EXHIBIT 2

DEVELOPER'S SCHEMATIC DESIGN OF EAST END CROSSING AND PROPOSAL COMMITMENTS

2-A Developer's Schematic Design
2-B Preliminary Project Baseline Schedule
2-C Financial Plan
2-D [reserved]
2-E Preliminary Project Management Plan
2-F Initial Design and Construction Commitment
2-G Operations and Maintenance Plan
2-H Equity Members, Contractors and Key Personnel Commitments
2-I Cost Tables
  2-I(1) Summary Cost Table
  2-I(2) Capital Cost Table
  2-I(3) Operating Cost Table
2-J Termination for Convenience Calculation Method
2-K Equal Employment Opportunity Certification
2-L Developer's Preliminary DBE Performance Plan
2-M DBE Certification
2-N Developer's Preliminary Workforce Diversity and Small Business Performance Plan
2-O Buy America Certification
2-P Use of Contract Funds for Lobbying Certification
2-Q Debarment and Suspension Certification
2-R Drug-Free Workplace Certification
2-S Form of Financial Close Certificate
2-T Form of IFA Bring-Down Certificate

Formatted: Highlight

EXHIBIT 2-A

DEVELOPER'S SCHEMATIC DESIGN

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-B

PRELIMINARY PROJECT BASELINE SCHEDULE

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-C

FINANCIAL PLAN

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-D

[RESERVED]

Formatted: Highlight

EXHIBIT 2-E

PRELIMINARY PROJECT MANAGEMENT PLAN

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-F

INITIAL DESIGN AND CONSTRUCTION COMMITMENT

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-G

OPERATIONS AND MAINTENANCE PLAN

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-H

EQUITY MEMBERS, CONTRACTORS AND KEY PERSONNEL COMMITMENTS

[TO BE PROVIDED]

Equity Members

Developer represents and warrants that the following are all the Equity Members:

_____

Key Contractors

Developer commits to provide, and IFA hereby approves, the following firms and organizations to initially serve as the following Key Contractors:

Names of Key Contractors	Key Contract

Other Contractors

Developer commits to provide, and IFA hereby approves, the following firms and organizations to initially serve as other Contractors:

Names of Key Contractors	Key Contract

Formatted: Highlight

Key Personnel

Developer commits to provide, and IFA hereby approves, the following individuals to initially serve as the following Key Personnel:

Names of Key Personnel	Key Personnel Positions
	Project Executive (if different from the Project Manager)
	Project Manager
	Deputy Project Manager(s)
	Financial Director
	Public Information Coordinator
	DBE Coordinator
	Lead Engineer
	Lead Bridge Engineer (if different from Lead Engineer)
	Lead Tunnel Engineer (if different from Lead Engineer or Lead Bridge Engineer)
	Construction Manager
	Bridge Construction Manager (if different from Construction Manager)
	Tunnel Construction Manager (if different from Construction Manager or Bridge Construction Manager)
	Quality Manager
	Utility Manager
	Safety Manager

Formatted: Highlight

	Environmental Compliance Manager
	Operations and Maintenance Manager
	Construction Quality Control Manager
	Design Quality Assurance Manager
	Construction Quality Manager

Formatted: Highlight

EXHIBIT 2-I

COST TABLES

[TO BE PROVIDED]

2-I(1) Summary Cost Table

2-I(2) Capital Cost Table

2-I(3) Operating Period Cost Table

Formatted: Highlight

EXHIBIT 2-J

TERMINATION FOR CONVENIENCE CALCULATION METHOD

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-K

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-L

DEVELOPER'S PRELIMINARY DBE PERFORMANCE PLAN

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-M

DBE CERTIFICATION

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-N

DEVELOPER'S PRELIMINARY WORKFORCE DIVERSITY AND SMALL BUSINESS PERFORMANCE PLAN

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-O

BUY AMERICA CERTIFICATION

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-P

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-Q

DEBARMENT AND SUSPENSION CERTIFICATION

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-R

DRUG-FREE WORKPLACE CERTIFICATION

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 2-S

FORM OF FINANCIAL CLOSE CERTIFICATE

[_____]*[letterhead of Developer]*

[DATE]

Pursuant to Section 18.5 of the Public Private Agreement (the "Agreement"), by and between the Indiana Finance Authority ("IFA") and [_____] ("Developer"), Developer hereby represents, certifies and warrants to IFA as at the date of Financial Close (except where a specific date is referred to below, in which case the truth and accuracy of the representation, certification and warranty shall be as at such specific date) as follows:

1. The Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Financial Model in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements, and (c) as of the effective date of the Initial Funding Agreements are mathematically correct and suitable for making reasonable projections.

2. The Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) was audited and verified by an independent recognized model auditor immediately prior to the Effective Date of the Agreement and such audit was updated within 48 hours after the Effective Date, (c) fully discloses all cost, traffic, revenue and other financial assumptions and projections that Developer has used and is using in making disclosures to equity investors and Lenders under the Initial Funding Agreements and (d) as of the effective date of the Initial Funding Agreements represents the projections that Developer believes in good faith are the most realistic and reasonable for the East End Crossing; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies and (iii) 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.

3. Neither Developer nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into agreements such as the Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Certificate, the term "principal" means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Developer.

4. Developer has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Financial Model.

5. As of the date of this Certificate, based upon its Reasonable Investigation, Developer has evaluated the constraints affecting design and construction of the East End Crossing, including the Project Right of Way limits, the terms and conditions of the NEPA Approval, IFA-Provided Approvals obtained prior to the Setting Date, the surface and

Formatted: Highlight

subsurface conditions discoverable through such Reasonable Investigation, and applicable Laws, and Developer has reasonable grounds for believing and does believe that the East End Crossing can be designed and built within such constraints.

6. Developer, in accordance with Good Industry Practice, conducted a Reasonable Investigation, and as a result of such Reasonable Investigation, Developer is familiar with and accepts the physical requirements of the Work, subject to IFA's obligations regarding Hazardous Materials under Section 5.9 of the Agreement and Developer's rights to seek relief under Article 15 of the Agreement.

7. Developer is a [_____]*[organization]* duly organized and validly existing under the laws of [_____]*[state/commonwealth]*, 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 the Initial Funding Agreements and to perform each and all of the obligations of Developer provided for therein. Developer is duly qualified to do business, and is in good standing, in the State and in the Commonwealth of Kentucky. Developer affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

8. The execution, delivery and performance of the Initial Funding Agreements have been duly authorized by all necessary corporate action of Developer; each person executing the Initial Funding Agreements on behalf of Developer has been duly authorized to execute and deliver each such document on behalf of Developer; and the Initial Funding Agreements have been duly executed and delivered by Developer.

9. Neither the execution and delivery by Developer of the Initial Funding Agreements, nor the consummation of the transactions contemplated thereby, is in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer or any agreement, judgment or decree to which Developer is a party or is bound, including the Agreement.

10. The execution and delivery by Developer of the Initial Funding Agreements, and the performance by Developer of its obligations thereunder, will not conflict with any Laws applicable to Developer that are valid and in effect on the date of execution and delivery. Developer is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Initial Funding Agreements.

