned as undeliverable and quotations submitted by DBEs that are not included in the DBE Schedule of Utilization with an explanation for the Proposer's action in each case.

The Development Entity shall execute subcontracts or agreements with the DBEs for the type and amount of work identified in the approved DBE Utilization Package, and shall execute subcontracts or agreements with DBEs selected in accordance with the DBE Plan.

**2.2 Required Records**

The Development Entity shall keep records and documents for six years following performance of the PPA to indicate compliance with this Section. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representatives of the Department and will be submitted to the Department upon request, together with other compliance information which may be required.

**2.3 Non-Discrimination**

The Development Entity shall not use the requirements of this Section to discriminate against any qualified company or group of companies.

**2.4 Reporting Violations of Program Rules**

The Development Entity is responsible for ensuring that the DBE performs a commercially useful function under the e PPA as defined in Section 1.6(A) of this Attachment 9. If the Development Entity becomes aware of any violations of that Section, the Development Entity is required to promptly report the violations to the Authorized Department Representative. This responsibility is in addition to any compliance monitoring by the Department and/or the FHWA, including compliance monitoring by the CQAF.

**2.5 Report of Payment to Contractors and DBEs and SBEs**

The Development Entity shall make prompt payment to DBEs in accordance with Part 26. In addition, the Development Entity shall report to the Department payments made to all Contractors, subcontractors and DBEs, in order to measure goal attainment and to gauge the effect of DBE goal(s) on the industry. The Development Entity shall submit payment data for all Contractors, subcontractors and for all DBEs approved by the Department that are owed payment or have received payment within the last month. Contractors and subcontractors that are certified SBEs shall be identified in the reporting, but shall not be included in the measurement of DBE attainment. Payments to DBE and SBE contractors shall be entered in the form of monthly progress report set forth as Appendix 2 (Monthly DBE/SBE Status Report) of this Attachment 9.

**2.6 Revisions to DBE Utilization**

The Development Entity shall obtain the Department's approval for revisions in DBE utilization prior to implementing any proposed change through submission of revised DBE utilization worksheets, including any change on the forms set forth in Appendix 1 (DBE Participation for Federal Projects) and Appendix 2 (Monthly DBE/SBE Status Report) of this Attachment 9.

If the reduction of the DBE's work or the removal of the DBE, including for violations of CUF requirements, causes the DBE utilization to fall below the goal(s), the Development Entity shall document good faith efforts to find another DBE to substitute for the original DBE to perform at least the same amount of work as the DBE that was terminated, to the extent needed to meet the contract goal(s).

A DBE may be substituted if the D&C Work committed to the DBE is deleted or reduced by the Department and enough D&C Work remains to substitute an equal commitment amount to the affected DBE. If not enough D&C Work remains, the Department may relieve the Development Entity from attaining that portion of the commitments.

In accordance with Section 26.53(f)(1) of Part 26, the Development Entity shall not terminate a DBE listed on the approved Detailed DBE Plan without the prior written consent of the Department. This includes instances in which the Development Entity seeks to perform work originally designated for a DBE with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The Department will consent only if good cause exists to terminate the DBE firm. Good cause includes, at a minimum, one the following circumstances:

- The listed DBE fails or refuses to execute a written contract;
- The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE to perform its work on the subcontract results from the bad faith or discriminatory action of the Development Entity;
- The listed DBE fails or refuses to meet the Development Entity's reasonable, non-discriminatory bond requirements;
- The listed DBE becomes bankrupt, insolvent, or otherwise lacks creditworthiness;
- The listed DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- The Department has determined that the listed DBE is not a responsible contractor;
- The listed DBE voluntarily withdraws from the project and provides to the Department written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract; and
- Other documented good cause that the Department determines compels the termination of the DBE, provided that good cause does not exist if the Development Entity seeks to terminate a DBE it relied upon to meet the utilization goal so that the Development Entity can self-perform the work for which the DBE was engaged or so that the Development Entity can substitute another DBE or non-DBE contractor after Financial Close.

Before submitting its request to terminate and/or substitute a DBE to the Department, the Development Entity shall give notice in writing to the DBE, with a copy to the head of the

Department Engineering District in which such DBE is performing any of the D&C Work, of its intent to request to terminate and/or substitute, and the reason for the request, with a copy of such notice transmitted by electronic mail to "minorityparticipation@pa.gov" (with reference to the "Rapid Bridge Replacement Project P3" in the subject field of such electronic mail).

The Development Entity shall give the DBE five days to respond to the notice and advise the Department and the Development Entity of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the Development Entity's action. If required in a particular case as a matter of public necessity (e.g., safety), the Department may approve a response period shorter than five days.

## APPENDIX 1 – DBE PARTICIPATION FOR FEDERAL PROJECTS FORM

EO-380 (6-06) **DBE PARTICIPATION FOR FEDERAL PROJECTS**

ORIGINAL ( ) or REVISION # _____ LETTING DATE/BID DATE _____

DATE _____ PROJECT OWNER _____ Page ___ of ___

| CONTRACT NUMBER | PROJECT | FEDERAL NUMBER | COUNTY | DBE GOAL |
|---|---|---|---|---|
| BID AMOUNT<br>$ | PRIME CONTRACTOR | | | |
| CONTACT PERSON | | | PHONE NUMBER<br>( ) | |

**COMPLETE THIS SECTION FOR DBE FIRM**

| DBE FIRM | DBE CERTIFICATE NUMBER |
|---|---|
| CONTACT PERSON | PHONE NUMBER<br>( ) |

Total Agreement $ credit @ 60% $_____ Mobilization $_____

*(include mobilization)* *(Regular Dealer only)*

Starting Date: _____/ _____/ Completion Date: _____/ _____/ _____ _____

CHECK THE APPROPRIATE BLOCK:

Subcontractor ☐ Regular Dealer ☐ Service ☐

Manufacturer ☐ Consultant ☐ Other ☐ _____

*(i.e. regular dealer to a subcontractor))*

LIST CONTRACT ITEM NUMBERS BELOW. IF PARTIAL–DESIGNATE WITH 'P'

| | | | |
|---|---|---|---|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

Description of work for all item numbers; **INCLUDING PARTIAL ITEMS:** _____

_____

_____

I am DBE certified by the Pennsylvania Unified Certification Program (PAUCP). I hereby certify that as a DBE, I quoted the above price and type of work.

**SIGNATURE OF DBE X**_____ _____

(SIGNATURE AND TITLE OF COMPANY OFFICIAL) (DATE)

I hereby certify, on behalf of, and intending to bind, the Contractor, that the information contained herein is true and correct to the best of my knowledge, information and belief.

**SIGNATURE OF PRIME X**_____

*(SIGNATURE AND TITLE OF COMPANY OFFICIAL)* *(DATE)*

***PENDOT USE ONLY***

☐ Approved ☐ Conditional Approval *(Prequalification only)* ☐ Disapproved

Condition: _____

_____

_____ By:_____

(Date)

**Note: Complete one form for each DBE on the project**

## APPENDIX 2 – MONTHLY DBE/SBE STATUS REPORT

| | | |
|---|---|---|
| EO-402 (5-14)<br>pennsylvania<br>DEPARTMENT OF TRANSPORTATION<br>www.dot.state.pa.us | MONTHLY DBE/SBE<br>STATUS REPORT | Report No: _____<br>Final ☐<br>Month:_____ Year:_____ |

| | | |
|---|---|---|
| Contract Number: | County: | Original Contract Amount: |
| Project Number: | Federal Number: | Current Contract Amount: |
| Prime Contractor: | DBE Goal: | |

| DBE/SBE Firm(s) Name | DBE or SBE | Whether Listed On DBE Commitment | Amount as Listed on DBE Commitment | Date of Executed Subcontract | Dollar Amount of Executed | Dollar Amount Paid This Month | Check Number | Dollar Amount Paid to Date |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

I certify that contracts have been executed with the above firms, amounts listed are accurate and payments were made in accordance with contractual obligations. Cancelled checks and/or supporting information will be on file for inspection or audit.

_____ _____ _____

Company Official's Signature Date Telephone Number

_____

Reviewed by

_____

Date Received

## ATTACHMENT 10 TO Schedule 15

## PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

For the purpose of this Attachment 10, 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.

During the term of the PPA, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 CFR § 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 PPA or from activities provided for under this PPA. As a condition of accepting and executing the PPA, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 CFR § 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 of this Attachment 10.

## ATTACHMENT 11 TO Schedule 15

## CERTAIN TITLE VI ASSURANCES

Notwithstanding anything to the contrary in this PPA, the Development Entity, for itself, its assignees and successors-in-interest, agrees as follows:

1. Compliance with Regulations: The Development Entity shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation 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 PPA.

2. Nondiscrimination: The Development Entity, with regard to the work performed by it during the term of this PPA, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Development Entity shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when this PPA covers a program set out in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Development Entity 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 Development Entity of the Development Entity's obligations under this PPA and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, age, sex, and disability/handicap.

4. Information and Reports: The Development Entity 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 Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Development Entity is in the exclusive possession of another who fails or refuses to furnish this information, the Development Entity shall so certify to the Department, or the Federal Highway Administration as appropriate, and shall set out what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Development Entity's noncompliance with the nondiscrimination provisions of this PPA, including, without limitation sections 1 through 4 (inclusive) of this Attachment 11, the Department shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

   (a) withholding of payments to the Development Entity under this PPA until the Development Entity complies, and/or

   (b) cancellation, termination or suspension of this PPA, in whole or in part.

6. Incorporation of Provisions: The Development Entity shall include the provisions of sections 1 through 6 (inclusive) of this Attachment 11 in every subcontract, including procurements of

materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

7. The Development Entity shall take such action with respect to any subcontractor procurement as the Department or Federal Highway Administration may direct as a means of enforcing the foregoing provisions including sanctions for noncompliance: *provided, however*, that, in the event the Development Entity becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Development Entity may request the Department to enter into such litigation to protect the interests of the Department, and, in addition, the Development Entity may request the United States to enter into such litigation to protect the interests of the United States.

## SCHEDULE 16

## CALENDAR EVENTS

(1) Memorial Day

(2) Independence Day

(3) Labor Day

(4) Thanksgiving Day

(5) Day after Thanksgiving Day

(6) Christmas through New Year's Day

(7) Columbus Day

(8) Veteran's Day

(9) Martin Luther King Jr. Day

(10) President's Day

(11) All Saturdays and Sundays

## SCHEDULE 17

## KARST BRIDGES

The Karst Bridges are the Replacement Bridges with the following “Bridge Key Numbers”:

(1) 9679;

(2) 12163;

(3) 20137;

(4) 26595;

(5) 31169;

(6) 33543;

(7) 4946;

(8) 23136;

(9) 23144;

(10) 23228;

(11) 23330;

(12) 28493;

(13) 28494;

(14) 28660;

(15) 27605;

(16) 13616;

(17) 13948;

(18) 14481;

(19) 20976;

(20) 21196;

(21) 21237;

(22) 21238;

(23) 21403;

(24) 21409;

(25) 21558;

(26) 21595;

(27) 22812;

(28) 3955;

(29) 5699;

(30) 5702;

(31) 5709; and

(32) 5763.

