

Georgia DOT Project: I-285/I-20 West Interchange
GDOT P.I.: 0013918

**PUBLIC PRIVATE PARTNERSHIP (P3)
MEMORANDUM OF UNDERSTANDING**

between the
Georgia Department of Transportation (hereinafter the DEPARTMENT)
and
Fulton County (hereinafter the OWNER)

Whereas the DEPARTMENT proposes to procure a P3 project, hereinafter referred to as the PROJECT, to rebuild the Interchange at I-285/I-20 in Cobb and Fulton County, Georgia as authorized by O.C.G.A. § 32-2-80; and

Whereas the DEPARTMENT will accomplish the PROJECT through (i) a developer, hereinafter referred to as the DEVELOPER, which will enter into a contract, hereinafter referred to as the CONTRACT, for the design, build and finance of the PROJECT and will subcontract certain work to a combination of contractors, design consultants (or design consultant team) and other entities; and (ii) the OWNER; and

Whereas, pursuant to O.C.G.A. § 32-6-170(b), the DEPARTMENT is authorized to pay or participate in the payment of the costs of removal, relocation, protection, or adjustment of the OWNER'S facilities, hereinafter referred to as the UTILITY ADJUSTMENT WORK, where the DEPARTMENT has made the determination that (i) the type of facility is one of those delineated in Section 1. below; (ii) such payments are in the best interest of the public and necessary in order to expedite the staging of the PROJECT; and (iii) the costs of the UTILITY ADJUSTMENT WORK are included as part of the PROJECT.

Whereas the OWNER may elect for the UTILITY ADJUSTMENT WORK to be carried out (i) by the OWNER; or (ii) by the DEVELOPER under the CONTRACT either utilizing the OWNER'S pre-approved design consultants and contractors or utilizing the DEVELOPER'S own design consultants and contractors.

1. Type of Utility

The OWNER has the following utility facilities in respect of which UTILITY ADJUSTMENT WORK may need to be carried out as a result of the proposed PROJECT:

Type of facility or facilities of the OWNER: [*Check to signify*]

- ☐ 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 contemplated under O.C.G.A. § 32-6-170(b) (Description) Click or tap here to enter text.

2. New Utility Facilities Proposed (Betterment)

The OWNER desires the following to be installed as new additional facilities within the PROJECT right of way, hereinafter referred to as a BETTERMENT:

[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.

The OWNER acknowledges and agrees that (i) any BETTERMENT will be subject to terms to be mutually agreed between the DEVELOPER and the OWNER and documented pursuant to a separate betterment agreement between the DEVELOPER and the OWNER, a copy of which betterment agreement must be provided to the DEPARTMENT; (ii) any such BETTERMENT will be subject to the same standards and requirements as if it were necessary UTILITY ADJUSTMENT WORK; and (iii) the OWNER will be responsible for all costs relating to any BETTERMENT and the DEPARTMENT will have no obligation to pay for or facilitate any such BETTERMENT.

3. Assignment of Responsibilities for Design and Construction

The OWNER hereby acknowledges and agrees that (i) prior to the award of the CONTRACT, the DEPARTMENT will not have in its possession final plans to be utilized to determine exact locations of the UTILITY ADJUSTMENT WORK; (ii) Overhead/Subsurface Utility Engineering (SUE) investigations plans exist providing the best information and signifying the layout of known existing facilities; and (iii) the OWNER has used the SUE plans for developing its determination of commitments as indicated below.

The DEVELOPER-developed plans will be developed by the DEVELOPER and provided to the OWNER after the CONTRACT is awarded. The OWNER hereby acknowledges and agree that if option 3A below has been selected (i) the DEVELOPER-developed plans shall be used by the DEPARTMENT as the final basis for the Standard Utility Agreement; and (ii) the OWNER will enter into the Standard Utility Agreement on the basis of such DEVELOPER-developed plans.

The OWNER hereby makes the following commitments with regard to the PROJECT and the UTILITY ADJUSTMENT WORK:

- 3A. The OWNER, at the DEPARTMENT'S cost pursuant to a Standard Utility Agreement, will provide the following services in respect of the UTILITY ADJUSTMENT WORK for the properties for which it has established prior rights: *[Check to signify]*

Design ☐
Construction ☐

The OWNER must provide documented proof of the prior right and that documentation must be verified and approved by the DEPARTMENT prior to execution of this MEMORANDUM OF UNDERSTANDING.