11. Each of the Initial Funding Agreements constitutes the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each Equity Member of Developer, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

12. There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the Initial Funding Agreements, the PPA Documents and the Principal Project Documents to which Developer is a party, or which challenges the authority of the Developer official executing the Initial Funding Agreements, the PPA Documents or such Principal Project Documents; and Developer has disclosed to IFA prior to the effective date of

Formatted: Highlight

the Initial Funding Agreements any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware. Developer has no current, pending or outstanding criminal, civil, or enforcement actions initiated by IFA, the State or the Commonwealth of Kentucky, and Developer agrees that it will immediately notify IFA of any such actions.

13. Between the Effective Date and the effective date of the Initial Funding Agreements, Developer has not obtained knowledge of any additional organizational conflict of interest not disclosed as of the Effective Date of the Agreement, and there have been no organizational changes to Developer or its Contractors identified in its Proposal, which have not been approved in writing by IFA. For this purpose, organizational conflict of interest has the meaning set forth in the Request for Proposals.

14. Neither Developer nor its principal(s) is presently in arrears in payment of Taxes, permit fees or other statutory, regulatory or judicially required payments to IFA, the State or the Commonwealth of Kentucky.

15. The individual signing the Agreement on behalf of Developer, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of Developer, that he/she has not, nor has any other member, employee, representative, agent or officer of Developer, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of the Agreement other than that which appears upon the face of the Agreement.

Capitalized terms used, but not defined, have the meanings ascribed in the Agreement.

Formatted: Highlight

IN WITNESS WHEREOF, the undersigned, the duly elected and qualified [title] of [_____]*[Developer name]*, a [_____] [_____], has been authorized by all necessary organizational action to make this certification on behalf of Developer (and without personal liability) and further certifies that [he]/[she] has caused this certificate to be executed as of the date first written above.

Signature: _____

Name:_____

Title:_____

Formatted: Highlight

State of Indiana §
County of _____ §

This instrument was acknowledged before me on this [_____] day of [_____], 201[___] by [_____]*[name]*, [_____]*[title]* of [_____]*[Developer name]*, a[n] [_____]*[state/commonwealth]* [_____]*[organization]*, on behalf of said [_____]*[organization]*.

_____
Notary Public in and for the State of Indiana

[Notary Seal]

_____
Printed Name of Notary Public

My Commission Expires: _____]

Formatted: Highlight

EXHIBIT 2-T

FORM OF IFA BRING-DOWN CERTIFICATE

[_____]*[letterhead of IFA outside counsel]*

[DATE]

Pursuant to Section 18.5 of the Public Private Agreement (the "Agreement"), by and between the Indiana Finance Authority ("IFA") and [_____] ("Developer"), IFA hereby represents, certifies and warrants to Developer as at the Effective Date of the Agreement as follows:

1. IFA has full power, right and authority to execute, deliver and perform the PPA Documents, the Milestone Agreement, the Use Agreement and the Principal Project Documents to which IFA is (or will be) a party and to perform each and all of the obligations of IFA provided for herein and therein.

2. Each person executing on behalf of IFA the PPA Documents, the Milestone Agreement, the Use Agreement and the Principal Project Documents to which IFA is (or will be) a party has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of IFA; and the PPA Documents, the Milestone Agreement, the Use Agreement and such Principal Project Documents have been (or will be) duly executed and delivered by IFA.

3. The PPA Documents, the Milestone Agreement, the Use Agreement and the Principal Project Documents to which IFA is (or will be) a party have each been duly authorized by IFA, and each constitutes (or at the time of execution and delivery will constitute) a legal, valid and binding obligation of IFA enforceable against IFA in accordance with its terms.

4. There is no action, suit, proceeding, investigation or litigation pending and served on IFA which challenges IFA's authority to execute, deliver or perform, or the validity or enforceability of, the PPA Documents, the Milestone Agreement, the Use Agreement and the Principal Project Documents to which IFA is a party or which challenges the authority of the IFA official executing the PPA Documents, the Milestone Agreement, the Use Agreement and such Principal Project Documents; and IFA has disclosed to Developer prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which IFA is aware.

5. Neither the execution and delivery by IFA of the PPA Documents, the Milestone Agreement or the Use Agreement, nor the consummation of the transactions contemplated 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 enabling legislation of IFA or any agreement, judgment or decree to which IFA is a party or is bound.

6. The execution and delivery by IFA of the PPA Documents, the Milestone Agreement or the Use Agreement and the performance by IFA of its obligations thereunder, will not conflict with any Laws applicable to IFA that are valid and in effect on the date of execution and delivery. IFA is not in breach of any applicable Law that would have a material adverse

Formatted: Highlight

effect on the performance of any of its obligations under the PPA Documents, the Milestone Agreement or the Use Agreement.

7. No consent of any party and no Governmental Approval is required to be made in connection with the execution, delivery and performance of the Agreement, which as not already been obtained.

Capitalized terms used, but not defined, have the meanings ascribed in the Agreement.

Formatted: Highlight

IN WITNESS WHEREOF, the undersigned, the duly elected and qualified [title] of the Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana, has been authorized by all necessary organizational action to make this certification on behalf of IFA (and without personal liability) and further certifies that [he]/[she] has caused this certificate to be executed as of the date first written above.

Signature: _____

Name:_____

Title:_____

Formatted: Highlight

State of Indiana §
County of _____ §

This instrument was acknowledged before me on this [_____] day of [_____], 201[___] by [_____]*[name]*, [_____]*[title]* of the Indiana Finance Authority, on its behalf.

_____
Notary Public in and for the State of Indiana

[Notary Seal]

_____
Printed Name of Notary Public

My Commission Expires: _____]

Formatted: Highlight

EXHIBIT 3

[RESERVED]

Formatted: Highlight

EXHIBIT 4

MILESTONE PAYMENT AMOUNTS

Milestone	Description	Amount (in millions)
1	Complete Main Span Pier Foundations	$25
2	Complete Tunnel Excavation and Initial Liner	$80
3	Complete Main Span Towers	$45
4	Complete Indiana East End Roadway from Old Salem Road Northwest to and Including the SR 62/Port Road/SR 265 Interchange	$45
5	Complete KY 841 construction between I-71 and US 42	$50
6	Complete Final Tunnel Liner	$26
7	Complete Main Span Superstructure Erection	$26
8	Substantial Completion	$95
	Total Milestone Payments	$392

Formatted: Highlight

EXHIBIT 5

HAZARDOUS MATERIALS RISK ALLOCATION TERMS

All risks associated with the discovery of Hazardous Materials in, on, under or within (i) from the Effective Date until the Substantial Completion Date, the Project Right of Way and (ii) during the Operating Period, the O&M Limits, in each case including costs and expenses and schedule delays arising out of any Hazardous Materials in, on or under (i) from the Effective Date until the Substantial Completion, the Project Right of Way and (ii) during the Operating Period, the O&M Limits, in each case will be borne by Developer, except as follows.