## SCHEDULE 18

## TECHNICAL PROVISIONS

[*To be attached under separate cover.*]

## SCHEDULE 19

## EXTRA WORK COSTS

### 1. GENERAL

### 1.1 Design Work

(a) For Extra Work consisting of Design Work, an amount equal to the salaries paid to technical employees for time actually spent in performing such services, plus one hundred seventy-five percent (175%) of the portion of such salaries representing "straight time" payments.

(b) As used in this Section 1.1 (Design Work), **salaries paid to technical employees** means salaries actually paid (excluding payments and factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, draftsmen and other technical employees of the Contractor performing such design services, excluding however, any partners, corporate officers and clerical or administrative personnel.

### 1.2 Construction Work

For Extra Work consisting of Construction Work, an amount equal to the sum of all applicable costs calculated in accordance with Section 2.

### 2. CONSTRUCTION EXTRA WORK COSTS

### 2.1 Records

The Development Entity shall keep records of the Extra Work costs set out in this Section 2 (Extra Work Costs) on a force account basis. The Development Entity shall compare force account records with those kept by CQAF, at the end of each day or as otherwise directed, to ensure accuracy and obtain concurrence. The Development Entity shall report any unresolved disagreements with such records to the Department. Failure to review CQAF's records or to report disagreements with such records shall create a presumption that CQAF's records are complete and accurate.

### 2.2 Labor

(a) Wages of forepersons; equipment operators; and skilled, semiskilled, and common laborers directly assigned to the specific operation will be reimbursed, as direct labor costs, at the actual base pay rate and fringe benefit rate paid, for each hour that such employees are engaged in the performance of Extra Work and, if directed, overtime as provided for in existing laws and regulations.

(b) Indirect labor costs will be allowed as a percentage of the total base labor cost. However, if certified payroll records indicate that the relevant Contractor's method of making payment is such that fringe benefits are paid directly to the worker, indirect labor costs will be allowed as a percentage of the total direct labor cost. Compute indirect labor costs as follows:

(i) Social Security Tax at the percentage legally required;

(ii) Medicare Tax at the percentage legally required; and

(iii) Unemployment Taxes at the estimated effective rate.

(c) Compute estimated effective rates for the current calendar year by dividing the relevant Contractor's total, company-wide Unemployment Tax payments for the previous calendar year by the total wages and salaries paid to all employees for the same period. Recompute estimated effective rates each year thereafter, for the duration of the Project, based on the previous calendar year's total wages and salaries and total tax payments.

**2.3 Material**

The cost of material used will be reimbursable, including applicable sales tax and transportation costs charged by the relevant Supplier.

**2.4 Equipment**

Reasonable rental rates for equipment, including trucks and machinery, mutually considered necessary, will be allowed, computed as follows:

(a) Owned Equipment

(i) For any Contractor-owned equipment, an hourly rental rate will be determined using the monthly rate listed in the applicable edition of the Rental Rate Blue Book for Construction Equipment (the **Blue Book**), Volume 1. The Blue Book edition in effect as of the first day that Extra Work is performed is the edition that will remain applicable throughout the performance of such Extra Work. The applicable edition of the Blue Book will be authorized for use statewide on a specified date.

(ii) The hourly rental rate for owned equipment will be computed by dividing the monthly rate listed in the Blue Book by 176. Apply to this rate, the area adjustment percentage for the Commonwealth and the age adjustment percentage for the model year of the piece of equipment, as shown on the Regional Adjustment Maps and in the Rate Adjustment Tables, respectively, located at the beginning of each section of the Blue Book.

(iii) An allowance will be made for operating costs by adding, to the above adjusted hourly rate, the estimated operating cost per hour, as listed in the Blue Book, for each hour that the equipment or machinery is actually in operation on the Extra Work. If equipment or machinery is required at the Project Site on a standby basis, but is not operating, compensation will be at 50% of the adjusted hourly rate, exclusive of operating costs.

(iv) Equipment used for maintenance and protection of traffic on a 24-hour basis will be reimbursed at a daily rental rate, which will be determined by dividing the monthly rate listed in the Blue Book by 22.

(v) Where Contractor-owned equipment or machinery is not listed in the Blue Book, a rental rate will be determined based on the manufacturer's list price for sale

(new) of such equipment. In these cases, the monthly rate will be computed as 6% of the sale price (new), and the total hourly rate determined by dividing the monthly rate by 160, when operating, and by 352, when required at the Project Site on a standby basis, but not operating, with no adjustment percentages applied. For equipment used for maintenance and protection of traffic on a 24-hour basis, with no listing in the Blue Book, the daily rental rate will be computed as 6% of the manufacturer's list price for sale (new) of the equipment divided by 22, with no adjustment percentages applied.

(vi) The rates established above include the cost of fuel; oil; lubrication; supplies; necessary attachments; repairs; overhaul and maintenance of any kind; storage; all costs of moving equipment on to and away from the Project Site, except as specified below; and all incidentals.

(vii) The Department will not approve any costs in excess of those outlined above unless such costs were incurred for the convenience of the Department, as directed, and are supported by an acceptable cost breakdown. If a piece of owned equipment, not already on or near the Project Site, is needed specifically for the Extra Work, the cost of moving the equipment on, to and away from the Project Site will be reimbursed; **provided** that the equipment will not be used immediately thereafter in the performance of original D&C Work.

(viii) The term "owned equipment," as used above applies to equipment (including trucks and machinery) which the relevant Contractor is required to provide for the proper execution of the Work whether the equipment is actually owned directly by the Contractor, is leased, or has been obtained in some other manner.

(b) Rented Equipment

(i) If a piece of equipment needed for the Extra Work is not of the type required to be provided by a Contractor for the proper execution of such work, or if the piece of equipment needed is "owned" but not currently available, and the equipment can be obtained by rental, the Development Entity shall discuss the need to rent the equipment with the Department and obtain approval of the rental rate to be paid before renting the equipment for the Extra Work.

(ii) Additionally, if an item is purchased specifically for the Extra Work, but does not become a permanent part of such Extra Work, the item will be considered rented equipment for cost reimbursement purposes. If the item's useful life is completely expended in the performance of the Extra Work, as determined by the Department, the full cost of the item will be reimbursed, including applicable sales tax and transportation costs. Otherwise, that portion of the item's useful life expended in the performance of the Extra Work will be determined and reimbursement made at a prorated cost.

(iii) The Development Entity will be reimbursed the actual invoiced cost for rented equipment, plus the cost of transporting the equipment to and from the relevant Project Site. An allowance will be made for operating costs by adding, to the rental cost, the estimated operating cost per hour, as listed in the Blue Book, for each hour the rented equipment is actually in operation on the Extra Work. The Development Entity shall

furnish a copy of the invoice, receipt, or canceled check as support for the rental expense incurred.

(iv) Transportation charges for each piece of rented equipment, to and from the relevant Project Site, will be paid provided:

(A) Equipment is obtained from the nearest available source;

(B) Return charges do not exceed the delivery charges;

(C) Haul rates do not exceed the established rates of licensed haulers; and

(D) Charges are restricted to those units of equipment not readily available and not on or near the project.

**2.5 Services by Others**

For specialized construction analyses, engineering services, or work not considered subcontract work requiring prequalification, the Development Entity will be reimbursed the invoice price plus 2% to cover administration and all other costs. The Development Entity shall furnish a copy of the invoice, receipt, or canceled check as support for the expense incurred. The markup on service by others costs will be limited to 2% only, regardless of whether the service was arranged by the Development Entity, the D&C Contractor or any other Contractor performing any or all of the Extra Work. The overhead and profit allowances specified in Section 2.8 (Overhead and Profit) below are not applicable to service by others costs.

**2.6 Permits and Insurance**

When specifically required for the force account Extra Work, as directed, the securing of permits or specialized insurance coverage, of a type not already required by this PPA, will be considered a service by others, as specified in Section 2.5 (Services by Others) above, and reimbursement of the permit fee or insurance premium paid will be allowed plus the specified markup.

**2.7 Subcontracting**

If any or all of the Extra Work is to be performed by a Contractor other than the D&C Contractor, such work must be considered subcontract work requiring prequalification and the D&C Contractor's need to subcontract the work must be approved. Payment for work performed by a Contractor other than the D&C Contractor will be determined based on a complete statement of applicable material, labor, and equipment costs, computed as specified herein, plus applicable markups for overhead and profit.

**2.8 Overhead and Profit**

Except for Extra Work considered to be service by others, as specified in Section 2.5 (Service by Others) above, to cover all administration, general and project superintendence, other overhead, bonds, insurance, anticipated profit, and use of small tools and equipment for which no rental is allowed, 20% will be added to the total material cost, 35% will be added to the total labor cost, and 5% will be added to the total equipment cost. If applicable, in addition to the above markups, 6% will be added to the total cost of any Extra Work performed by a Contractor other than the

D&C Contractor as approved subcontract work as specified in Section 2.7 (Subcontracting) above.

## 3. STATEMENTS AND FINAL PAYMENT

### 3.1 Statements

(a) The Development Entity shall furnish for Department review an itemized statement of all Extra Work costs, in the form of a properly completed force account record, detailed as follows:

(i) Name, classification, work dates, daily hours, total hours, base pay rate, fringe benefit rate, total pay rate and extension (as relevant) for each foreperson; equipment operator; and skilled, semi-skilled, and common laborer in respect of Extra Work consisting of Construction Work and for each architect, engineer, designer, draftsman and other technical employee of the Contractor in respect of Extra Work consisting of Design Work;

(ii) Description (year, make, model, capacity, etc.), use dates, daily hours, total hours, rental rates (operating and standby) and extension for each piece of rented equipment and/or description, rental cost, transportation costs (if separate), and extension for each piece of rented equipment;

(iii) Description, quantity, unit price and extension for all materials, applicable sales tax, and transportation costs charged by any relevant Supplier;

(iv) Name, description, unit price and extension for all services by others; and

(v) Rates (legally required, estimated effective, or policy percentage) paid for unemployment taxes, medicare tax, and social security tax.

(b) Statements of labor costs are to be supported by certified payroll records.

(c) Statements of material costs (including sales tax and transportation costs), rented equipment costs and service by others costs are to be supported and accompanied by invoices.

(d) If materials used in the Extra Work are not specifically purchased for such Extra Work but are taken from the relevant Contractor's stock or provided by entities that are divisions, affiliates, subsidiaries or in any other way related to such Contractor or its parent company, such Contractor shall furnish an affidavit certifying that the materials were obtained as described above, that the quantity claimed was actually used, and that the price and transportation costs claimed were actually incurred.

### 3.2 Final Payment

(a) Final payment will not be made for Extra Work performed until the Development Entity has furnished to the Department all statements and applicable supporting documentation described in Section 3.1 (Statements).

(b) Payment for all Extra Work is accepted as payment in full for all profit and for all equipment, labor, material, field overhead, home office and general administrative expenses, and every other

expense incurred as a result of the Extra Work. No claims for additional compensation of any kind arising out of or relating to such Extra Work can be asserted against the Department with the Board of Claims.

## SCHEDULE 20

## CONDITIONS PRECEDENT TO NOTICES TO PROCEED

## PART 1

## CONDITIONS PRECEDENT TO NTP1

(1) The Commercial Closing Date has occurred.