- 3B. The OWNER elects for the following services in respect of the UTILITY ADJUSTMENT WORK to be included in the CONTRACT (regardless of prior rights) pursuant to O.C.G.A. § 32-6-170(b). The UTILITY ADJUSTMENT WORK will be included in the scope of the CONTRACT and the costs of the UTILITY ADJUSTMENT WORK will be included in the overall PROJECT costs under the CONTRACT:

Option 1: Work to be performed under the CONTRACT by the OWNER's pre-approved design consultants and/or contractors identified in attached "Exhibit A": [*Check to signify*]

Design ☐
Construction ☐

Option 2: Work to be performed under the CONTRACT by the DEVELOPER: [*Check to signify*]

Design ☒
Construction ☒

[*If both are checked under Option 2, please leave Exhibit A blank*]

As per this section, all work necessary for the UTILITY ADJUSTMENT WORK in accordance with the plans, when approved, shall be included in the CONTRACT and accomplished by the DEVELOPER except as follows: [*Check none or list any work items to be performed by the OWNER and identify whether such work items will be at the DEPARTMENT's cost pursuant to a Standard Utility Agreement under option 3A above or at the OWNER's cost under option 3C below.*]

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.

- 3C. OWNER, at OWNER'S cost, will provide the following services: [*Check to signify*]

Design ☐
Construction ☐

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

1. The identification of existing facilities including preparation of Overhead/Subsurface Utility Engineering (SUE) investigations plans will be accomplished by the DEPARTMENT prior to award of the CONTRACT and thereafter supplemented by the DEVELOPER.
2. The DEVELOPER shall coordinate reviews of the utility relocation information and obtain acceptance from the OWNER and the DEPARTMENT when required. The OWNER shall apply for and obtain any required permits from the DEPARTMENT and perform any final design or proprietary design needed to administer its own relocation work if the work will not be included in the CONTRACT. 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" to the DEVELOPER and submit a No Conflict GUPS Permit.
3. All construction engineering and contract supervision shall be the responsibility of the DEPARTMENT and the DEVELOPER to ensure that all UTILITY ADJUSTMENT WORK included in the CONTRACT is accomplished in accordance with the PROJECT's plans and specifications. The DEVELOPER will consult with the OWNER before authorizing any changes or deviations which affect the OWNER's facility.
4. For UTILITY ADJUSTMENT WORK included in the CONTRACT, the DEVELOPER shall ensure that the design, construction, and installation of the OWNER'S facilities is performed by the OWNER'S pre-approved design consultant and/or contractor (if option 3B, Option 1 has been selected) and/or by the DEVELOPER (if option 3B, Option 2 has been selected).
5. For UTILITY ADJUSTMENT WORK included in the CONTRACT, the OWNER or the OWNER's consultant shall have the right to visit and inspect the work at any time and advise the DEVELOPER and the DEPARTMENT's Engineer of any observed discrepancies or potential issues. The DEPARTMENT agrees to notify the OWNER when all UTILITY ADJUSTMENT WORK included in the CONTRACT is completed and ready for final inspection by the OWNER.
6. Upon completion of the UTILITY ADJUSTMENT 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 the DEVELOPER. Final acceptance of the UTILITY ADJUSTMENT WORK shall be 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 UTILITY ADJUSTMENT 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 all coordination, work, services, reimbursement, and other matters in respect of UTILITY ADJUSTMENT WORK under this MEMORANDUM OF UNDERSTANDING, the OWNER shall comply with all requirements under the DEPARTMENT'S UAM and 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 UAM and any agreements in effect between the DEPARTMENT and the

OWNER. The OWNER agrees to cooperate in good faith with the DEVELOPER and to respond to all requests for information or meetings required to reach a resolution of any disputed items.

8. All UTILITY ADJUSTMENT WORK performed by the OWNER, at the DEPARTMENT's cost, through a Standard Utility Agreement under option 3A above and all UTILITY ADJUSTMENT WORK included in the CONTRACT under option 3B above shall be performed 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 the 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 these 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 MEMORANDUM OF UNDERSTANDING as "Exhibit B." 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, 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.

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.

[signature page follows]

PI #0013918

Exhibit A

OWNER Pre-Approved Contractor List

Company Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Company Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Company Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Please provide a minimum of three.

OWNER Pre-Approved Design Consultant List

Company Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Company Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Company Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Contact Person: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Please provide a minimum of three.

Exhibit B

To be completed after the Project is awarded

GEORGIA DEPARTMENT OF TRANSPORTATION

BUY AMERICA CERTIFICATE OF COMPLIANCE

Date _____

WE, _____
(UTILITY/RAILROAD OWNER)

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.

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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 COMPANY.

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 me before this ____ day of _____, ____.

Notary Public / Justice of the Peace My commission expires: _____