1. If there occurs any Relief Event under clause (m) or (n) of the definition of Relief Event, and if Developer timely satisfies the terms and conditions for asserting a Relief Event set forth in Section 15.1 of the Agreement, then IFA will pay the applicable Extra Work Costs and Delay Costs directly attributable to the handling, containment, transport, removal, remediation and disposal of such Hazardous Materials, subject to the following:

(a) Such Extra Work Costs and Delay Costs shall be limited as set forth in Section 3 below;

(b) If the Hazardous Materials are contained in soils or other solid materials or objects that may be returned to trenches or other areas of excavation within or adjacent to (i) from the Effective Date until the Substantial Completion, the Project Right of Way and (ii) during the Operating Period, the O&M Limits, in each case pursuant to regulations, policies or approvals of applicable Governmental Entities, and if the excavation of such contaminated soils or other solid materials or objects is undertaken for any purpose or reason other than the fact of contamination, then the Extra Work Costs shall be limited to the reasonable out-of-pocket costs of handling such contaminated soils, materials and objects in excess of the out-of-pocket costs Developer would incur to handle the same if they were not contaminated;

(c) If the Hazardous Materials are contained in soils or other solid materials or objects that are removed from the Site for any purpose or reason other than the fact of contamination, then the Extra Work Costs for which IFA is liable shall be limited to the incremental increase in out-of-pocket cost to excavate, handle, haul and dispose of the soils or other solid materials or objects over the out-of-pocket cost to excavate, handle, haul and dispose of them if they did not contain Hazardous Materials;

(d) If avoidance or remediation of such Hazardous Materials is capable of being accomplished under applicable Laws and Governmental Approvals through measures less costly than excavation, removal and off-site disposal of contaminated soil and groundwater, or less costly than return to trenches and other areas of excavation, which measures may include (i) design modifications and construction techniques to avoid such Hazardous Materials or reduce the quantities to be excavated, removed and disposed of off-site, and (ii) on-site containment and institutional controls, then IFA shall only be liable for the least costly alternative, provided, that if Developer believes that excavation, removal and off-site disposal is overall the best method for handling such Hazardous Materials, considering all factors, including cost and schedule impacts to both IFA and Developer, then Developer shall first obtain IFA's concurrence in such judgment, which concurrence shall not be unreasonably withheld, conditioned or delayed, and Developer shall respond to all reasonable requests by IFA for

Formatted: Highlight

supporting information in respect of such judgment, whereupon Developer shall be entitled only to the actual, documented and reasonable out-of-pocket cost to undertake such excavation, removal and off-site disposal; and

(e) The Extra Work Costs and Delay Costs available under this Section 1 are subject to the Claim Deductible as provided in Section 15.6.2 of the Agreement and shall be payable first out of the Relief Events Allowance as provided in Section 15.6 of the Agreement until exhausted, and second by IFA.

2. IFA Release(s) of Hazardous Materials, other than Known or Suspected Hazardous Materials, is a Relief Event (under clause (m) of the definition of Relief Event), subject to the applicable limitations set forth in Section 3 below.

3. None of the following liabilities, costs, expenses and Losses shall be chargeable against or reimbursable by IFA:

(a) Liabilities, costs, expenses and Losses to the extent attributable to Developer Releases of Hazardous Materials;

(b) Extra Work Costs and Delay Costs arising out of Releases of Hazardous Materials from vehicles operating within (i) from the Effective Date until the Substantial Completion Date, the Project Right of Way, and (ii) during the Operating Period, the O&M Limits, in each case, unless operated by IFA;

(c) Liabilities, costs, expenses and Losses that could be avoided by the exercise of Good Industry Practice to mitigate and reduce cost, including exercise of Developer's duties to avoid and mitigate set forth in Section 5.9.2 of the Agreement;

(d) Costs and expenses to investigate and characterize Hazardous Materials (including Phase 1 ESAs and preliminary site investigations (i.e. phase 2 investigations)) of unexpected and minimal quantities, except with respect to Hazardous Materials of an unexpected and extraordinary quantity or toxicity, whereupon IFA and Developer shall negotiate in good faith an amount for such costs and expenses for which IFA shall be liable to pay;

(e) Developer Releases of Hazardous Materials;

(f) Liabilities, costs, expenses and Losses incurred if IFA is not afforded the opportunity to inspect sites containing Hazardous Materials or IFA Releases of Hazardous Materials before Developer takes any action which would inhibit IFA's ability to ascertain, based on a site inspection, the nature and extent of the materials, except for Developer's Emergency actions necessary to stabilize and contain a sudden release or otherwise required by Law to immediately address the Emergency;

(g) Liabilities, costs, expenses and Losses with respect to Hazardous Materials in, on or under locations Developer is required to avoid pursuant to the Technical Provisions; or

(h) Liabilities, costs, expenses and Losses covered by insurance available to Developer, or deemed to be self-insured by Developer under Section 17.1.4.4 of the Agreement.

Formatted: Highlight

4. Extra Work Costs for off-site disposal of soils contaminated with Hazardous Materials for which IFA is liable under this Exhibit 5 shall be determined by applying the same unit price (per ton or cubic yard) that applies to Developer under the Design-Build Contract with respect to off-site disposal for which Developer is not compensated by IFA. If no such unit price is stated in the Design-Build Contract, then the unit price shall not exceed the unit price IFA could obtain through competitive low bid from a qualified contractor for such work.

5. As between IFA and Developer, IFA will retain generator and arranger status for Hazardous Materials to the extent set forth in Sections 5.9.6 and 5.9.7 of the Agreement.

6. Developer may be entitled to schedule, performance and other relief due to a Relief Event under clause (m) or (n) of the definition of Relief Event to the extent provided in Sections 15.11 and 15.12 of the Agreement; provided that no time extension shall be allowed with respect to immaterial quantities of Hazardous Materials in any particular location.

Formatted: Highlight

EXHIBIT 6

HANDBACK REQUIREMENTS RESERVE ELEMENTS AND RESERVE FUNDING MECHANISM

1. Developer shall make deposits to the Handback Requirements Reserve Account by the last day of each Quarter, commencing with the first Quarter of the fifth full calendar year before the end of the Term, and continuing thereafter.

2. Developer shall make quarterly deposits into the Handback Requirements Reserve Account so that by the *beginning* of each of the last four years during the Term the Handback Requirements Reserve will contain an amount equal to:

   (a) The summation across all Elements that have a number of years stated in the "Useful Life" column in Table 23-1 (Residual Life Requirements at Handback) of the Technical Provisions of the following factors, as set forth in the most recent Rehabilitation Work Schedule (as it may be revised pursuant to the Handback Requirements): the estimated cost to perform the Rehabilitation Work on such Element at the end of its Useful Life multiplied by the lesser of (i) one or (ii) a fraction the numerator of which is the average Age each such Element will have as of the end of the current calendar year and the denominator of which is the total average Useful Life thereof, plus

   (b) The summation across all other Elements (i.e. those Elements that have a number of years stated in the "Residual Life at Handback" column in Table 23-1 (Residual Life Requirements at Handback) of the Technical Provisions) of the estimated cost to perform the Rehabilitation Work on each other Element that is to be performed prior to expiration of the Term in accordance with the Handback Requirements multiplied by a fraction the numerator of which is four minus the number of full calendar years until the year in which the Rehabilitation Work is scheduled to be performed pursuant to the Rehabilitation Work Schedule (as it may be revised pursuant to the Handback Requirements) and the denominator of which is four; plus

   (c) 10% of the amounts under clauses (a) and (b) above as a contingency.