(2) The Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents, the detailed "DBE Performance Plan" describing the methods to be employed for achieving the Department's DBE goals for the Project, including the Development Entity's exercise of GFE and the requirements set out in Attachment 9 to Schedule 15 (Federal Requirements) of this PPA.

(3) All Insurance Policies required to be procured under Schedule 9 (Insurance Coverage Requirements) as of NTP1 have been obtained and are in full force and effect in accordance with Article 19 (Insurance) and the Development Entity has delivered to the Department written verification of insurance coverage as required by Article 19 (Insurance).

## PART 2

## CONDITIONS PRECEDENT TO NTP2

(1) NTP1 has been issued.

(2) The Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents:

(a) the Project Management Plan (including all sub-component plans) as set out in Section 2 and Table 2-1 of the Technical Provisions; and

(b) the Project Baseline Schedule and all component parts thereof.

(3) The Development Entity has satisfied all other requirements of the Project Documents that are required to be satisfied prior to commencement of Design Work, in the form and content required therein.

(4) All Insurance Policies required to be procured under Schedule 9 (Insurance Coverage Requirements) as of NTP2 have been obtained and are in full force and effect in accordance with Article 19 (Insurance) and the Development Entity has delivered to the Department written verification of insurance coverage as required by Article 19 (Insurance).

(5) The Construction Quality Acceptance Firm has been appointed in accordance with Section 2 (Project Management) of the Technical Provisions.

(6) The Development Entity has provided the Department with a copy of the contract enterted into between the Development Entity and the Construction Quality Acceptance Firm for approval in accordance with Section 2.2.3 (Quality of Construction Work) of the Technical Provisions.

## PART 3

## CONDITIONS PRECEDENT TO NTP3

(1) NTP2 has been issued.

(2) All necessary Governmental Approvals necessary to begin the applicable elements of the Construction Work have been obtained and the Development Entity has furnished to the Department fully executed copies of such Governmental Approvals.

(3) To the extent that any Governmental Approvals contain conditions that must be satisfied before the relevant elements of the Construction Work can commence, satisfaction of such conditions and demonstration of the same to the Department.

(4) The Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents, each of items 22 through 72 set out in Attachment 2-2 (Submittals Summary Table) to the Technical Provisions in respect of the relevant Replacement Bridge.

(5) The Development Entity has satisfied all other requirements of the Project Documents that are required to be satisfied prior to commencement of the applicable elements of the Construction Work, including delivery to the Department of all Submittals relating to the applicable elements of the Construction Work required by the Project Management Plan or the Project Documents, in the form and content required therein.

(6) All Insurance Policies required to be procured under Schedule 9 (Insurance Coverage Requirements) as of NTP3 have been obtained and are in full force and effect in accordance with Article 19 (Insurance) and the Development Entity has delivered to the Department written verification of insurance coverage as required by Article 19 (Insurance).

(7) The Development Entity has issued a written notice to the Department requesting the issuance of NTP3 in respect of the relevant Replacement Bridge.

(8) The "DBE Performance Plan" delivered by the Development Entity in accordance with clause (2) of Part 1 (Conditions Precedent to NTP1) of this Schedule 20 (Conditions Precedent to Notices to Proceed) has been updated as relevant in accordance with Attachment 9 to Schedule 15 (Federal Requirements) of this PPA.

## SCHEDULE 21

## CONDITIONS PRECEDENT TO SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE

## PART 1

## SUBSTANTIAL COMPLETION OF A REPLACEMENT BRIDGE

(1) All lanes of the relevant Replacement Bridge set out in the Final Design Documents are in their final configuration and available for normal and safe use and operation (without temporary traffic controls).

(2) The relevant Replacement Bridge is able to pass an inspection pursuant to federal National Bridge Inspection Standards with a minimum NBIS bridge rating of eight (8).

(3) Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents, each of items 73 through 91 set out in Attachment 2-2 (Submittals Summary Table) to the Technical Provisions in respect of the relevant Replacement Bridge.

(4) No uncured Noncompliance Events exist with respect to the relevant Replacement Bridge.

(5) The Development Entity has otherwise completed the Design Work and Construction Work with respect to the relevant Replacement Bridge in accordance with the Project Documents, Final Design Documents and Construction Documents.

(6) All Utility Relocation Work relating to the relevant Replacement Bridge has been completed in accordance all relevant agreements and utility clearances in respect of such Utility Relocation Work.

(7) All Insurance Policies required under Article 19 (Insurance) for the Maintenance Work to be performed on the relevant Replacement Bridge have been obtained and are in full force and effect, and the Development Entity has delivered to the Department verification of insurance coverage as required by Article 19 (Insurance).

## PART 2

## FINAL ACCEPTANCE OF A REPLACEMENT BRIDGE

(1) Substantial Completion has occurred with respect to the relevant Replacement Bridge.

(2) All Punch List items in respect of the relevant Replacement Bridge have been completed in accordance with the requirements of the Project Documents.

(3) All Submittals for the Design Work and Construction Work that the Development Entity is required by the Project Documents to submit after Substantial Completion of the relevant Replacement Bridge have been submitted to the Department.

(4) The Department has received a complete set of the As-Built Drawings for the relevant Replacement Bridge, in the form required under the Project Documents.

(5) If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the relevant Replacement Bridge, including any certification from the Engineer of Record for the Project, the Development Entity has caused such certificates to be delivered and has concurrently issued identical certificates to the Department.

(6) With respect to the relevant Replacement Bridge, the Development Entity has restored to their original condition any lands provided by the Department for temporary access and other activities not forming part of the Replacement Bridge.

(7) Development Entity has caused to be developed and delivered to the Department, and the Department has approved, in accordance with the terms of the Project Documents:

(a) items 92 through 97 set out in Attachment 2-2 (Submittals Summary Table) to the Technical Provisions in respect of the relevant Replacement Bridge;

(b) an updated Maintenance Management Plan in respect of the relevant Replacement Bridge, reflecting As-Built Drawings and final Maintenance Limits with respect to the Replacement Bridge pursuant to Section 17 (Maintenance Work) of the Technical Provisions; and

(c) the As-Built Schedule with respect to the relevant Replacement Bridge.

(8) No uncured Noncompliance Events exist with respect to the relevant Replacement Bridge.

(9) All of the conditions of the Governmental Approvals relating to the relevant Replacement Bridge that relate to Design Work or Construction Work have been satisfied in full.

(10) All Governmental Approvals (if any) required to perform the Maintenance Work in respect of the relevant Replacement Bridge are in place, have been provided to the Department and are not subject to appeal.

(11) The Development Entity has certified to the Department in writing that no overdue amounts owing to any first-tier Contractor with respect to the relevant Replacement Bridge remain unpaid (except for amounts relating to good faith disputes).

(12) All demobilization from the relevant Project Site is complete, including the removal of temporary work and equipment used in the performance of the Construction Work, but not required for the Maintenance Work.

(13) All aesthetic and landscaping work with respect to the relevant Replacement Bridge has been completed in accordance with the requirements of the Project Documents.

**FORM 1**

**FORM OF DIRECT AGREEMENT**

# DIRECT AGREEMENT

**[ ]**

**By and Among**

**THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**
**as the Department**

**and**

**[●]**
**as the Development Entity**

**and**

**[●]**
**as Collateral Agent**

**relating to the Pennsylvania Rapid Bridge Replacement Project**

## CONTENTS

**Clause** **Page**


1. Definitions, Project Documents and Order of Precedence ..... 351
2. Consent to Security and Notices ..... 355
3. Rights and Obligations during the Cure Period ..... 357
4. Step-In Arrangements ..... 358
5. Substitution Proposals ..... 360
6. Substitution ..... 361
7. Reinstatement of Remedies ..... 363
8. Impact of Bankruptcy or Insolvency Proceedings ..... 363
9. Termination of this Agreement ..... 364
10. Preservation of Funds ..... 364
11. Competing Step-In Rights ..... 364
12. General Provisions ..... 365

Signatories ..... 371


**Annex**


1. Form of Step-In Entity Accession Agreement ..... 373
2. Form of Substitute Accession Agreement ..... 375
3. Financing Documents ..... 377

**THIS DIRECT AGREEMENT** (this **Agreement**) is made and entered into as of [●]

**BY** and **AMONG**:

(1) **THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**, a [●](the **Department**);

(2) **[●]**, a [●] (the **Development Entity**); and

(3) **[●]** as collateral agent for the Lenders (the **Collateral Agent**).

**RECITALS**:

(A) **WHEREAS**, the Department and the Development Entity have entered into that certain Public-Private Transportation Partnership Agreement dated as of [●], as the same may be amended or modified from time to time (the **PPA**), in connection with the design, construction, financing, and maintenance of the Replacement Bridges, and all associated work products and activities related thereto, as more fully described in the PPA (the **Project**);

(B) **WHEREAS**, the Collateral Agent is the collateral agent for the various providers (collectively, the **Lenders**) of senior debt (the **Senior Debt**) to the Development Entity pursuant to the Financing Documents (as defined in the PPA) as the same may be modified, replaced or amended from time to time, the proceeds of which will be provided to the Development Entity and used by the Development Entity to perform, in part, its obligations under the PPA;

(C) **WHEREAS**, pursuant to the Financing Documents the provision by the Lenders of the Senior Debt to the Development Entity is conditioned upon the Department providing the Lenders with certain assurances (as more particularly set out in this Agreement); and

(D) **WHEREAS**, this Agreement is, for the purposes of the PPA, the Direct Agreement referred to therein.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

## 1. DEFINITIONS, PROJECT DOCUMENTS AND ORDER OF PRECEDENCE

### 1.1 Definitions

Capitalized terms used herein but not otherwise defined in this Agreement shall have the respective meanings set out in Schedule 1 (Definitions) to the PPA. In addition, the following terms have the meanings specified below:

**Bankruptcy Related Default** means a Development Entity Default that arises pursuant to Section 22.1(h) of the PPA.

**Collateral Agent Notice** has the meaning given to it in Section 2.2(d)(i).

**Cure Period** means the period commencing on the date that the Collateral Agent receives a Department Notice pursuant to Section 2.2(a) and ending on the earliest of:

(a) the relevant Cure Period Completion Date;

(b) any Step-out Date or Substitution Effective Date; or

(c) the last day of the Term.

**Cure Period Completion Date** means, subject to Section 8.2:

(a) with respect to any Payment Default, the date falling 30 Days after the later of (i) the date that the Collateral Agent receives the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Development Entity pursuant to Section 22.3 (Initial Notice and Cure Periods) of the PPA;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the later of (i) the date that the Collateral Agent receives the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Development Entity pursuant to Section 22.3 (Initial Notice and Cure Periods) of the PPA;

(c) with respect to any Non-Completion Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; provided, however, that such period shall be extended by such reasonable period of time as may be required to achieve Substantial Project Completion (subject to a maximum extension of 275 Days), but only to the extent that:

    (i) there is a reasonable prospect of achieving Substantial Project Completion within 365 Days of the relevant Department Notice; and

    (ii) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan in relation to achieving Substantial Project Completion; and

(d) with respect to any Development Entity Default not referred to in clauses (a) through (c) above, the date falling 90 Days after the later of (i) the date that the relevant Department Notice is received by the Collateral Agent, and (ii) expiration of any applicable cure period granted to the Development Entity pursuant to Section 22.3 (Initial Notice and Cure Periods) of the PPA; provided, however, that such period shall, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

    (i) within the aforementioned 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant Development Entity Default; and

    (ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of the Department) a reasonable period of time to remedy the relevant Development Entity Default.

