

Georgia DOT Project: I-285 Express Lane West, Phase 1
GDOT P.I. 0017124

**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 undertake a Public, Private, Partnership (P3), hereinafter referred to as the PROJECT to add two (2) new, barrier-separated express lanes in both directions of I-285 between South Atlanta Road and New Northside Drive in Cobb and Fulton Counties, Georgia by contract as authorized by O.C.G.A. § 32-2-81; 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 Fulton County Water & Sewer has facilities from New Northside Drive, heading West to the Fulton County line. FCWS does not have facilities in Cobb County.

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. 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, iron and manufactured products furnished for permanent incorporation into the work on this PROJECT shall occur in the United States. The only exceptions to this requirement are (i) the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country and, (ii) manufactured products that do not include steel and iron components. 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,

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 hereto for reference purposes and shall be provided to the DEPARTMENT upon completion of 80% of the CONTRACT amount. Records to be maintained by the RAILROAD/UTILITIES and the DEPARTMENT for this certification shall include a signed mill test report and/or a signed certification by a supplier, distributor, fabricator, or 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.
9. In addition to the BUY AMERICA requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410) outlined in Section 8 above, the BUILD AMERICA, BUY AMERICA ACT ("BABA") set forth under the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §§ 70901-52, extends coverage of BUY AMERICA to include construction materials used for this PROJECT. Under BABA all construction materials furnished for permanent incorporation into the work on this PROJECT shall be manufactured in the United States. The White House Office of Management and Budget (OMB) Memorandum M-22-11, *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, defines a "construction material" as an article, material, or supply that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall. Items excluded from construction materials under OMB Memo M-22-11 are: items of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.
- a. Items that consist of two or more of the above-listed construction materials that have been combined together through a manufacturing process, and items that include at least one of the above-listed construction materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. Manufactured products that do not contain steel and iron components are not subject to BUY AMERICA requirements as set forth under Section 8 above.
 - b. The BUY AMERICA preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to this PROJECT. It does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of this PROJECT (e.g., temporary aluminum scaffolding). Additionally, the BUY AMERICA preference does not apply to equipment and furnishings that are used at or within the finished infrastructure project but are not permanently affixed to the PROJECT or an integral part of the structure (e.g., movable chairs, desks, or computer equipment).
 - c. A Certificate of Compliance shall be furnished for Construction Materials, as part of the backup information with the billing and on material furnished according to the actual cost account agreement. The form for this certification entitled "Build America, Buy America Certificate of Compliance for Construction Materials" is attached hereto for reference purposes and shall be provided to the DEPARTMENT upon completion of 80% of the CONTRACT amount. Records to be maintained by the COMPANY and the DEPARTMENT for this certification shall include a signed mill test report and/or documentation by a supplier, distributor, fabricator, or manufacturer that has handled the construction materials affirming that all manufacturing, to include at least the final manufacturing process and the immediately preceding manufacturing stage 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 construction materials or nonpayment of the work.

[signature page follows]

This MEMORANDUM OF UNDERSTANDING will be incorporated into the CONTRACT by reference or exhibit.

APPROVED FOR THE OWNER BY:

[Handwritten Signature]

(Signature)

Click or tap here to enter text.

(Printed Name and Title)

ROBERT L. PITTS
CHAIRMAN

Click or tap to enter a date.

(Date)

9/11/23



APPROVED FOR THE DEPARTMENT BY:

(Signature)

Click or tap to enter a date.

(Date)

STATE UTILITIES ADMINISTRATOR

ITEM # *23-0556* RCS *8/16/23*
NECESS MEETING

Exhibit A

OWNER 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, GA 30340
Phone: 770-263-7234
Contact Person: Paxton Billinglsey
E-Mail: paxtone-siteengineeringine.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: nearra@ruby-collins.com

Please provide a minimum of three.

OWNER Pre-Approved Design Consultant List

Company Name: Stantec Inc
Address: 3157 Royal Drive Suite 250, Alpharetta, GA 30022
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, Ste 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
Phone: 770-754-0755
Contact Person: 678.518.3893
E-Mail: Giny.Jacob@greshamsmith.com

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 _____, 20____

WE, _____

(UTILITY/RAILROAD OWNER)

Address: _____

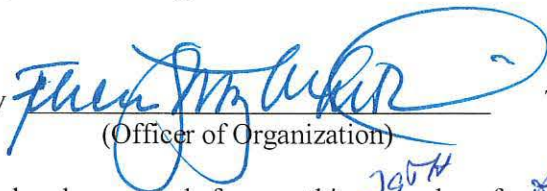
Hereby certify that we are in compliance with the "Buy America" requirements of the Federal regulations 23 U.S.C. 313 and 23 CFR 635.410 of this project.

P.I. No. , Description, County

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


(Officer of Organization)

Title

Chief Purchasing Agent

Subscribed and sworn to before me this 29th day of August, 2023.


Notary Public/Justice of the Peace

My Commission Expires:

MAY 25, 2025

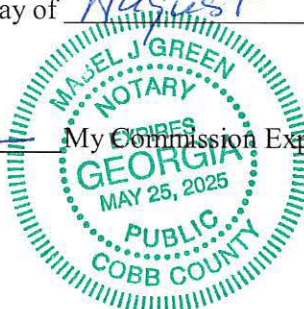


Exhibit C

To be completed after the Project is awarded

Original 12/22/2022

**BUILD AMERICA, BUY AMERICA
CERTIFICATE OF COMPLIANCE
FOR CONSTRUCTION MATERIALS**

Date _____, 20____

We, _____

(UTILITY/RAILROAD OWNER)

Address: _____

Hereby certify that we are in compliance with the "BUILD AMERICA, BUY AMERICA" ("BABA") requirements of the Infrastructure Investment and Jobs Act ("IIJA"), as set forth under Pub. L. No. 117-58, §§ 70901-52, and that all construction materials as defined under BABA furnished for the referenced project, have been produced in the United States of America.

P.I. No. XXXXXXXX- DESCRIPTION

XXXXXXXXXXXX COUNTY

We further certify that as required, we will maintain all records and documents pertinent to the BABA requirements, 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 BABA requirements are delivered during invoicing, then we will maintain all records and documents pertinent to the BABA requirements 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.

Signed by *[Signature]*
(Officer of Organization)

Title *Chief Purchasing Agent*

Subscribed and sworn to before me this 29TH day of August, 2023.

Mabel J. Jones

Notary Public/Justice of the Peace My Commission Expires



MAY 25, 2025