

Georgia DOT Project: I-285 Topend East side Express Lanes
GDOT P.I. 0001758

DESIGN BUILD FINANCE MAINTAIN (DBFM) MEMORANDUM OF UNDERSTANDING

Between the
Georgia Department of Transportation (hereinafter DEPARTMENT)
And
Fulton County (hereinafter OWNER)

Whereas, the DEPARTMENT proposes to undertake a Design Build Finance Maintain (DBFM) Project, hereinafter referred to as the PROJECT to add two (2) new at-grade and elevated, barrier-separated express lanes in both directions of I-285 between SR 400 and Henderson Road and in both directions of SR 400 from Glenridge Connector to the North Springs MARTA Station in Fulton and DeKalb County, Georgia by contract as authorized by O.C.G.A. § 32-2-81; and

Whereas, the DEPARTMENT will accomplish the PROJECT through a DEVELOPER including a combination of contractors, design consultants (or design consultant team), and other entities working together to design and build the PROJECT, hereinafter referred to as DEVELOPER; and the utility owner hereinafter referred to as the OWNER, and

Whereas, pursuant to O.C.G.A. § 32-6-170(b), the DEPARTMENT has made a Public Interest Determination (PID) for this PROJECT, all costs of relocation, protection, or adjustment shall be borne by the DEVELOPER where DEVELOPER AND OWNER enter into an agreement Master Utility Adjustment Agreement (MUAA) which will allow DEVELOPER to accelerate completion of any relocation, protection, or adjustment by shifting responsibility for such costs as long as the OWNER has either prior rights or agrees to include any relocation, removal, protection or adjustment into the PROJECT with the use of OWNER pre-approved list of design consultants and contractors; and

Whereas, the DEPARTMENT and pursuant to the Design-Build Finance Maintain (DBFM) Agreement, is authorized to pay or participate in the payment of the costs of design, relocation, protection, or adjustment of OWNER'S facilities where the DEPARTMENT has made the determination that (i) such payments are in the best interest of the public and necessary in order to expedite the staging of the PROJECT; and (ii) the costs of the design, removal, relocation, protection, or adjustment of such facilities are included as part of the Contract between the DEPARTMENT and the DEVELOPER for the PROJECT; and

Whereas, time is of the essence in the completion of DEVELOPER'S duties under the Contract, DEVELOPER shall enter into a Master Utility Adjustment Agreement (MUAA), acceptable in form and terms to both the DEVELOPER and OWNER, with OWNER to provide for timely completion of any removal, relocation, protection, or adjustment.

1. Project Location Description

The DBFM Project's location is described as follows and further depicted and described in attached Exhibit A, "Proposed Construction Limits Exhibit":

Facility (Interstate or Highway No.)	From (Milepost/Crossroad)	TO
a. <u>I-285</u>	<u>SR 400 (MP 25)</u>	<u>Henderson Road (MP 35)</u>
b. <u>SR 400</u>	<u>Glenridge Connector (MP 6)</u>	<u>N. Springs MARTA Station (MP 9)</u>

2. Type of Utility

OWNER has the following Utility Facilities which may need to be adjusted or relocated as a result of the proposed Contract:

Type of facility or facilities of OWNER:

- ☐ Domestic water mains and distribution lines and associated appurtenances
- ☒ Sanitary Sewer facilities and/or Storm Drainage System
- ☐ Electrical Distribution (overhead and underground) wires, poles, etc.
- ☐ Electrical Transmission (overhead and underground) wires, poles, etc.
- ☐ Natural Gas Distribution Facilities (underground)
- ☐ Natural Gas Transmission Facilities (underground)
- ☐ Petroleum Pipeline (underground)
- ☐ Telecommunications facilities and equipment
- ☐ Cable TV facilities
- ☐ Street Lighting
- ☐ Internet Data Service
- ☐ Other Facilities (Description) [Click or tap here to enter text.](#)