**Department Notice** has the meaning given to it in Section 2.2(a).

**Designated Account** means [●].

**Discharge Date** means the date on which all of the obligations of the Development Entity under the Financing Documents have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

**Event of Default** has the meaning given to such term in the Financing Documents[20].

**Financing Assignment** means any pledge, hypothecation, assignment, or other security instrument pledging, hypothecating, assigning or granting any other security interest in the Development Entity's Interest as pursuant to the Financing Documents.

**Initial Equity Members** means the Equity Members as of the date of this Agreement.

**Initial Period** means:

(a) with respect to any Payment Default, the later of (i) the date falling 30 Days after the date that the Collateral Agent received the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Development Entity pursuant to Section 22.3 (Initial Notice and Cure Periods) of the PPA; and

(b) with respect to any other Development Entity Default not referred to in (a) above, the later of (i) date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Development Entity pursuant to Section 22.3 (Initial Notice and Cure Periods) of the PPA

in each case, as may be extended pursuant to Section 8.2.

**Key Ratios** means [●][21]

**Lenders' D&C Direct Agreement** means the agreement entered into on or about the date of this Agreement between the D&C Contractor, the Collateral Agent and the Development Entity in connection with the D&C Contract.

**Non-Completion Default** means a Development Entity Default that arises pursuant to Section 22.1(k)(ii) of the PPA.

**Payment Default** means a Development Entity Default that arises pursuant to Section 22.1(c) of the PPA that has not been cured within a period of thirty (30) days of the Development Entity receiving written notice from the Department of such Development Entity Default.

**Property** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

**Qualified Substitute Development Entity** means a Person who:

(a) has the legal capacity, power and authority to become a party to, and perform the obligations of the Development Entity under, the PPA;

[20] This definition must refer to the definition of "Event of Default" (or equivalent) in the Financing Documents.
[21] To be completed based on relevant ratios in the Financing Documents.

(b) has the resources available to it (including committed financial resources) to perform the obligations of the Development Entity under the PPA;

(c) is not a Prohibited Person;

(d) employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Development Entity under the PPA; and

(e) has not been:

(i) debarred or prohibited from participating in state or federally-funded projects;

(ii) indicted, convicted, pled guilty or *nolo contendere* to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity; or

(iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

**Step-in Date** has the meaning given to it in Section 4.1(c).

**Step-in Entity** has the meaning given to it in Section 4.1(b).

**Step-in Entity Accession Agreement** means the agreement to be entered into by a Step-in Entity pursuant to Section 4.1(c).

**Step-in Notice** has the meaning given to it in Section 4.1(a).

**Step-in Period** in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

(a) the last day of the Cure Period;

(b) the Substitution Effective Date;

(c) the Step-out Date;

(d) the date of termination of the PPA by the Department in accordance with this Agreement and the PPA; and

(e) the last day of the Term.

**Step-out Date** in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.3.

**Step-out Notice** has the meaning given to it in Section 4.3(a).

**Substitute** has the meaning given to it in Section 5.1.

**Substitute Accession Agreement** means the agreement to be entered into by a Substitute pursuant to Section 6.1.

**Substitution Effective Date** has the meaning given to it in Section 6.1.

**Substitution Notice** has the meaning given to it in Section 5.1.

### 1.2 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the PPA and the provisions of this Agreement, the provisions of this Agreement shall prevail.

### 1.3 No Effect on PPA

Nothing in this Agreement amends or modifies any of the Development Entity's obligations to the Department under the PPA.

## 2. CONSENT TO SECURITY AND NOTICES

### 2.1 Consent to Security

Notwithstanding anything to the contrary in the Project Documents:

(a) the Department acknowledges notice and receipt of and consents to:

(i) the collateral assignment by the Development Entity to the Collateral Agent of all of the Development Entity's Interest pursuant to the Financing Documents;

(ii) the grant by each of the Initial Equity Members to the Collateral Agent of a security interest in its respective equity interest(s) in the Development Entity, in each case pursuant to the Financing Documents; and

(iii) the grant of the security interests set out in the Security Documents set out in Section 2 (Security Documents) of Annex 3 hereto;

(b) none of the security interests referred to in Section 2.1(a):

(i) constitutes (or with the giving of notice or lapse of time, or both, could constitute) either a breach of the PPA or a Development Entity Default; or

(ii) requires any consent of the Department that is either additional or supplemental to those granted pursuant to this Section 2.1;

(c) for the avoidance of doubt, the Collateral Agent shall not, by virtue of the security interests referred to in Section 2.1(a), acquire any greater rights to the Development Entity's Interest than the Development Entity itself has at any particular time pursuant to the PPA; and

(d) for so long as any amount under the Financing Documents is outstanding, the Department shall not, without the prior written consent of the Collateral Agent (to the extent such consent is required under the Financing Documents), consent to any assignment, transfer, pledge or

hypothecation of the PPA or any interest therein by the Development Entity, other than as specified in this Agreement.

**2.2 Notice Requirements**

(a) The Department shall give the Collateral Agent written notice (a **Department Notice**) promptly upon becoming aware of the occurrence of any Development Entity Default giving rise to the Department's right to terminate the PPA, and shall specify in the Department Notice:

(i) the unperformed obligations of the Development Entity under the PPA of which the Department is aware (having made reasonable inquiry) and the grounds for termination of the PPA in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Development Entity resulting therefrom;

(ii) all amounts due and payable by the Development Entity to the Department under the PPA, if any, on or before the date of the Department Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the PPA, the nature of the Development Entity's obligation to pay such amounts; and

(iii) the amount of any payments that the Department reasonably foresees will become due from the Development Entity during the applicable Cure Period.

(b) The Department shall from time to time update any Department Notice issued pursuant to Section 2.2(a) as and when it becomes aware of any unperformed obligations of the Development Entity (including non-payment of amounts that have become due) under the PPA that were not specified in the relevant Department Notice.

(c) For the avoidance of doubt, nothing in this Agreement shall prevent the concurrent running of multiple Department Notices.

(d) The Collateral Agent shall:

(i) promptly upon becoming aware of any Event of Default (whether or not a Department Notice has been served in connection with the same event) give the Department written notice (a **Collateral Agent Notice**);

(ii) specify in any Collateral Agent Notice the circumstances and nature of the Event of Default to which the Collateral Agent Notice relates; and

(iii) notify the Department of any decision to accelerate amounts outstanding under the Financing Documents or to exercise any enforcement remedies under the Financing Documents promptly upon the taking of such decision.

**2.3 Department Payments under the PPA**

The Department shall, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the PPA into the Designated Account and the Development Entity agrees that any payment made in accordance with this Section 2.3 shall constitute a complete discharge of the Department's relevant payment obligations under the PPA.

## 3. RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD

### 3.1 No Termination during the Cure Period

At any time during a Cure Period, the Department shall not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the PPA for Development Entity Default; or

(b) take, join in or support, whether directly or indirectly, any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Development Entity or for the composition or readjustment of the Development Entity's debts, or any similar insolvency procedure in relation to the Development Entity, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Development Entity or for any part of the Development Entity's Property provided, however, that, for the avoidance of doubt, if and after any of the foregoing have been commenced with respect to the Development Entity by a Person other than the Department, this clause (b) shall not otherwise restrict or impair the ability of the Department to participate in any way in such liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Development Entity or for the composition or readjustment of the Development Entity's debts, or any similar insolvency procedure in relation to the Development Entity, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Development Entity or for any part of the Development Entity's Property.

### 3.2 Collateral Agent Rights

(a) At any time during an Event of Default (but, in the case of a Development Entity Default, only for so long as the Initial Period has not expired), without giving a Step-in Notice, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Development Entity under the Project Documents, or remedy any breach of the Development Entity thereunder at any time, which performance or remedy by or on behalf of the Collateral Agent shall be accepted by the Department in lieu of performance by the Development Entity and in satisfaction of the Development Entity's corresponding obligations under the Project Documents. To the extent that any breach of the Development Entity under the Project Documents is remedied and/or any payment liabilities or obligations of the Development Entity are performed by the Collateral Agent under this Section 3.2(a), such action shall discharge the relevant liabilities or obligations of the Development Entity to the Department. No such performance by or on behalf of the Collateral Agent under this Section 3.2(a) shall be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of the Development Entity under the Project Documents.

(b) At any time during a Cure Period or an Event of Default, the Collateral Agent may:

(i) issue a Step-in Notice in accordance with the requirements of Section 4.1; or

(ii) issue a Substitution Notice in accordance with the requirements of Section 5.1.

## 4. STEP-IN ARRANGEMENTS

### 4.1 Step-in Notice

(a) Provided that all unperformed payment obligations of the Development Entity identified in a Department Notice shall have been remedied in full or waived by the Department on or before the Step-in Date, the Collateral Agent may provide the Department with a written notice (**Step-in Notice**) under this Section 4.1 at any time during any Cure Period or Event of Default.

(b) The Collateral Agent shall nominate, in any Step-in Notice, any one of:

(i) the Collateral Agent, a Lender or any of their respective Affiliates that is not a Prohibited Person; or

(ii) any Person approved by the Department in its discretion, such approval not to be unreasonably withheld, conditioned or delayed if such Person meets all the criteria to be a Qualified Substitute Development Entity and the Department has been provided with the relevant information required under Section 5.3 with respect to such Person (it being understood that if the Department has failed to respond to the Collateral Agent within 60 Days of the date on which the Department has received the information specified in Section 5.3 in respect of any such nominated Person, the approval of the Department shall be deemed to have been given),

(each a **Step-in Entity**), stating that the Step-in Entity is to become a joint and several obligor with the Development Entity under the PPA and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice shall be deemed to become a party to the PPA and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-In Entity Accession Agreement), and submits it to the Department (the **Step-in Date**).

### 4.2 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity shall be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Development Entity under the PPA and this Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with the Development Entity for the payment of all sums due from the Development Entity under or arising out of the PPA at the Step-in Date and for the performance of all of the Development Entity's obligations under or arising out of the PPA on or after the Step-in Date.

(b) Without prejudice to Article 7 (Reinstatement of Remedies), during the Step-in Period:

(i) the Department undertakes:

(A) not to terminate or give notice terminating the PPA for Development Entity Default, unless:

I. the grounds for termination or giving notice of termination arose during the Step-in Period; or

II. the Step-in Entity fails to comply with the requirements of any plan agreed between the Department and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

(B) not to take, join in or support, whether directly or indirectly, any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Development Entity or for the composition or readjustment of the Development Entity's debts, or any similar insolvency procedure in relation to the Development Entity, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Development Entity or for any part of the Development Entity's Property provided, however, that, for the avoidance of doubt, if and after any of the foregoing have been commenced with respect to the Development Entity by a Person other than the Department, this clause (B) shall not otherwise restrict or impair the ability of the Department to participate in any way in such liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Development Entity or for the composition or readjustment of the Development Entity's debts, or any similar insolvency procedure in relation to the Development Entity, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Development Entity or for any part of the Development Entity's Property;

(C) not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to the Development Entity) under the PPA, unless the grounds for suspension of performance arose during the Step-in Period; and

(D) to continue to make payments required to be made to the Development Entity under the PPA to the Designated Account or to such other account as notified by the Collateral Agent to the Department.