3. Developer's quarterly deposits in a year shall equal one-fourth of the amount required to be deposited in such year as described in Section 2 above, provided that if Developer's aggregate actual draws during the current calendar year exceed the planned draws by more than 10% (including draws to fund Safety Compliance work allowed under Section 9.2 of the Agreement), Developer shall increase its quarterly deposits for the remainder of the calendar year in order to make up the excess draws.

4. In determining the amount of Developer's deposits to be made in the current calendar year, the Parties shall take into account the total amount in the Handback Requirements Reserve Account at the end of the immediately preceding calendar year and Developer's planned draws from the Handback Requirements Reserve Account during the current calendar year.

Formatted: Highlight

5. If at any time during the course of Rehabilitation Work on an Element the actual incurred costs thereof are such that the balance in the Handback Requirements Reserve Account for such Element is less than the total amount required to be funded to the Handback Requirements Reserve Account for such Element, Developer shall promptly make an additional deposit in order to fully make up the difference.

6. If after completion of and payment in full for Rehabilitation Work on an Element there remains an unused balance in the Handback Requirements Reserve Account for such Element during the Term, the unused balance shall be retained in full and reallocated and credited toward required balances in the Handback Requirements Reserve Account for other Elements.

Formatted: Highlight

EXHIBIT 7

IFA'S DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS

Section 103.01 of the Department's "2012 Standard Specifications," as modified by the Department's "Recurring Special Provision" 100-C-151B "Disadvantaged Business enterprise Procedure and Good Faith Efforts (Revised 05-23-11)" comprises the Disadvantaged Business Enterprise (DBE) Special Provisions, and are hereby incorporated in their entirety, as if fully set forth herein, *mutatis mutandis*.

Formatted: Highlight

EXHIBIT 8

EQUAL EMPLOYMENT OPPORTUNITY TRAINEES SPECIAL PROVISIONS

Section 107.06 of the Department's "2012 Standard Specifications" comprises the Equal Employment Opportunity Trainees Special Provisions, and is hereby incorporated in its entirety, as if fully set forth herein, *mutatis mutandis*.

Formatted: Highlight

EXHIBIT 9

ANNUAL MAP LIMITS

[TO BE PROVIDED]

Formatted: Highlight

EXHIBIT 10

PAYMENT MECHANISM

SECTION 1 – DEFINITIONS

Capitalized terms used in this Exhibit 10 shall have the respective meanings given to them in Exhibit 1 of the PPA.

SECTION 2 – AVAILABILITY PAYMENT

2.1 Availability Payments

The Maximum Availability Payment for Fiscal Year y (MAP_y) is payable in Quarterly Payments as provided in Section 2.3 below and subject to adjustments, positive and negative, as provided in Section 3 below.

Monthly Disbursements will be made by the IFA as partial payments of each Quarterly Payment as provided in Section 10.2.3 of the PPA.

2.2 Annual MAP CPI Adjustment

The Base Maximum Availability Payment (Base MAP) will be adjusted in each Fiscal Year according to changes in the CPI in accordance with Eq. 2.2. The adjustment to the Base MAP will occur on the Substantial Completion Date and at the beginning~~end~~ of each ~~the first fiscal~~ Fiscal ~~year~~ Year~~following Substantial Completion and each anniversary~~ thereafter.

Eq. 2.2:

$$MAP_y = ((MAP_{Base})x([\bullet])x(1+2.5\%)^n + ((MAP_{Base})x([\bullet])x\left(\frac{CPI_y}{CPI_{2012}}\right)$$

Where:

MAP_y = the Maximum Availability Payment for Fiscal Year y,

MAP_{Base} = the Base Maximum Availability Payment in 2012 dollars set forth in Attachment 1 to this Exhibit 10,

CPI_y = the CPI as of July 1 of Fiscal Year y,

CPI_{2012} = October 26, 2012, and

n = the number of Fiscal Years from October 26, 2012, including the partial fiscal year to June 30, 2013.

The CPI to be used is the latest value available as of July 1, regardless of whether that CPI is seasonally adjusted.

Formatted: Font: Italic

Formatted: Highlight

2.3 Quarterly Payment

The Quarterly Payment with respect to the qth Quarter for the period after the Substantial Completion Date will be calculated in accordance with Eq. 2.3, subject to Section 10.2.7 of the PPA:

Eq. 2.3:

$$QAP_{q,y} = \left(\frac{d_{q,y}}{d_y} \right) \times MAP_y - QPA_{q,y}$$

Where:

$QAP_{q,y}$ = the Quarterly Payment for the qth Quarter in Fiscal Year *y*

$d_{q,y}$ = the number of days in the qth Quarter in Fiscal Year *y*:

from the later of the start of the qth Quarter and the Substantial Completion Date; and

to the earlier of the end of the qth Quarter and the Termination Date.

d_y = the number of days in Fiscal Year *y*

MAP_y = the Maximum Availability Payment for Fiscal Year y

$QPA_{q,y}$ = the Quarterly Payment Adjustment for the qth Quarter in Fiscal Year *y* as calculated in accordance with Eq. 3.1 as defined in Section 3 of this Exhibit 10.

SECTION 3 – CALCULATION OF PAYMENT ADJUSTMENTS

3.1 Quarterly Payment Adjustment

The Quarterly Payment Adjustment ($QPA_{q,y}$) for the qth Quarter in Fiscal Year y for the period after the Substantial Completion Date will be calculated in accordance with Eq. 3.1 as follows:

Eq. 3.1:

$$QPA_{q,y} = QUA_{q,y} + QNA_{q,y} + QOA_{q,y}$$

Where:

$QPA_{q,y}$ = Quarterly Payment Adjustment for the qth Quarter in Fiscal Year *y*

$QUA_{q,y}$ = Quarterly Unavailability Adjustment for the qth Quarter in Fiscal Year *y (as calculated in accordance with Eq. 3.4)*

$QNA_{q,y}$ = Quarterly Noncompliance Adjustment for the qth Quarter in Fiscal Year *y(as calculated in accordance with Eq. 3.7)*

Formatted: Highlight

$QOA_{q,y}$ = Quarterly Other Payment Adjustments for the qth Quarter in Fiscal Year y (as defined in Section 3.8 of this Exhibit 10)

3.2 RESERVED

3.3 RESERVED

3.4 Quarterly Unavailability Adjustment

Subject to the limitations in Section 3.6 below, the Quarterly Unavailability Adjustment ($QUA_{q,y}$) for each Unavailability Event, except for those addressed in the PPA Section 15.11, in the qth Quarter in Fiscal Year y for the period after the Substantial Completion Date will be calculated in accordance with Eq. 3.4 as follows:

Eq. 3.4:

$$QUA_{q,y} = \sum_{e=1}^{n} UA_e$$

Where:

$QUA_{q,y}$ = Quarterly Unavailability Adjustment for the qth Quarter in Fiscal Year *y*