3. New Utility Facilities Proposed (Betterment)

OWNER desires the following to be installed (at its own expense) as new additional facilities within the PROJECT. Not Applicable

Insert here or attach a detailed description of proposed new additional utility installations:

[Click or tap here to enter text.](#)

[Click or tap here to enter text.](#)

[Click or tap here to enter text.](#)

[Click or tap here to enter text.](#)

4. Assignment of Responsibilities for Design and Construction

This MEMORANDUM OF UNDERSTANDING and the following shall serve only as a basis for assignment of responsibilities and costs for DEVELOPER to enter into a Master Utility Adjustment

Agreement (MUAA) with OWNER after the Contract is awarded to DEVELOPER by the DEPARTMENT. For a DBFM project implementation, the DEPARTMENT will not have in its possession exact costing plans to be utilized to determine exact locations of the removal, relocation, protection, or adjustment. However, Overhead/Subsurface Utility Engineering (SUE) investigations plans exist providing the best information and signifying the layout of known existing facilities at the time of the distribution of this MOU. Please use these plans for developing the final determination of services as indicated below. The DEVELOPER's plans will be provided to the OWNER after the PROJECT is awarded by the DEPARTMENT which shall be used as the final basis for the MUAA. Betterment costs will be the OWNER's responsibility.

NOTE: When the Utility Owner allows the relocation work to be included in the contract, all material cost and labor will be paid for by the DEVELOPER, excluding betterment.

OWNER hereby makes the following commitments with regard to the PROJECT:

- 4A. OWNER, at the DEVELOPER'S cost through a MUAA/MUAAA, will provide the following services for the properties for which it has established prior rights (Check to signify):

Design ☐
Construction ☐

- 4B. OWNER, at the DEVELOPER'S cost, will allow any removal, relocation, protection, adjustment and/or design of its facilities to be placed into the DEPARTMENT'S contract for the following services (Regardless of Prior Rights) pursuant to O.C.G.A. § 32-6-170(b). The DEVELOPER will add the removal, relocation, protection, materials, adjustment and/or design cost, excluding betterment, to the overall PROJECT's cost. (Check to signify):

Option 1: Work to be performed by the OWNER's pre-approved Design Consultants and/or Contractors at the DEVELOPER'S cost.

Design ☒
Construction ☒

Option 2: Work to be performed by the DEVELOPER at the DEVELOPER'S cost (Check to signify):

Design ☐
Construction ☐

If both are checked, please leave page 10 blank.

As per this section, all work necessary for the removal, relocation, protection, or adjustment of the described utilities in accordance with the plans when approved shall be included in the PROJECT contract and accomplished by the DEVELOPER except as follows (Check none or list any work items to be performed by the OWNER)

None ☒

Excluded Items Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.

Comments: Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.

4C. OWNER, at OWNER'S cost, will provide the following services (Check to signify):

Design ☐
Construction ☐

If construction under item 4C is selected, please fill out exhibit B.

The following is hereby mutually agreed to and understood by both parties:

1. The DEPARTMENT shall require the DEVELOPER to coordinate reviews of the utility relocation information and obtain acceptance from the OWNER and DEPARTMENT when required. If the preliminary plans indicate that no conflict exists, and the OWNER concurs with this information, the OWNER shall provide a letter of "no conflict", and submit a GUPS No Conflict permit.
2. Any OWNER claiming the existence of a prior right with the respect to a Utility Adjustment shall be responsible and have the burden of establishing such claim. In such case, the OWNER shall be required to provide the DEVELOPER with all supporting documentation to substantiate its prior right claim with respect to a Utility Adjustment. In the event the DEVELOPER and the OWNER are unable to reach an agreement with respect to a prior right claim within 30 days from the OWNER's submission to the DEVELOPER of the supporting documentation, then the DEVELOPER shall submit such information to the DEPARTMENT for the DEPARTMENT's determination of the existence of the OWNER's prior right. Any such determination by the DEPARTMENT will be made within 60 days of the receipt of the DEVELOPER'S submission.
3. If the OWNER chooses to perform their own relocations and the OWNER holds no property interest as stated above; the OWNER shall confirm in writing to the DEVELOPER that the OWNER will relocate its own facilities at no cost to the DEVELOPER or the DEPARTMENT.
4. All construction engineering and contract supervision shall be the responsibility of the DEVELOPER to ensure that all utility work included in the contract is accomplished with the contract's plans and specifications. The DEPARTMENT shall cause the DEVELOPER to consult with the OWNER before authorizing any changes or deviations which affect the OWNER's facilities.
5. For Utility work included in the contract, the OWNER shall ensure that the construction and installation of the OWNER's facilities are performed by an OWNER pre-approved contractor. For utility work included in the contract, the OWNER or OWNER's consultant shall have the right to visit and inspect the work at any time and advise the DEVELOPER and the DEPARTMENT of any observed discrepancies or potential issues. The DEPARTMENT shall cause the DEVELOPER to notify the OWNER when all utility work is completed and ready for final inspection by the OWNER.

6. Upon Maintenance Acceptance or Final Acceptance of the utility work included in the contract and upon certification by the DEPARTMENT'S project manager and the OWNER that the work has been completed in accordance with the plans and specifications, the OWNER will accept the adjusted, relocated, and additional facilities and will thereafter operate and maintain said facilities located within the PROJECT right of way subject to the DEPARTMENT'S Utility Accommodations Policy and Standards Manual (UAM), current edition" and any agreements in effect without further cost to the DEPARTMENT or it's DEVELOPER. Final acceptance of the utility relocation work is accomplished by the execution of the Utility Facility Relocation Acceptance Form. The DEVELOPER shall provide the OWNER with a complete set of "As-Built Plans" for review and approval reflecting the relocation work performed by the DEVELOPER. Upon completion of the Utility Facility Relocation Acceptance Form and the exchange of the final OWNER approved "As-Built Plans", the OWNER will operate and maintain the installed facilities going forward based on the date of execution of the Utility Facility Relocation Acceptance Form by the DEPARTMENT.
7. For the purpose of utility coordination, relocation and reimbursement matters, the OWNER shall cooperate with the DEVELOPER in the same manner as if coordinating directly with the DEPARTMENT in accordance with the laws of the State of Georgia, the DEPARTMENT'S "Utility Accommodation Policy and Standards Manual, current edition" and any agreements in effect between the DEPARTMENT and OWNER. The OWNER agrees to cooperate in good faith with the DEVELOPER and to respond to all reasonable requests for information or meetings required to reach a resolution of any disputed items.
8. All Utility work included in the PROJECT's contract and Utility work completed by the OWNER that is reimbursed by the DEVELOPER through an agreement shall be in accordance with the BUY AMERICA requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410) all manufacturing processes for steel and iron products or predominantly of steel or iron furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than their exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.
 - a. Products of steel include, but are not limited to, such products as structural steel piles, reinforcing steel, structural plate, steel culverts, and guardrail steel supports for signs, signals and luminaires. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not limited to this clause, only the application process.
 - b. A Certificate of Compliance shall be furnished for steel and iron products as part of the backup information with the billing. The form for this certification entitled "Buy America Certificate of Compliance" is attached to this agreement as "Exhibit D." Records to be maintained by the Developer for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or nonpayment of the work.

- c. The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

This Memorandum of Understanding will be incorporated into the DBFM Project Contract by reference or Exhibit.