(ii) the Department shall owe its obligations under the PPA and this Agreement to the Development Entity and such Step-in Entity jointly; provided, however, that:

(A) subject to Section 4.2(b)(ii)(B), the performance of such obligations by the Department in favor of either such Step-in Entity or the Development Entity shall be a good and effective discharge of such obligations under this Agreement and the PPA; and

(B) the Collateral Agent shall be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the

Department and the Development Entity) that, at all times thereafter while such Step-in Entity is deemed to be a party to the PPA and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the PPA and this Agreement.

(c) The Development Entity shall not be relieved from any of its obligations under the PPA, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the PPA pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.2(a) and Section 6.2(a).

### 4.3 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice (**Step-out Notice**) to the Department, terminate its obligations to the Department under the PPA and this Agreement, whereupon the Step-in Entity shall, upon the expiration of such notice, no longer be deemed to be a party to the PPA and this Agreement and shall be released from all obligations under the PPA and this Agreement. The obligations of the Department to the Step-in Entity in such capacity under the PPA and this Agreement shall also terminate upon the expiration of such notice.

(b) Nothing in this Section 4.3 shall have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the PPA or this Agreement by the Development Entity or the Step-in Entity during the Step-in Period.

## 5. SUBSTITUTION PROPOSALS

### 5.1 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Development Entity to assign its rights and obligations under the PPA and/or this Agreement to a Person (a **Substitute**) designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Financing Documents), the effectiveness of such assignment shall be conditional upon:

(a) the Collateral Agent issuing a notice (a **Substitution Notice**) to the Department requesting the prior approval of the proposed Substitute;

(b) the Department approving the identity of the proposed Substitute pursuant to Sections 5.2 or 5.4; and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.1.

### 5.2 Grounds for Refusing Approval

The Department shall only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

(a) the proposed Substitute is not a Qualified Substitute Development Entity; or

(b) subject to Section 6.4, there are outstanding breaches of the PPA that have been previously notified by the Department to the Collateral Agent and have not, to the reasonable satisfaction of the Department, been remedied or waived prior to the date of the Substitution Notice; unless the Department has approved (such approval not to be unreasonably withheld, conditioned or delayed) a plan specifying the remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

### 5.3 Provision of Information

The Collateral Agent shall, as soon as practicable, provide to the Department such information in relation to the proposed Substitute and any Person who, it is proposed, will enter into a material subcontract with the proposed Substitute in relation to the Project, as the Department shall reasonably require to enable it to reasonably determine whether the proposed Substitute is a Qualified Substitute Development Entity, including:

(a) the name and address of the proposed Substitute;

(b) unless such proposed Substitute is a publicly traded entity, the names of the proposed Substitute's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;

(c) the manner in which it is proposed to finance the proposed Substitute and the extent to which such financing is committed (to the extent relevant);

(d) copies of the proposed Substitute's most recent financial statements (and if available, such financial statements shall be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;

(e) a copy of the proposed Substitute's organizational documents;

(f) details of the resources available to the proposed Substitute and the proposed Substitute's appropriate qualifications, experience and technical competence available to the proposed Substitute to enable it to perform the obligations of the Development Entity under the PPA; and

(g) the names of the proposed Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

### 5.4 Deemed Approval

If the Department has failed to respond to the Collateral Agent within 60 Days of the date on which the Department has confirmed it has received the information specified in Section 5.3 in respect of any proposed Substitute, the approval of the Department shall be deemed to have been given.

## 6. SUBSTITUTION

### 6.1 Substitution Effective Date

If the Department approves (or is deemed to have approved) the identity of a proposed Substitute pursuant to Article 5 (Substitution Proposals), the Substitute shall execute a duly completed

Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to the Department (with a copy of it to the other parties to this Agreement). Such assignment shall become effective on and from the date on which the Department countersigns the Substitute Accession Agreement or the date that is ten Days after the date the Department receives the completed Substitute Accession Agreement if the Department fails to countersign the Substitute Accession Agreement (the **Substitution Effective Date**).

**6.2 Effectiveness of Substitution**

On and from the Substitution Effective Date:

(a) such Substitute shall become a party to the PPA and this Agreement in place of the Development Entity who shall be immediately released from its obligations arising under, and cease to be a party to, the PPA and this Agreement from that Substitution Effective Date; and

(b) such Substitute shall exercise and enjoy the rights and perform the obligations of the Development Entity under the PPA and this Agreement, including, without limitation, any and all undischarged obligations of the Development Entity that were otherwise required to be performed by the Development Entity prior to the Substitution Effective Date; and

(c) the Department shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Development Entity prior to the Substitution Effective Date) under the PPA and this Agreement to such Substitute in place of the Development Entity and any Step-in Entity.

**6.3 Facilitation of Transfer**

The Department shall use its reasonable efforts to facilitate the transfer to the Substitute of the Development Entity's obligations under the PPA and this Agreement.

**6.4 Settlement of Outstanding Financial Liabilities**

(a) The Substitute shall pay to the Department within 30 Days after the Substitution Effective Date any amount due from the Development Entity to the Department under the PPA and this Agreement as of the Substitution Effective Date (as notified by the Department to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.4(a), the Department shall be entitled to exercise its rights under the PPA in respect of the amount so due and unpaid.

**6.5 Consequences of Substitution**

On and from the Substitution Effective Date:

(a) subject to Section 6.4, any right of termination or any other right suspended by virtue of Section 3.1 shall be of no further effect and the Department shall not be entitled to terminate the PPA and this Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date;

(b) if any Step-in Entity is a party to or has any obligations under the PPA and this Agreement on the Substitution Effective Date, such Step-in Entity shall cease to be a party thereto and hereto and shall be discharged from all obligations thereunder and hereunder; and

(c) the Department shall enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Development Entity shall be replaced as a party by the Substitute.

## 7. REINSTATEMENT OF REMEDIES

If a Department Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the Department and:

(a) no Step-in Entity or Substitute becomes a party to the PPA and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the PPA and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the Department shall be entitled to:

(i) act upon any and all grounds for termination available to it in relation to the PPA in respect of Development Entity Defaults under the PPA that have not been remedied or waived by the Department;

(ii) pursue any and all claims and exercise any and all remedies against the Development Entity; and

(iii) if and to the extent that it is then entitled to do so under the PPA, take or support any action of the type referred to in Section 3.1(b).

## 8. IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS

### 8.1 Rejection of the PPA

(a) If the PPA is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Development Entity and, within 150 Days after such rejection or termination, the Collateral Agent shall so request and shall certify in writing to the Department that the Collateral Agent or the Collateral Agent's permitted designee or assignee, including a Qualified Substitute Development Entity, intends to perform the obligations of the Development Entity as and to the extent required under the PPA, the Department will execute and deliver to the Collateral Agent (or any Substitute satisfying the requirements of this Agreement if directed to do so by the Collateral Agent) a new PPA. The new PPA shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the PPA, except for any obligations that have been fulfilled by the Development Entity, any party acting on behalf of or stepping-in for the Development Entity or the Collateral Agent prior to such rejection or termination. References in this Agreement to the PPA shall be deemed also to refer to any such new PPA.

(b) The effectiveness of any new PPA referred to in Section 8.1(a) above will be conditional upon the Collateral Agent first reimbursing the Department in respect of its costs incurred in connection with the execution and delivery of such new PPA.

### 8.2 Extension of Cure Period Completion Date

If:

(a) the Collateral Agent is prohibited by any court order, bankruptcy or insolvency proceedings from remedying the Development Entity Default that is the subject of a Department Notice; or

(b) the Collateral Agent pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Project and possession, custody and control of the Project, but despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the Project,

then each of the relevant Cure Period Completion Date and Initial Period shall be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

## 9. TERMINATION OF THIS AGREEMENT

This Agreement shall remain in effect until the earliest to occur of:

(a) the Discharge Date;

(b) the time at which all of the parties' respective obligations and liabilities under the PPA and this Agreement have expired or have been satisfied in accordance with the terms of the PPA and this Agreement; and

(c) any assignment to a Substitute has occurred under Article 6 (Substitution) and the Department shall have entered into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Development Entity has been replaced as a party by the Substitute.

## 10. PRESERVATION OF FUNDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Financing Documents, the Collateral Agent agrees for itself and on behalf of the Lenders that it shall not exercise any rights under the Financing Documents or take any other steps that would prejudice the operation of Section 8.7 (Handback Reserve Account) of the PPA.

## 11. COMPETING STEP-IN RIGHTS

### 11.1 Subordination of Department Rights

Notwithstanding any provision in the D&C Direct Agreement to the contrary, the Department agrees that it will not exercise any rights of step-in, novation or other similar rights it may have under the D&C Direct Agreement until:

(a) the PPA has been terminated (other than pursuant to a transfer to a Substitute pursuant to Article 6 (Substitution)); or

(b) the expiration of any relevant period under the Lenders' D&C Direct Agreement in which the Collateral Agent is required or entitled to either exercise or procure the exercise of rights of step-in, novation, transfer or any similar right under the Lenders' D&C Direct Agreement; or

(c) if the Collateral Agent has exercised or procured the exercise of rights of step-in, novation, transfer or any similar right, the date of any step-out or similar event (howsoever defined) under the Lenders' D&C Direct Agreement has occurred.

### 11.2 Expiration of Lender Rights

The Collateral Agent shall notify the Department:

(a) promptly, and in any event, within five (5) Business Days of the date on which the Authorized Representative, the Collateral Agent and/or the Development Entity have exhausted all of their direct or indirect legal rights and remedies against the D&C Contractor under the Financing Documents or have determined not to exercise (or to cease exercising) or are not entitled to exercise the same; and

(b) of any decision by the Lenders whether or not to exercise any or all of their direct or indirect rights against the D&C Contractor under the Financing Documents or the D&C Contract (if they have not by then given notice under (a) above) by the date six (6) months after the date that the Department pays to the Development Entity the whole of the termination compensation (if any) that is payable to the Development Entity following termination of the PPA; and

(c) following receipt by the Department of such notice, all of the right, title and interest of the Collateral Agent or any other Lender against the D&C Contractor pursuant to the Financing Documents shall be subject and subordinated in all respects to all right, title and interest of the Department pursuant to the D&C Direct Agreement.

## 12. GENERAL PROVISIONS

### 12.1 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Development Entity to enter into this Agreement.

(c) The undersigned signatory for the Development Entity hereby represents and warrants that he or she is an officer of the Development Entity and that he or she has full and complete authority to enter into this Agreement on behalf of the Development Entity.

(d) The Development Entity hereby represents and warrants that the Development Entity has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Collateral Agent to enter into this Agreement.