UA_e = the Unavailability Adjustment for a single Unavailability Event that occurs during the qth Quarter in Fiscal Year y as calculated in accordance with Section 3.5 of this Exhibit 10.

e = a single Unavailability Event in the qth Quarter of Fiscal Year *y*

n = the number of Unavailability Events in the qth Quarter of Fiscal Year *y*

3.5 Unavailability Adjustment for a Single Unavailability Event

The Unavailability Adjustment for a single Unavailability Event (UA_e) is the product of the MAP factors defined by the Crossing Section, the Type of Day, the Availability Period and the Level of Lane Availability. Specifically:

- the Project has been divided into three Crossing Sections
- the year has been divided into three Types of Day
- each day has been divided into four Availability Periods
- Level of Lane Availability is based on six layouts of running lanes available, with and without shoulders

The Unavailability Adjustment for a single Unavailability Event (UA_e) will be calculated in accordance with Eq. 3.5 as follows:

Eq. 3.5:

Formatted: Highlight

$UA_e = MAP_y \times S \times D \times P \times Tx\ (t/H)$

Where:

S = The Crossing Section factor from Table 1 for the section of the Crossing that was affected by the Unavailability Event. In the case of an event that affects more than one section, S will equal the sum of the factors in Table 1 for the Crossing Sections affected.

D = The Type of Day Factor from Table 2 for the type of day on which the Unavailability Event occurred. Events that affect more than one calendar day will be considered separate events.

P = The Unavailability Period Factor from Table 3 for the time period in which the Unavailability Event occurred. In the case of an event that affects more than one time period on a given calendar day, P will equal the sum of the factors in Table 3 for the time periods affected.

T = Adjustment factor for the number of lanes or shoulders affected by the Unavailability Event.

t = Length of time over which the Unavailability Event occurred, measured in 30 minute increments, rounding to the next 30 minute increment. An Unavailability Event of 5 minutes for example would be measured as 30 minutes. A 31 minute Unavailability Event would be measured as 60 minutes.

H = Length of time the Unavailability Period during which the Unavailability Event occurred, measured in minutes.]

3.5.1 Crossing Section Factor (S)

The Crossing is divided into three Sections weighted as follows:

Table 1.

Section	Description	Crossing Section Factor (S)
A	River Road (KY) to Old Salem Road (IN)	45%
B	Old Salem Road to SR62/Port Rd/SR265 Interchange	45%
C	SR62/Port Rd/SR 265 Interchange to North Project Limit	10%

3.5.2 Type of Day Factor (D)

Formatted: Highlight

Each day of the year is classified and weighted as follows:

Table 2.

Type of Day	Number of Days per Year (A)	Relative Weight (B)	Type of Day Factor (D) (B/A)
Standard Weekday	253	80%	0.3162%
Saturday	52	12%	0.2308%
Sunday or Holiday	60	8%	0.1333%
Total	365*	100%	NA

* No adjustments for leap year.

3.5.3 Unavailability Period Factor (P)

Each day is divided into five Unavailability Periods weighted as follows:

Table 3.

Time of Day	Unavailability Period	Description	Time Period (Eastern time)	Unavailability Period Factor (P)
Standard Weekday	A	Morning	06.00 – 11.00	30%
	B	Midday	11.00 – 15.00	20%
	A	Afternoon	15.00 – 19.00	30%
	B	Evening	19.00 – 22.00	15%
	B	Night	22.00 – 06:00	5%
Total				100%
Saturday	B	Morning	06.00 – 11.00	25%
	B	Midday	11.00 – 15.00	20%
	B	Afternoon	15.00 – 19.00	25%

Formatted: Highlight

	B	Evening	19.00 – 22.00	20%
	B	Night	22.00 – 06:00	10%
Total				100%
Sunday and Holidays	B	Morning	06.00 – 12.00	20%
	B	Midday	12.00 – 16.00	25%
	B	Afternoon	16.00 – 19.00	25%
	B	Evening	19.00 – 22.00	20%
	B	Night	22.00 – 06:00	10%
Total				100%

3.5.4 Unavailability Type Factor (T)

The Unavailability Adjustment for any particular type of Unavailability Event is calculated as a percentage of the MAP, based on the number of lanes available relative to the number of open roadway lanes and shoulders on the Crossing section affected in accordance with the following table showing the percentage deduction to the MAP:

Table 4.

Four-Lane Bridge or Roadway **(2 Lanes in Each Direction)**	**Layout of Running Lanes Available**					
	2+2	**2+1**	**1+1**	**2+0**	**1+0**	**0+0**
Shoulder(s) are open						
Unavailability Type Factor (T)	0%	35%	65%	75%	85%	100%
Shoulder(s) are closed						
Unavailability Type Factor (T)	5%	40%	70%	80%	90%	100%

Formatted: Highlight

In addition:

- If one or more contra-flow lanes are used, the Unavailability Type Factor (T) in Table 4 will be increased by the addition of 10% to factors noted.

- If any part of a ramp or interchange is unavailable, the Unavailability Type Factor (T) in Table 4 will be increased by the addition of 10% to the factors noted.

In any event, the Percentage of MAP Payable will never be less than 0.

Where more than one type of Unavailability Event occurs during the same Availability Period, the Unavailability Adjustment associated with each event will be calculated and only the largest adjustment will be applied.

In relation to Emergency Closures, a maximum period of 1-hour of additional closure time, commencing at the time when the lane is handed back into the control of Developer by the Emergency Services and Developer has completed any required repairs, will be allowed before an Unavailability Event is triggered; however, the additional closure time shall only be used as necessitated by the Emergency Closure and not for any other purpose.

3.6 Unavailability Adjustments for Planned Maintenance

Developer will be assessed Unavailability Adjustments for all Unavailability Events during Unavailability Period A, including Closures due to Planned Maintenance, but excluding any other Permitted Closures as per Section 3.7 below of this Exhibit 10. Developer will not be assessed Unavailability Adjustments for Unavailability Events during Unavailability Period B for any Permitted Closure including Planned Maintenance, provided that Planned Maintenance does not exceed 120 calendar days per year, as per Section 22.4.1.1 of the Technical Provisions.

3.7 Limitations on Quarterly Unavailability Adjustment

Notwithstanding Section 3.6 above, the total Quarterly Unavailability Adjustment with respect to the qth Quarter will be the lesser of:

$QUA_{q,y}$ as calculated in Eq. 3.4, and $MAP_y \times \left(\frac{d_{q,y}}{d_y} \right)$

For clarity, no Unavailability Adjustment will be applied with respect to any Permitted Closure, except for Unavailability Events for Planned Maintenance during Unavailability Period A, in accordance with Section 3.6 above of this Exhibit 10. No Unavailability Adjustment will be applied to Unavailability Events respecting an affected East End Crossing portion first occurring during a period of step-in by IFA, as provided in Section 11.7.1.5 of the Agreement.

3.8 Quarterly Noncompliance Adjustment

A single O&M Period Noncompliance Point shall equal $5,000 per point.