APPROVED FOR OWNER BY:

(Signature)

Click or tap to enter a date.
(Date)

Print Name and Title

(Printed Name and Title)

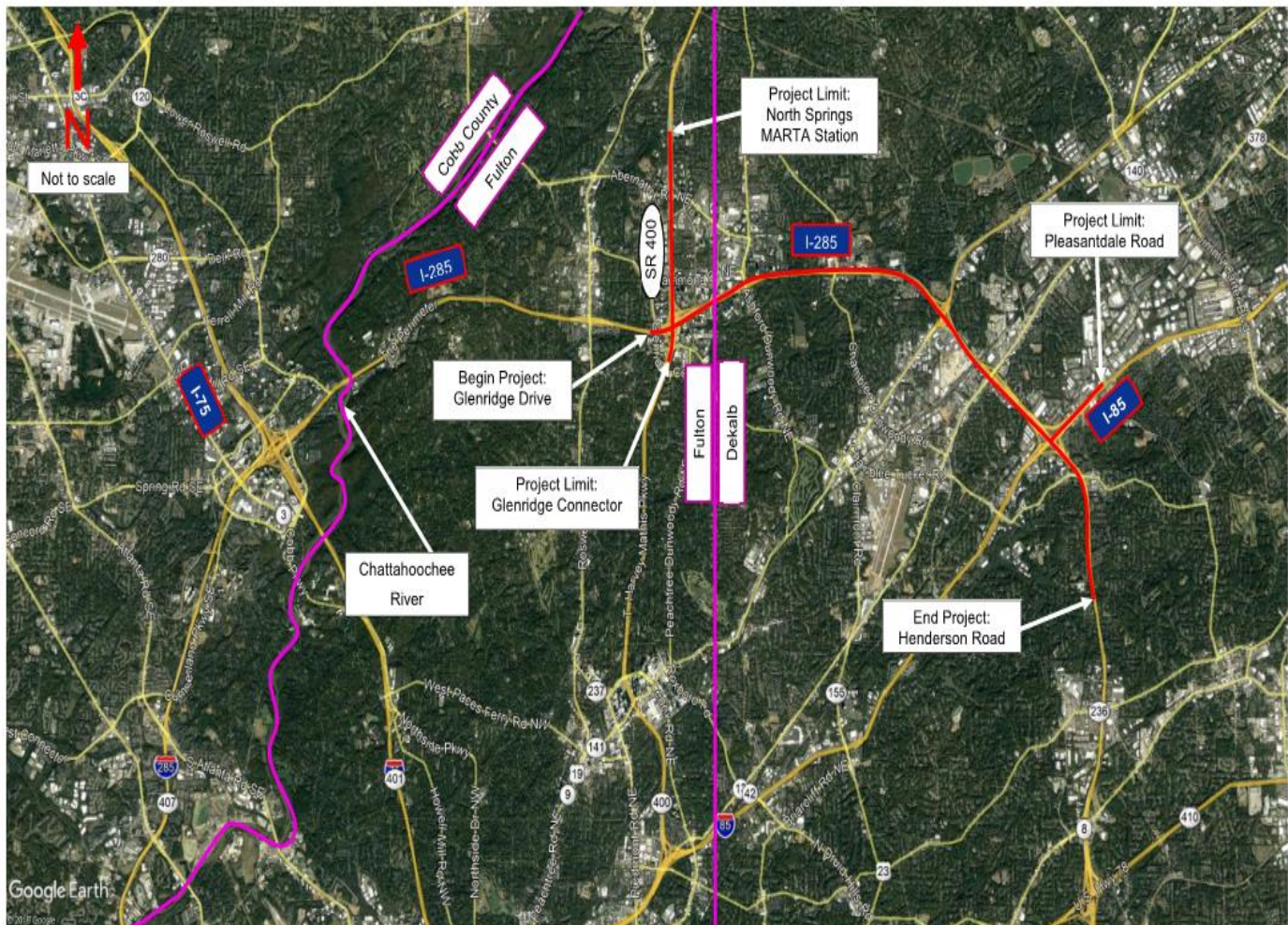
APPROVED FOR DEPARTMENT BY:

(Signature)

Click or tap to enter a date.
(Date)