(e) The Department hereby represents and warrants that:

(i) the Department has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(ii) the execution, delivery and performance of this Agreement, and the performance of the transactions contemplated hereby, have been duly and validly authorized by all necessary action of the Department; and

(iii) this Agreement has been duly and validly executed and delivered by the Department, and constitutes a valid and binding obligation of the Department, enforceable against the Department in accordance with its terms, subject only to:

(A) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Laws now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies;

(B) the effect of Applicable Laws governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;

(C) the effect of Applicable Law governing enforcement and collection of damages against the Department, including, without limitation, the doctrine of sovereign immunity; and

(D) Applicable Law concerning the review and approval of contracts, as to form and legality, by the Office of General Counsel of the Commonwealth and the Office of the Attorney General of the Commonwealth.

(f) The Department represents and warrants to the Collateral Agent that:

(a) there is no Department Default or, to its knowledge, Development Entity Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Department Default or, to its knowledge, a Development Entity Default, and no Department Default or, to its knowledge, Development Entity Default has occurred prior to the date hereof; and

(b) each representation and warranty made by it under Section 21.2 (Department Representations and Warranties) of the PPA is true and correct as of the date hereof.

These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

### 12.2 Public Information and Confidentiality

(a) The Department and the Collateral Agent will, for each other's benefit, comply with the requirements of the Project Documents with regard to the public disclosure of information as if any reference to the Development Entity therein was a reference to the Collateral Agent.

(b) The Department hereby approves disclosure by the Development Entity to the Collateral Agent, the Lenders and other agents of the Lenders, of the information, documents, reports, data, or records provided to, or prepared by, the Development Entity under the PPA, or prepared by any Development Entity's Contractor under the relevant Contract.

### 12.3 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any party of any right or remedy under this Agreement or law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

### 12.4 Non-collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, the Department shall have the right to terminate this Agreement without liability.

### 12.5 Disputes

(a) In the event of any dispute between the Department and the Collateral Agent under this Agreement, the parties shall resolve the dispute according to the dispute resolution procedures set out in the PPA, with the Collateral Agent having the same rights and obligations as the Development Entity under the dispute resolution procedures set out in Article 30 (Dispute Resolution Procedures) of the PPA.

(b) Nothing in Section 12.5(a) affects the Collateral Agent's rights and remedies against the Development Entity and the Development Entity's Interest under the Financing Documents and Financing Assignments or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

**12.6 Successors and Assigns**

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; provided, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Financing Documents. In connection with any such assignment or transfer, the Department agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**12.7 Severability**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**12.8 Prior Contracts Superseded**

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set out herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

**12.9 Notices and Communications**

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

The Pennsylvania Department of Transportation
Attention: [ ]
Facsimile: [ ]

*With copies to*:

[●]
Attention: [ ]

Facsimile: [ ]

If to the Development Entity:

[●]
Attention: [ ]
Facsimile: [ ]

*With copies to*:

[●]
Attention: [ ]
Facsimile: [ ]

If to the Collateral Agent:

[●]
Attention: [ ]
Facsimile: [ ]

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (**provided**, that the original is thereafter delivered as aforesaid).

**12.10 Effect of Breach**

Without prejudice to any rights a party may otherwise have, a breach of this Agreement shall not of itself give rise to a right to terminate the PPA.

**12.11 Counterparts**

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**12.12 No Third-Party Beneficiaries**

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

**12.13 No Partnership**

Nothing contained in this Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 12.13.

**12.14 No Interference**

The Development Entity joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

**12.15 Collateral Agent Liability**

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Article 4 (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity), Section 12.1 and Section 12.15(b), the Collateral Agent shall not have any liability to the Department under this Agreement, unless the Collateral Agent expressly assumes such liability in writing.

(b) The Department acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of the Development Entity's obligations under the PPA, except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

**12.16 Governing Law and Jurisdiction**

This Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. Each of the Development Entity and the Collateral Agent consents to the jurisdiction of any court of Pennsylvania and any federal courts in the Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Each of the Development Entity and the Collateral Agent agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Applicable Law.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

## SIGNATORIES

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF TRANSPORTATION**

By: _____
Secretary of Transportation

**APPROVED AS TO FORM AND LEGALITY**

By: _____
Department Agency Counsel

By: _____
Commission Agency Counsel

By: _____
Deputy General Counsel
Office of General Counsel

By: _____
Deputy Attorney General
Office of Attorney General

CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

By: _____
Comptroller

**[●]**,

[Development Entity]

By: _____

Name: _____

Title: _____

**[●]**

[Collateral Agent]

By: _____

Name: _____

Title: _____

## ANNEX 1

## FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[*Date*]

To: The Pennsylvania Department of Transportation:
[●]

Copied to: [●]
[Lenders and other parties to Financing Documents to be listed]
[insert address]
For the attention of: [●]

From: [Step-in Entity]

**THE PENNSYLVANIA RAPID BRIDGE REPLACEMENT PROJECT**
**STEP-IN ENTITY ACCESSION AGREEMENT**

Ladies and Gentlemen:

Reference is made to the Public-Private Transportation Partnership Agreement, dated as of **[●]** (as amended, amended and restated, supplemented or otherwise modified from time to time, the **PPA**), between The Pennsylvania Department of Transportation (the **Department**) and [●] (the **Development Entity**) and the Direct Agreement, dated as of **[●]** (as amended, amended and restated, supplemented or otherwise modified from time to time, the **Direct Agreement**), among the Department, the Development Entity and **[●]**, as Collateral Agent. Terms not otherwise defined herein shall have the same meaning given to them in the Direct Agreement.

We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the Direct Agreement.

1. We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the PPA and the Direct Agreement jointly and severally with the Development Entity as a Step-in Entity and, accordingly, shall have the rights and powers and assume the obligations of the Development Entity under the PPA and the Direct Agreement in accordance with the terms of the Direct Agreement.

2. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

   [*contact details of Step-in Entity*]

3. This Step-in Entity Accession Agreement shall be governed by, and construed in accordance with, the law of the Commonwealth. Venue for any legal action arising out of this Agreement shall lie in any Commonwealth court or U.S. Federal court sitting in the Commonwealth.

   The terms set out herein are hereby agreed to:

   **[**Step-in Entity**]**

   By _____
   Name:

Title:

## ANNEX 2

## FORM OF SUBSTITUTE ACCESSION AGREEMENT

[*Date*]

To The Pennsylvania Department of Transportation
[●]

Copied to: [●]

From: [Substitute]

**THE PENNSYLVANIA RAPID BRIDGE REPLACEMENT PROJECT**
**SUBSTITUTE ACCESSION AGREEMENT**

Ladies and Gentlemen:

Reference is made to the Public-Private Transportation Partnership Agreement, dated as of **[●]** (as amended, amended and restated, supplemented or otherwise modified from time to time, the **PPA**), between The Pennsylvania Department of Transportation (the **Department**) and [●] (the **Development Entity**) and the Direct Agreement, dated as of **[●]** (as amended, amended and restated, supplemented or otherwise modified from time to time, the **Direct Agreement**), among the Department, the Development Entity and **[●]**, as Collateral Agent.

Terms defined not otherwise defined herein shall have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Substitute pursuant to Article 6 (Substitution) of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the PPA and the Direct Agreement as a Substitute and, accordingly, shall have the rights and powers and assume the obligations of the Development Entity under the PPA and the Direct Agreement in accordance with the terms of the Direct Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

   [contact details of Substitute]

4. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the law of the Commonwealth. Venue for any legal action arising out of this Agreement shall lie in any Commonwealth court or U.S. Federal court sitting in the Commonwealth.

   The terms set out herein are hereby agreed to:

   [Substitute]

   By: _____

Name:
Title:

Agreed for and on behalf of:
The Pennsylvania Department of Transportation

By: _____
Name:
Title:

[*Provided under separate cover*]

## ANNEX 3

## FINANCING DOCUMENTS

### 1. FUNDING AGREEMENTS

(a) [List at Financial Close.]

### 2. SECURITY DOCUMENTS

(a) [*List at Financial Close*.]

**FORM 2**

**FORM OF D&C DIRECT AGREEMENT**

# D&C DIRECT AGREEMENT

**[ ]**

**Between**

**[●]**
**as D&C Contractor**

**[●]**
**as D&C Guarantor**

**THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**
**as the Department**

**and**

**[●]**
**as the Development Entity**

**relating to the Pennsylvania Rapid Bridge Replacement Project**

**CONTENTS**

**Clause** **Page**


1. Definitions and Interpretations ..... 380
2. The D&C Contractor's Warranty and Liability ..... 380
3. Documents ..... 381
4. Liability of Partners ..... 381
5. Notices ..... 382
6. Assignment ..... 383
7. Department's Remedies ..... 384
8. Inspection of Documents ..... 384
9. Step-in Rights in favor of the Department ..... 384
10. Governing Law and Jurisdiction ..... 385
11. Third Party Rights ..... 385
12. Counterparts, Facsimile or Other Electronic Execution ..... 385
13. Severability ..... 385
14. Entire Agreement, Amendment, Non-Waiver ..... 386

Signatories ..... 387

**THIS D&C DIRECT AGREEMENT** is made on [date].

**BETWEEN**

(1) **[●]**, a [●] (the **D&C Contractor**);

(2) **[●]** a [●] (the **D&C Guarantor**);

(3) **THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**, a [●] (the **Department**); and

(4) **[●]**, a [●] (the **Development Entity**),

and collectively, the **Parties**.

**BACKGROUND**

(A) By the Public-Private Transportation Partnership Agreement for the Pennsylvania Rapid Bridge Replacement Project dated [ ] (the **PPA**), the Department has appointed the Development Entity to carry out the Works.

(B) By a design and construction contract dated [ ] (the **D&C Contract**), the Development Entity has appointed the D&C Contractor to carry out the D&C Work in relation to the Project.

(C) By a parent guaranty (the **D&C Parent Guaranty**), the D&C Guarantor has guaranteed the obligations of the D&C Contractor under the D&C Contract.

(D) The D&C Contractor is obliged under the D&C Contract to give a direct agreement in this form in favor of the Department, and it is a condition precedent to the effectiveness of the PPA that this D&C Direct Agreement be executed.

**NOW, THEREFORE**, in consideration of the foregoing premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

## 1. DEFINITIONS AND INTERPRETATIONS

(a) In this D&C Direct Agreement, unless the context otherwise requires, the following expression shall have the following meaning:

**D&C Contractor Documents** means all Project Data (as defined in the PPA).

(b) Unless expressly defined otherwise in this D&C Direct Agreement, any defined term in this D&C Direct Agreement shall have the same meaning given to such term in the D&C Contract.

## 2. THE D&C CONTRACTOR'S WARRANTY AND LIABILITY

(a) The D&C Contractor warrants to the Department that it has carried out and will continue to carry out its duties under the D&C Contract in accordance with the D&C Contract and that it has exercised and

will continue to exercise in the performance of those duties the reasonable skill, care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the D&C Contract in relation to works of similar scope, nature and complexity to the D&C Work. In particular and without limiting the generality of the foregoing the D&C Contractor covenants with the Department that it has carried out and will carry out and complete the D&C Works in accordance with the D&C Contract and duly observe and perform all its duties and obligations thereunder.

(b) The D&C Contractor shall be entitled in any action or proceedings by the Department to raise equivalent rights in defense of liability (except for set off or counterclaim) as it would have against the Development Entity under the D&C Contract, and shall have no liability under this D&C Direct Agreement that is of greater severity or of longer duration than it would have had if the Department had been a party to the D&C Contract as joint employer.