Formatted: Highlight

The Quarterly Noncompliance Adjustment, $QNA_{q,y}$, with respect to each Noncompliance Event whose Noncompliance Point Adjustment is applied in or occurs during the qth Quarter of Fiscal Year *y* after the Substantial Completion Date, will be determined in accordance with Eq. 3.8 as follows:

Eq. 3.8:

$$QNA_{q,y} = \sum_{x=1}^{n} NCA_x \times (\$5{,}000 \times \frac{CPI_y}{CPI_{2012}})$$

Where:

$QNA_{q,y}$ = Quarterly Noncompliance Adjustment for the qth Quarter of Fiscal Year *y*

NCA_x = the number of Noncompliance Points related to the Noncompliance Event *x* whose adjustment is applied in or occurs during the qth Quarter in Fiscal Year *y* during the Operating Term as determined by reference to Attachment 1 of Exhibit 12 to the PPA.

n = the total number of Noncompliance Events occurring in or whose Noncompliance Adjustments are applied in the qth Quarter of Fiscal Year *y*

x = a Noncompliance Event as defined in Attachment 1 of Exhibit 12 to the Agreement

The assessment of Noncompliance Points with respect to each Noncompliance Event shall be undertaken in accordance with Article 11 of the Agreement.

3.9 Quarterly Other Payment Adjustment

Quarterly Other Payment Adjustments are positive or negative adjustments according to Sections 10.2.3.2 (d), 15.5, 16.1.6, 16.2.5, 17.1.8, 17.1.9.10, 19.2.5.5 and 19.2.5.6 of the Agreement.

SECTION 4 – MILESTONE PAYMENT

4.1 Milestone Payment

Milestone Payments will be as shown in Exhibit 4 of the Agreement.

The Substantial Completion Milestone Payment Amount will be adjusted in accordance with Section 4.2 below.

4.2 Substantial Completion Milestone Payment Adjustment

A single Construction Noncompliance Point shall equal $5,000 per point.

Substantial completion Milestone Payment Amount = SCMP – Lesser of (SCMPAC) or (SCMPA)

Formatted: Highlight

Where:

SCMP = Substantial Completion Milestone Payment shown in Exhibit 4 of the Agreement

SCMPAC = the amount of the Substantial Completion Milestone Payment Adjustment Cap which shall be $10,000,000.

The Substantial Completion Milestone Payment Adjustment (SCMPA) will be determined in accordance with Eq. 4.2 as follows:

Eq. 4.2:

$$SCMPA = \sum_{x=1}^{n} CNCA_x \times (\$5{,}000 \times \frac{CPI_y}{CPI_{2012}})$$

Where:

CNCAx = is the Construction Noncompliance Adjustment related to the Construction Noncompliance Event x that occurs during the construction period between NTP2 and the Substantial Completion Date and which is subject to Construction Noncompliance Adjustments, as determined by reference to Attachment 1 of Exhibit 12 to the PPA.

n = the total number of Construction Noncompliance Events occurring during the construction period between NTP2 and the Substantial Completion Date

x = a Noncompliance Event as defined in Attachment 1 of Exhibit 12 to the Agreement

4.3. Limitations on Milestone Payments

When milestone payments are earned, payments will be made up to the lowest limiting amount that is in effect at that time, with additional monthly payments being due, subject to the actual limiting amount each month until all milestone payments that have been earned are paid.

1. Milestone payments will be limited to the maximum aggregate milestone payment schedule as follows:

   a. Through June 30, 2013 $44,000,000

   b. Through June 30, 2014 $73,000,000

   c. Through June 30, 2015 $122,000,000

   d. Through June 30, 2016 $176,000,000

   e. Through June 30, 2017 $392,000,000

Formatted: Highlight

f. Through June 30, 2018 $392,000,000

2. Milestone payments will be limited to actual earned value of work completed as determined by Developer's monthly schedule status report as approved by IFA.

Formatted: Highlight

Attachment 1 to Exhibit 10

MAP_{Base} = [Insert from ITP Form J and updated from Financial Model at financial close by amendment to PPA]

Formatted: Highlight

EXHIBIT 11

[reserved]

Formatted: Highlight

EXHIBIT 12

NONCOMPLIANCE POINTS SYSTEM AND PERSISTENT DEVELOPER DEFAULT

1. Noncompliance Points System

The table attached as Attachment 1 to this Exhibit 12 identifies Developer failures and breaches that may result in the assessment of Noncompliance Points, the number of Noncompliance Points that may be assessed for each such failure or breach, and the cure period available to Developer for each such failure or breach, other than for Developer's failure to submit a deliverable by its due date.

2. Trigger Points for Persistent Developer Default and Uncured Noncompliance Points

2.1 A Persistent Developer Default under clause (a) of the definition thereof shall exist entitling IFA to require submittal of Developer's remedial plan under Section 19.2.6 of the Agreement, on any date (whether before or after the Substantial Completion Date) that:

(a) The cumulative number of Noncompliance Points assessed during any consecutive 365-day period (excluding any Noncompliance Points assessed for cured Noncompliance Events during the period prior to the Substantial Completion Date) equals or exceeds the following:

(i) For any consecutive 365-day period ending prior to the Substantial Completion Date, 140;

(ii) For any consecutive 365-day period a portion of which includes any days prior to the Substantial Completion Date, 140; and

(iii) For any other consecutive 365-day period, 100.

(b) The cumulative number of Noncompliance Points, cured or uncured, assessed during any consecutive 1095-day period (excluding any Noncompliance Points assessed for cured Noncompliance Events during the period prior to the Substantial Completion Date) equals or exceeds the following:

(i) For any consecutive 1095-day period ending prior to the Substantial Completion Date, 270;

(ii) For any consecutive 1095-day period a portion of which includes any days prior to the Substantial Completion Date, but includes not more than 365 days outside such period, 270; and

(iii) For any consecutive 1095-day period a portion of which includes any days prior to the Substantial Completion Date, but includes more than 365 and not more than 730 days outside such period, 250; and

(iv) For any consecutive 1095-day period a portion of which includes any days prior to the Substantial Completion Date, but includes more than 730 and not more than 1094 days outside such periods, 225; and

Formatted: Highlight

(v) For any other consecutive 1095-day period, 200.

2.2 A Persistent Developer Default under clause (b) of the definition thereof shall exist entitling IFA to require submittal of Developer's remedial plan under Section 19.2.6 of the Agreement, on any date (whether before or after the Operating Period commences) that the cumulative number of breaches or failures to perform within clause (b) of the definition of Persistent Developer Default during any consecutive 365-day period equals or exceeds the following:

(a) For any consecutive 365-day period ending prior to the Substantial Completion Date, 90;

(b) For any consecutive 365-day period a portion of which includes any days prior to the Substantial Completion Date, 90; and

(c) For any other consecutive 365-day period, 60.

2.3 The number of cured Noncompliance Points that would otherwise then be counted under this Section 2 is subject to reduction in accordance with Section 19.2.6.3 of the Agreement.