STATE UTILITIES ENGINEER

EXHIBIT A Project Map



I-285 Top End East Express Lanes Project

PROJECT is to add two (2) new at-grade and elevated, barrier-separated express lanes in both directions of I-285 between SR 400 (Milepost **25**) and Henderson Road (Milepost **35**) and in both directions of SR 400 from Glenridge Connector (Milepost **6**) to the North Springs MARTA Station (Mileposts **9**) in Fulton County, Georgia and DeKalb County, Georgia

EXHIBIT B

OWNER MANAGED UTILITY ADJUSTMENT FACILITIES (At Owners costs)

Facility Description and Location:

- 1.** Click or tap here to enter text.
- 2.** Click or tap here to enter text.
- 3.** Click or tap here to enter text.
- 4.** Click or tap here to enter text.
- 5.** Click or tap here to enter text.
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- 15.** Click or tap here to enter text.
- 16.** Click or tap here to enter text.
- 17.** Click or tap here to enter text.
- 18.** Click or tap here to enter text.
- 19.** Click or tap here to enter text.
- 20.** Click or tap here to enter text.

EXHIBIT C

PRE-APPROVED CONTRACTOR/CONSULTANT List Pre-Approved Contractor List

Company Name John D Stephens, Inc.
Address 272 Hurricane Shoals Road, NE, Lawrenceville GA 30046
Phone 770-972-8000
Contact Person Jennifer Butler
E-Mail info@johndstephens.com

Company Name Site Engineering Inc.
Address 7025 Best Friend Road, Atlanta, Georgia 30340,
Phone (770) 263-7234
Contact Person Paxton Billingsley
E-Mail paxton@siteengineeringinc.com

Company Name Ruby-Collins Inc.
Address 4875 Martin Court SE, Smyrna GA 30082
Phone 770.432.2900
Contact Person Ms. Nikki Carr
E-Mail ncarr@ruby-collins.com

Please provide a minimum of three.

Pre-Approved Design Consultant List

Company Name Stantec Inc.
Address 3157 Royal Drive, Suite 250 Alpharetta, Georgia 30022-2487
Phone (678) 327-2929
Contact Person Ms. Jennifer Kolbe
E-Mail jennifer.kolbe@stantec.com

Company Name Prime Engineering Inc.
Address 3715 Northside Parkway, NW Building 300, Suite 200 Atlanta, GA 30327
Phone 404-425-7100
Contact Person Rob MacPherson
E-Mail info@prime-eng.com

Company Name Gresham Smith
Address 1125 Sanctuary Parkway Suite 350 Alpharetta, GA 30009 Phone 770.754.0755
Contact Person Click or tap here to enter text. E-Mail Click or tap here to enter text.

EXHIBIT D

Original 5/17/2013
Revised 1/28/2015

**GEORGIA
DEPARTMENT OF TRANSPORTATION
BUY AMERICA
CERTIFICATE OF COMPLIANCE**

Date Click here to enter a date

WE, Click here to Utility/Railroad Owner Name

Address: Click here to add Utility/Railroad address

Hereby certify that we are in compliance with the “Buy America” requirements of the Federal regulations 23 U.S.C. 313 and 23 CFR 635.410 of this project.

Project PI#: Click to insert PI# Project description: Enter project description

As required, we will maintain all records and documents pertinent to the Buy America requirement, at the address given above, for not less than 3 years from the date of project completion and acceptance, if we do not provide the records and documents during invoicing. If all records and documents pertinent to the Buy America requirement are delivered during invoicing, then we will maintain all records and documents pertinent to the Buy America requirement for not less than three (3) years from the date conditional final payment has been received by the UTILITY/RAILROAD. These files will be available for inspection and verification by the Department and/or FHWA.

We further certify that the total value of foreign steel as described in the Buy America requirements for this project does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

Signed by: _____ Title: _____
(Officer of Organization)

Subscribed and sworn to before me this _____ day of _____, _____

_____ My Commission Expires: _____

Notary Public/Justice of the Peace