## 3. DOCUMENTS

(a) To the extent that any Project Data is in the ownership or possession of the D&C Contractor and/or any Intellectual Property is owned or licensable by the D&C Contractor, the D&C Contractor undertakes (for the benefit of the Department) to comply with the terms of Section 27.1 (Intellectual Property) of the PPA as if such terms were incorporated into this D&C Direct Agreement and the D&C Contractor was the Development Entity.

(b) The D&C Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Department or those authorized by it access to the D&C Contractor Documents and to provide copies (including copy negatives and CAD disks) thereof at the Department's expense.

(c) The D&C Contractor warrants to the Department that it has used the standard of skill, care and diligence as set out in clause 2(a) to see that the D&C Contractor Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the D&C Works will not infringe the rights of any third party.

## 4. LIABILITY OF PARTNERS

Where the D&C Contractor is a partnership, references in this D&C Direct Agreement to the **D&C Contractor** will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this D&C Direct Agreement will be deemed to be joint and several.

## 5. NOTICES

(a) Notices under this D&C Direct Agreement shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by facsimile or e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such person):

(i) All notices, correspondence and other communications to D&C Contractor shall be delivered to the following address:

[●]

Address: [ ]

Attn: [ ]

Telephone: [ ]

Facsimile: [ ]

E-mail: [ ]

(ii) All notices, correspondence and other communications to the Development Entity shall be delivered to the following address or as otherwise directed by the Development Entity's Authorized Representative (as defined in the PPA):

[●]

Address: [ ]

Attn: [ ]

Telephone: [ ]

Facsimile: [ ]

E-mail: [ ]

(iii) All notices, correspondence and other communications to the Department shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by the Department's Authorized Representative (as defined in the PPA):

The Pennsylvania Department of Transport

Address: [ ]

Attn: [ ]

Telephone: [ ]

Facsimile: [ ]

E-mail: [ ]

(iv) All notices, correspondence and other communications to D&C Guarantor shall be delivered to the following address:

[●]

Address: [ ]

Attn: [ ]

Telephone: [ ]

Facsimile: [ ]

E-mail: [ ]

(v) In addition, copies of all notices regarding Disputes (as defined in the PPA), and termination and default notices shall be delivered to the following person:

[●]

Attn: [ ]

Telephone: [ ]

Facsimile: [ ]

E-mail: [ ]

(vi) Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m., Eastern Standard or Daylight Time (as applicable), and all other notices received after 5:00 p.m., Eastern Standard or Daylight Time (as applicable), shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m., Eastern Standard or Daylight Time (as applicable)).

## 6. ASSIGNMENT

No party to this D&C Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other party.

## 7. DEPARTMENT'S REMEDIES

The rights and benefits conferred upon the Department by this D&C Direct Agreement are in addition to any other rights and remedies it may have against the D&C Contractor, including without prejudice to the generality of the foregoing any remedies in negligence.

## 8. INSPECTION OF DOCUMENTS

Each of the D&C Contractor's and the D&C Guarantor's liabilities under this D&C Direct Agreement will not be in any way reduced or extinguished by reason of any inspection or approval of the D&C Contractor Documents or attendance at Project meetings or other enquiry or inspection which the Department may make or procure to be made for its benefit or on its behalf.

## 9. STEP-IN RIGHTS IN FAVOR OF THE DEPARTMENT

(a) Each of the D&C Contractor and the D&C Guarantor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated (as relevant) the D&C Contract and the D&C Parent Guaranty, or its engagement under it, or discontinue or suspend the performance of any duties or obligations thereunder (including the D&C Contractor's obligations with respect to the Performance Security) without first giving to the Department not less than forty-five (45) days' prior written notice specifying the D&C Contractor's and the D&C Guarantor's grounds for terminating or treating as terminated or repudiated (as relevant) the D&C Contract and the D&C Parent Guaranty, or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the D&C Contract and the D&C Parent Guaranty. Within such period of notice:

(i) the Department may give written notice to the D&C Contractor and D&C Guarantor that the Department will thenceforth become the Development Entity under the D&C Contract and the D&C Parent Guaranty to the exclusion of the Development Entity and thereupon each of the D&C Contractor and the D&C Guarantor will admit that the Department is the Development Entity under the D&C Contract and the D&C Parent Guaranty, respectively, and each of the D&C Contract and the D&C Parent Guaranty will be and remain in full force and effect notwithstanding any of the said grounds;

(ii) if the Department has given notice under clause 9(a)(i) or clause 9(c), the Department shall accept liability for the Development Entity's obligations under the D&C Contract and will as soon as practicable thereafter remedy any outstanding breach by the Development Entity which is capable of remedy by the Department; and

(iii) if the Department has given notice under clause 9(a)(i) or clause 9(c), the Department will from the service of such notice become responsible for all sums properly payable to the D&C Contractor under the D&C Contract accruing due before and after the service of such notice but the Department will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Development Entity under the D&C Contract.

(b) Notwithstanding anything contained in this D&C Direct Agreement and notwithstanding any payments which may be made by the Department to the D&C Contractor, the Department will not be under any obligation to the D&C Contractor or the D&C Guarantor nor will the D&C Contractor or the D&C Guarantor have any claim or cause of action against the Department unless and until the

Department has given written notice to the D&C Contractor and the D&C Guarantor pursuant to clause 9(a)(i) or clause 9(c).

(c) Each of the D&C Contractor and the D&C Guarantor further covenants with the Department that if the PPA is terminated by the Department, it will, if requested by the Department by notice in writing and subject to clause 9(a)(ii) and clause 9(a)(iii), accept the instructions of the Department to the exclusion of the Development Entity in respect of its duties under the D&C Contract or the D&C Parent Guaranty, as the case may be (other than with respect to any monetary claims that the Development Entity may have against the D&C Contractor or the D&C Guarantor that existed or accrued prior to the exercise by the Department of its rights hereunder), upon the terms and conditions thereof and will if so requested in writing enter into a novation agreement whereby the Department is substituted for the Development Entity under the D&C Contract and the D&C Parent Guaranty (other than with respect to such pre-existing monetary claims).

(d) The Development Entity acknowledges that each of the D&C Contractor and the D&C Guarantor will be entitled to rely on a notice given to it by the Department under clause 9(c) as conclusive evidence that the PPA has been terminated by the Department.

## 10. GOVERNING LAW AND JURISDICTION

This D&C Direct Agreement shall be governed by, and interpreted and enforced in accordance with, the Laws of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of Pennsylvania courts. Each of the Development Entity, the D&C Contractor and the D&C Guarantor consents to the jurisdiction of any court of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. Each of the Development Entity, the D&C Contractor and the D&C Guarantor agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Applicable Law.

## 11. THIRD PARTY RIGHTS

This D&C Direct Agreement is only enforceable by the original parties to it and by their successors in title and permitted assignees.

## 12. COUNTERPARTS, FACSIMILE OR OTHER ELECTRONIC EXECUTION

This D&C Direct Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Any copies hereof or signatures hereon delivered by facsimile or other electronic means shall, for all purposes, be deemed to be originals.

## 13. SEVERABILITY

If any term or provision of this D&C Direct Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In addition, the Parties shall endeavor in good-faith negotiations to replace any such invalid, illegal, or unenforceable provisions with valid, legal, and enforceable

provisions with the same or comparable economic effect and benefit as such invalid, illegal, or unenforceable provisions.

## 14. ENTIRE AGREEMENT, AMENDMENT, NON-WAIVER

This D&C Direct Agreement contains the entire agreement between the Parties, and supersedes all previous agreements between the Parties, relating to the transactions contemplated herein. Neither this D&C Direct Agreement nor any of the terms hereof may be amended, supplemented, terminated, waived or modified except by an instrument in writing signed by the Parties.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have executed this D&C Direct Agreement as of the date first written above.

**SIGNATORIES**

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF TRANSPORTATION**

By: _____
Secretary of Transportation

**APPROVED AS TO FORM AND LEGALITY**

By: _____
Department Agency Counsel

By: _____
Commission Agency Counsel

By: _____
Deputy General Counsel
Office of General Counsel

By: _____
Deputy Attorney General
Office of Attorney General

CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

By: _____
Comptroller

**[●]**
a [●]

By: _____

Name: _____

Title: _____

**[●]**
a [●]

By: _____

Name: _____

Title: _____

**[●]**
a [●]

By: _____

Name: _____

Title: _____

## FORM 3

## FORM OF FINANCIAL MODEL

[*To be attached following selection of the Preferred Proposer*.]

**FORM 4**

**FORM OF CLOSING SECURITY**

**PART 1**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

| | |
|---|---|
| ISSUER: | [●] |
| PLACE FOR PRESENTATION OF DRAFT IN PROGRESS: | (Name and Address of Bank/Branch—MUST be PHILADELPHIA, PENNSYLVANIA Bank/Branch) |
| APPLICANT: | [●] |
| BENEFICIARY: | PENNSYLVANIA DEPARTMENT OF TRANSPORTATION<br>P.O. Box 3545<br>400 North Street, 8th Floor,<br>Harrisburg, PA 17120-3545. |
| LETTER OF CREDIT NUMBER: | [●] |
| PLACE AND DATE OF ISSUE: | [●] |
| AMOUNT: | $[●] |
| EXPIRATION DATE: | [*Must be no earlier than 180 days following the Proposal Due Date*] |

Issuer hereby issues this Irrevocable Standby Letter of Credit (this **Letter of Credit**) in favor of Beneficiary for any sum or sums in the sum of up to **Twenty Million United States Dollars ($20,000,000)** pursuant to the Public-Private Transportation Partnership Agreement for the Pennsylvania Rapid Bridge Replacement Project dated [ ] between Beneficiary and Applicant (such amount, the **Stated Amount**). Funds under this Letter of Credit are available by draft at sight drawn on Issuer. Any draft under this Letter of Credit shall identify this Letter of Credit by the name of Issuer, and the Letter of Credit number, amount, and place and date of issue, and Beneficiary shall certify to Issuer that Beneficiary is entitled to draw on this Letter of Credit.

This Letter of Credit shall be honored by Issuer if presented at [PHILADELPHIA, PENNSYLVANIA Bank/Branch—Name and Address] on or before [*180 days following the date of announcement of the Preferred Proposer, or if such date is not a Business Day, the next succeeding Business Day*] (the **Expiration Date**). The obligations of Issuer hereunder are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by [*Name of Applicant*] under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against [*Name of Applicant*]. [*Name of Applicant*] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. This Letter of Credit shall terminate on the earlier of (a) the close of business on the Expiration Date and (b) the date on which Issuer has honored one or more draws in the full amount of the Stated Amount. This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a **Fax Drawing**) *provided, however*, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary's presentment by electronic mail to the electronic mail address provided to Issuer in the Fax Drawing.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 (**ISP98**), as interpreted under the laws of the Commonwealth of Pennsylvania, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Letter of Credit (**Proceedings**), we irrevocably:

(a) submit to the exclusive jurisdiction of any Commonwealth of Pennsylvania court or U.S. Federal court sitting in the Commonwealth of Pennsylvania; and

(b) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

Issuer:

By: _____

Name: [●]

Title: [●]

(Authorized Signatory of Issuer)

******* Please instruct your bank to have the Letter of Credit issued in the above format in "Draft" form and emailed to the Department (at the contact information provided in Section 32.10 of the PPA) for approval **PRIOR** to issuance in "Original" form. **If the draft is not reviewed in advance, the Letter of Credit can be rejected**. If you are in need of further assistance, please contact the Department's Authorized Representative. ****

## PART 2

## DEMAND GUARANTY

PLACE OF ISSUANCE: [Name and Address of Bank/Branch—MUST be Bank/Branch located in Philadelphia, Pennsylvania (the **Place of Issuance**)].