Formatted: Highlight

ATTACHMENT 1 TO EXHIBIT 12

ASSESSMENT CATEGORIES

Category	Cure Periods	Assessment of Noncompliance Points
A	Cure period shall be deemed to start upon the date and time Developer first obtained knowledge of, or reason to know of, the Noncompliance Event. For this purpose Developer shall be deemed to first obtain knowledge of the Noncompliance Event not later than the date of delivery of the Notice of Determination to Developer, as described in Section 11.2.3.2 of the PPA.	If a category "A" Noncompliance Event is not fully and completely cured within the cure period, Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period (of duration equal to the prior cure period), as described in Sections 11.3.5 and 11.3.6 of the PPA.
B	Cure period shall be deemed to start upon the date and time on which the Noncompliance Event occurred, regardless of whether IFA delivered a Notice of Determination to Developer, as described in Section 11.2.3.3 of the PPA.	If a category "B" Noncompliance Event is not fully and completely cured within the cure period, Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period (of duration equal to the prior cure period), as described in Sections 11.3.5 and 11.3.6 of the PPA.
C	No cure period applicable.	Noncompliance Points shall first be assessed on the date of the initial Notice under Section 19.2 of the PPA, as described in Section 11.3.8 of the PPA.

Formatted: Highlight

NONCOMPLIANCE POINTS SYSTEM

PRE-SUBSTANTIAL COMPLETION NONCOMPLIANCE POINTS SYSTEM

Ref	Main Heading	Subheading	Failure to:	Assess-ment Category	Cure Period	Number of Points	Construction Noncompliance Event
1	Design and Construction	Access to Adjacent Properties	Maintain ingress and egress to adjacent properties as required under Section 12 of the Technical Provisions.	B	4 Hours	5	Yes
2	Environmental Compliance	Noise	Comply with Section 7.7 of the Technical Provisions with respect to noise.	B	1 Hour	2	Yes
3	Environmental Compliance	Contravention of Environmental Approvals	Follow the Environmental Approvals required in Section 7 of the Technical Provisions.	A	1 Day	2	Yes
4	Project Management	Inspection	Comply with a requirement of any Section of the Technical Provision or of the PPA with regard to inspection, except where provided elsewhere in this Attachment 1.	B	2 Days	2	Yes
5	Design and Construction	Traffic Management	Conform to the restrictions of Sections 12.4.3 and 12.4.7 of the Technical Provisions.	B	20 Minutes	1	Yes
6	Project Management	Safety	Observe the requirements of the safety plan; or to carry out any construction, operation or maintenance activity; in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 6.5.5 of the Technical Provisions.	A	1 Day	1	Yes

Formatted: Highlight

7	Project Management	Quality Management	Establish, maintain updated and comply with the requirements of a Quality Management Plan in accordance with Section 2 of the Technical Provisions.	B	7 Days	1	Yes
8	Contracting and Labor Practices	Compliance with DBE plan	Comply with the requirements of Section 7.10 of the PPA in connection with the Disadvantaged Business Enterprise (DBE) Program.	B	30 Days	1	Yes
9	Contracting and Labor Practices	Compliance with Workforce Diversity and Small Business Performance Plan	Comply with the requirements of Section 7.11 of the PPA in connection with the Workforce Diversity and Small Business Performance Plan	B	30 Days	1	Yes
10	General	IFA access	Comply with any of the provisions of Section 3.4 (Oversight, Inspection and Testing), Section 7.1 (Disclosure of Contracts and Contractors), Section 12.1 (Financial Model Updates), and Article 23 (Records and Audits; Intellectual Property) of the PPA, with respect to access for IFA's Authorized Representative(s) to the Project, Developer's Project offices and operations buildings, and Developer's data.	C	None	2	No
11	General	Notification of breach	Notify IFA of the occurrence of any Noncompliance Event specified in this Attachment 1 in accordance with Sections 11.2.1 and 19.1.1.12 of the PPA.	A	1 Day	2	No
12	Insurance	Verification of coverage	Comply with the requirements of Article 17 of the PPA.	B	15 Days	1	No

Formatted: Highlight

13	Project Management	Deliverables	Prepare, implement, maintain, update or submit a plan, a report, a deliverable or a submittal required by, or compliant with, any Section of the Technical Provisions or of the PPA, except where provided elsewhere in this Attachment 1.	B	7 Days	1	No
14	Reserved						
15	General	Governmental Approval	Deliver to IFA any executed copy of a Governmental Approval prior to beginning construction activities as required by Section 5.6 and Section 4.3 of the PPA.	B	7 Days	1	No
16	General	Governmental Approval	Submit any application for a Governmental Approval to IFA for approval or review and comment prior to submitting to any Governmental Entity as required by Section 4.3.3 of the PPA.	B	7 Days	1	No
17	Environmental Compliance	Notification	Promptly notify IFA of Hazardous Materials as set forth in Section 5.9.3 of the PPA.	B	1 Day	2	No
18	Environmental Compliance	Mitigation	Take reasonable steps to mitigate the effects of Hazardous Materials as set forth in Sections 5.9 and 15.15 of the PPA.	B	2 Days	5	No
19	Utility Adjustments	Maintain Service	Use Good Industry Practice to prevent damage to or interruption of a utility service in accordance with Section 18.1.4 of the Technical Provisions.	C	None	3	No
20	Design and Construction	Construction Warranties	Ensure extension of third parties warranties to IFA or failure to correct any defective Work that would void any such warranty as required by Section 5.11.2 and of the PPA.	A	30 Days	1	No
21	Design and	Implementation of Directive	Proceed with Directive Letters in	A	5 Days	3	No

Formatted: Highlight

	Construction	Letters	accordance with Section 16.3 of the PPA.				
22	Design and Construction	Traffic Management	Comply with the requirements of the Traffic Management Plan.	B	4 Hours	2	No

Formatted: Highlight

O&M PERIOD NONCOMPLIANCE POINTS SYSTEM

Ref	Main Heading	Subheading	Failure to:	Assess-ment Category	Cure Period	Number of Points
1	General	IFA access	Comply with any of the provisions of Section 3.4 (Oversight, Inspection and Testing), Section 7.1 (Disclosure of Contracts and Contractors), Section 12.1 (Financial Model Updates), and Article 23 (Records and Audits; Intellectual Property) of the PPA, with respect to access for IFA's Authorized Representative(s) to the Project, Developer's Project offices and operations buildings, and Developer's data.	C	None	2
2	General	Final Acceptance	Achieve Final Acceptance by the Final Acceptance Deadline as described in Section 5.8.5 of the PPA.	B	1 Day	5
3	General	Notification of breach	Notify IFA of the occurrence of any Noncompliance Event specified in this Attachment 1 in accordance with Sections 11.2.1 and 19.1.1.12 of the PPA.	A	1 Day	2
4	Insurance	Verification of coverage	Comply with the requirements of Article 17 of the PPA.	B	15 Days	1
5	Contracting and Labor Practices	Affiliates	Submit a copy of the proposed contract with an Affiliate in accordance with Section 7.6.2 of the PPA.	B	7 Days	1
6	Contracting and Labor Practices	Disclosure of Contracts and Contractors	Provide IFA with a list of all Contracts, Contractors, guarantees of Key Contracts and the guarantors with each monthly report required under this PPA or the Technical Provisions in accordance with Section 7.1.1 of the PPA.	B	7 Days	1
7	Contracting and Labor	Notification of Contractors	Comply with the requirements of Section 7.7 of the PPA.	B	14 Days	1