NAME AND ADDRESS OF OBLIGEE: Pennsylvania Department of Transportation, P.O. Box 3545, 400 North Street, 8th Floor, Harrisburg, PA 17120-3545.

Reference is made to that certain Public-Private Transportation Partnership Agreement (the **PPA**) for the Pennsylvania Rapid Bridge Replacement Project dated [ ] between the Obligee and [**NAME OF DEVELOPMENT ENTITY]** (the **Principal**). All terms used but not defined herein shall have their respective meanings set out in the PPA.

We have been informed that the Principal is entering into the PPA with the Obligee, and the obligations of the Principal thereunder prior to the Financial Closing Date is required by such PPA to be supported by Closing Security (which may be in the form of this demand guaranty (this **Guarantee**)).

At the request of the Principal, we **[NAME OF GUARANTOR]** (**Guarantor**) hereby irrevocably undertake to pay you, as Obligee, at the Place of Issuance any sum or sums not exceeding in total the amount of **Twenty Million United States Dollars ($20,000,000)** upon receipt by us of your demand in writing and your written statement (in the demand) stating the Principal is in breach of one or more of its commitments made pursuant to the PPA and the respect in which the Principal is in breach of such commitments.

Any demand of payment must contain your signature(s) which must be authenticated by your lawyers or by a notary public. The authenticated demand and statement must be received by us at this office on or before [***Must be no earlier than 180 days following the Proposal Due Date, or if such date is not a Business Day, the next succeeding Business Day]***, when this Guarantee shall expire and shall be returned to us.

To the extent not inconsistent with the express provisions hereof, this Guarantee is subject to the Uniform Rule for Demand Guarantees, published as number 458 by the International Chamber of Commerce (**URDG 458**), as interpreted under the laws of the Commonwealth of Pennsylvania, and shall, as to matters not governed by URDG 458, be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

| | |
|---|---|
| Dated _____ | Dated _____ |
| PRINCIPAL [Insert Name of Development Entity] | GUARANTOR [Insert Name of Guarantor] |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |

**FORM 5**

**FORM OF DEPARTMENT LEGAL OPINION**

**COMMONWEALTH OF PENNSYLVANIA**
GOVERNOR'S OFFICE OF GENERAL COUNSEL

[*Date*]

**TO: EACH OF THE PARTIES SET FORTH IN SCHEDULE 1 ATTACHED HERETO**

Ladies and Gentlemen:

As Chief Counsel, I am chief legal counsel for The Pennsylvania Department of Transportation (the **Department**), an executive agency of the Commonwealth of Pennsylvania (the **Commonwealth**), and in this capacity, I have examined the transactions contemplated by: (a) that certain Public-Private Transportation Partnership Agreement (the **PPA**) dated as of [●] between the Department and [●] (the **Development Entity**) and (b) that certain Direct Agreement (the **Direct Agreement**) dated as of [●] by and among the Department, the Development Entity and [●], as Collateral Agent. This opinion is being delivered solely in my capacity as Chief Counsel and at the express request of the Department. All terms used in this opinion and not otherwise expressly defined herein shall have the respective meanings assigned thereto or provided therefor in the PPA.

For purposes of rendering the opinions set forth herein, I have examined all applicable laws, and the following documents and such other materials as I deemed necessary or appropriate for the purposes hereof:

(a) the PPA;

(b) the Direct Agreement; and

(c) a transcript from the Summary Minutes of a meeting of the Commonwealth's Public Private Transportation Partnerships Board on September 27, 2013 in respect of the Project.

The documents described in (a) and (b), above, are collectively referred to herein as the **Transaction Documents**.

In rendering the opinions expressed herein, I have assumed, without independent investigation, (i) the genuineness of all signatures on the documents reviewed by me (**provided**, **however**, I am not assuming for purposes of the opinions herein the genuineness of signatures of individuals executing documents on behalf of the Department), (ii) the authenticity of all such documents submitted to me as originals, (iii) the

conformity to the originals of all such documents submitted to me as copies, (iv) the due execution of all documents by individuals authorized to execute them and the delivery of all such documents (**provided**, **however**, I am not assuming for purposes of the opinions herein the due execution and delivery of documents by individuals executing documents on behalf of the Department), (v) with respect to documents executed by parties other than the Department, that those parties executing those documents have the requisite power and authority to enter into and perform all obligations under those documents, that those documents are such parties' legal, valid and binding obligations enforceable against such parties in accordance with their terms and that all statements made therein by such parties are true and correct, (vi) the legal capacity of all natural persons executing documents (**provided**, **however**, I am not assuming for purposes of the opinions herein the legal capacity of natural persons executing documents on behalf of the Department), and (vii) that there are no oral or written statements or agreements that modify, amend, vary, annul or postpone, or purport to modify, amend, vary, annul or postpone, any of the terms of the Transaction Documents. As to questions of fact material to the opinions rendered herein, I have made such inquiry as in my judgment is appropriate under the circumstances.

To the extent that any opinion expressed herein is based upon "my knowledge", or words of similar import, these words imply that in the course of my representation of the Department in connection with this matter, no information has come to my attention or the attention of the attorneys currently rendering services to the Department in connection with this matter that would give us actual knowledge or actual notice of the existence or absence of facts which would change the opinions stated herein.

To the extent that this opinion deals with the application of law, it is limited as to the effect on the subject transaction only of the laws of the United States of America and the Commonwealth, and I express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or of principles of conflicts of laws.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions set forth herein, I am of the opinion that:

(a) The Department is an executive agency of the Commonwealth, and has the requisite power and authority to execute and deliver the Transaction Documents and to perform its obligations thereunder. The Transaction Documents have been duly authorized, executed and delivered by the Department and constitute the legal, valid and binding obligation of the Department enforceable against the Department in accordance with their respective terms; and such obligations of the Department under the Transaction Documents do not create any lien on, pledge of, or security interest in, any revenues, reserve funds or other property of the Department.

(b) None of (i) the authorization, execution or delivery by the Department of the Transaction Documents, (ii) the performance by the Department of its obligations under the Transaction Documents, or (iii) the consummation by the Department of the transactions contemplated in the Transaction Documents will (A) violate or contravene any law, rule or regulation applicable to and binding upon the Department, (B) conflict with, breach or contravene, or constitute a default of, in any material respect, the provisions of any material agreement to which the Department is a party or by which it is bound, or (C) contravene any pertinent resolution of the Department, or any ruling or order of any court of the United States of America or the Commonwealth applicable to and binding upon the Department.

(c) No approval, consent, authorization or other action by, or filing with, any court or any agency or authority of the United States of America or the Commonwealth is required in connection with the execution and delivery by the Department of the Transaction Documents or the performance by the Department of its obligations under the Transaction Documents except as set out in the Transaction Documents.

(d) There are no pending actions, suits or proceedings to which the Department is a party which purport to affect the legality, validity or enforceability of any Transaction Document, or which will materially adversely affect the ability of the Department to perform its obligations under any Transaction Document nor, to the best of my knowledge, has any such action, suit or proceeding been threatened in writing against the Department.

The opinions set forth above are subject to the following additional assumptions, qualifications and exceptions:

(i) The enforceability of the Transaction Documents is subject to, and limited by (A) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Laws now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies, (B) the effect of applicable laws governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity, (C) the effect of applicable law governing enforcement and collection of damages against the Department, including, without limitation, the doctrine of sovereign immunity; and (D) applicable law concerning the review and approval of contracts, as to form and legality, by the Office of General Counsel of the Commonwealth and the Office of the Attorney General of the Commonwealth, **provided**, **however**, the doctrine of sovereign immunity shall not bar an action to enforce a claim based on the breach of a contractual provision of any of the Transaction Documents to the extent of the limited waiver of sovereign immunity in Chapter 17 of the Commonwealth Procurement Code, 62 Pa.C.S. §§ 1701 et seq. and provided the claim is presented in accordance with the laws of the Commonwealth.

(ii) I express no opinion as to the nature or extent of the Department's rights in, or title to, any property, or to the existence or priority of any lien or security interest applicable to any property.

(iii) I express no opinion herein as to whether a court would limit enforcement of any of the enforcing party's rights or remedies under the Transaction Documents if the enforcement thereof under the circumstances would violate an implied covenant of good faith and fair dealing.

(iv) I express no opinion as to the enforceability of any (A) provisions which purport to waive procedural, judicial or substantive rights to the extent not waiveable under applicable law or to restrict access to legal or equitable remedies or which purport to establish evidentiary standards, (B) provisions relating to subrogation rights, suretyship, delay or omission of enforcement of rights or remedies, agreements to agree on future acts, prohibitions against the transfer, alienation, or hypothecation of property, consent judgments or marshaling of assets, (C) remedies in respect of a breach that is not material or does not adversely affect the enforcing party, (D) provisions exculpating any party

from liability for its acts or omissions to the extent the acts or omissions involve gross negligence, recklessness, willful misconduct or unlawful conduct, and (E) provisions imposing penalties, or default rates of interest or late payment charges upon delinquency in payment or the occurrence of a default or event of default, to the extent they are deemed to be penalties or forfeitures.

(v) I express no opinion on (A) the securities laws of the United States of America or the Commonwealth, (B) the environmental laws of the United States of America or the Commonwealth, (C) the Internal Revenue Code of 1986 and all rules and regulations promulgated thereunder and (D) the statutes, ordinances, administrative decisions, rules, regulations and laws of counties, towns, municipalities, political subdivisions and other similar local governmental units of the Commonwealth (including, without limitation, those pertaining to zoning and other real property and land use matters, and other local law matters of any kind).

This opinion is delivered to you upon the request of the Department, solely for your benefit in connection with the referenced transaction and may not be quoted or relied on by any other person, or used for any other purpose, without our prior written consent. No opinion is to be implied or inferred beyond the opinions expressly stated herein.

The opinions expressed herein are based upon the law in effect on the date hereof, and I assume no obligation to revise, supplement or update this opinion or otherwise advise you of any matters after the date hereof should such law be changed by legislative action, judicial decision or otherwise.

Very truly yours,

William J. Cressler
Chief Counsel

## SCHEDULE 1

## PARTIES TO WHOM LEGAL OPINION IS ADDRESSED

[*Development Entity*]
[ADDRESS]

[*Equity Members*]
[ADDRESSES]

[*Lenders*]
[ADDRESSES]

cc: [●]
The Pennsylvania Department of Transportation

## APPENDIX 1

## DEVELOPMENT ENTITY'S PROPOSAL COMMITMENTS

[*To be attached following selection of the Preferred Proposer.*]

## APPENDIX 2

## LIST OF EQUITY MEMBERS, QUALIFIED INVESTORS AND RELATED ENTITIES

[*To be attached following selection of the Preferred Proposer.*]