Formatted: Highlight

Ref	Main Heading	Subheading	Failure to:	Assess-ment Category	Cure Period	Number of Points
	Practices					
8	Reserved					
9	Project Management	Audit	Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Section 3.2.7 of the PPA.	B	7 Days	1
10	Project Management	Deliverables	Prepare, implement, maintain, update or submit a plan, a report, a deliverable or a submittal required by, or compliant with, any Section of the Technical Provisions or of the PPA, except where provided elsewhere in this Attachment 1.	B	7 Days	1
11	Project Management	Document Management	Manage documents in accordance with Section 1.5.2.6 and 22.6 of the Technical Provisions.	A	7 Days	1
12	Project Management	Inspection	Comply with a requirement of any Section of the Technical Provisions or of the PPA with regard to inspection, except where provided elsewhere in this Attachment 1.	B	2 Days	2
13	Reserved					
14	Project Management	Key Personnel	Comply with a requirement with regard to Key Personnel of any Section of the Technical Provisions or of the PPA, except where provided elsewhere in this Attachment 1.	A	30 Days	2
15	Project Management	Maintenance and inspection of Records	Keep, maintain and make available to IFA all books, records and documents in accordance with Sections 23.1 and 23.2 of the PPA.	A	7 Days	1

Formatted: Highlight

Ref	Main Heading	Subheading	Failure to:	Assess-ment Category	Cure Period	Number of Points
16	Project Management	Quality Management	Establish, maintain updated and comply with the requirements of the Quality Management Plan in accordance with Section 2 of the Technical Provisions.	A	7 Days	2
17	Project Management	Safety	Observe the requirements of the safety plan; or to carry out any construction, operation or maintenance activity; in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 6.5.5 of the Technical Provisions.	A	1 Day	3
18	Project Management	Submission	Develop and submit a part of, or change, addition or revision to, the PMP at the time required in accordance with Sections 3.2.2 or 3.2.4 of the PPA.	B	14 Days	1
19	Environmental Compliance	Notification	Notify IFA of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 5.9.3 of the PPA.	A	1 Day	1
20	O&M	Category 1 Defect	Mitigate a hazard for a Category 1 defect within the time period shown in the Performance and Measurement Table.	A	See Performance and Measurement Table	3
21	O&M	Category 1 Defect	Implement a permanent remedy for a Category 1 defect within the time period shown in the Performance and Measurement Table.	A	See Performance and Measurement Table	2
22	O&M	Category 2 Defect	Implement a permanent repair for a Category 2 defect within the time period shown in the	A	See Performance	1

Formatted: Highlight

Ref	Main Heading	Subheading	Failure to:	Assess-ment Category	Cure Period	Number of Points
			Performance and Measurement Table.		and Measurement Table	
23	O&M	Reporting Records Accuracy	Report Defects or Noncompliance points in the Operations Reports as required per Section 22.6 of the Technical Provisions.	A	7 Days	5
24	O&M	Traffic Operations Restrictions	Comply with a traffic operations restrictions set forth in Article 6 of the PPA (each instance).	B	1 Day	1
25	O&M	Availability Payment Documentation	Provide supporting documentation with the draft Availability Payment invoice.	B	7 Days	5
26	O&M	O&M Plan	Comply with the requirements of Operations and Maintenance Plan not specifically identified elsewhere in this Attachment 1.	B	14 Days	1
27	O&M	O&M Work Files	Maintain current and accurate files, and make them available for inspection and audit, related to the O&M Work per requirements of Sections 22.1.10 and 22.7.2 of the Technical Provisions.	B	15 Days	3
28	O&M	Operations Report	Submit Operations Report per requirements of Section 22.2.2 of the Technical Provisions.	B	7 Days	5
29	O&M	Maintenance Work Report	Submit Maintenance Work Report per requirements of Section 22.4.1.3 of the Technical Provisions.	B	7 Days	5
30	O&M	Maintenance Plan	Submit an annual Maintenance Plan per requirements of Section 22.4.1 of the Technical Provisions.	B	14 Days	3
31	O&M	Notification Regarding Planned Roadway	Notify and/or coordinate with public agencies (INDOT, KYTC, Louisville Metro, etc.) regarding planned Segment Closures per the requirements of	C	None	3

Formatted: Highlight

Ref	Main Heading	Subheading	Failure to:	Assess-ment Category	Cure Period	Number of Points
		Closures	Section 22.2.3 of the Technical Provisions.			
32	Reserved					
33	O&M	Operations Staffing Levels	Maintain the operations staffing levels in accordance with the requirements of Section 22 of the Technical Provisions and the PMP.	A	30 Days	4
34	O&M	Hazardous Materials Management Plan	Implement a Hazardous Materials policy in accordance with the requirements of Section 7.9 of the Technical Provisions.	B	14 Days	4
35	O&M	Inspection Obligations	Perform Developer's inspection obligations per the requirements of Section 22 of the Technical Provisions.	A	1 Day	1
36	O&M	Snow and Ice Control Plan	Submit an annual Snow and Ice Control Plan per the requirements of Section 22.3.1.12.2 of the Technical Provisions.	B	14 Days	3
37	O&M	Winter Patrol Diary	Make available the Winter Patrol Diary per the requirements of Section 22.3.1.12.4 of the Technical Provisions.	B	1 day	4

Formatted: Highlight

EXHIBIT 13

LIST OF INITIAL FUNDING AGREEMENTS

AND INITIAL SECURITY DOCUMENTS

[TO BE PROVIDED AT FINANCIAL CLOSE]

Funding Agreements

Security Documents

Formatted: Highlight

EXHIBIT 14

CALCULATION AND PAYMENT OF REFINANCING GAIN

Section 1. Data and Projections Required for the Calculation of the Refinancing Gain

Developer must notify IFA as soon as practicable of its interest in proceeding with a Refinancing and the proposed schedule for documenting and closing the proposed Refinancing other than an Exempt Refinancing.

Developer shall provide the following information at least 35 days in advance of the scheduled Refinancing date:

(a) The Financial Model with the original projections duly adjusted for any changes in the East End Crossing structure (e.g. IFA Changes);

(b) Details of the actual timing and amounts of Committed Investment from the Effective Date to the scheduled Refinancing date;

(c) Details of the actual timing and amounts of Distributions to Equity Members or any of their Affiliates from the Effective Date to the scheduled Refinancing date;

(d) Information on the actual cash flow of Developer from the Effective Date to the scheduled Refinancing date, set out under the same headings as the Financial Model;

(e) Term sheet and other relevant information on the terms of the Refinancing;

(f) A pre-Refinancing Financial Model, which does not take into account the effects of the Refinancing, as updated by Developer (i) for any changes in the East End Crossing and based on the actual performance of the East End Crossing to the date of calculation and other macroeconomic assumptions and (ii) with projections for the cash flow of Developer from the estimated Refinancing date to the end of the Term, including projected Distributions ("**Pre-Refinancing Financial Model**");

(g) A post-Refinancing Financial Model which fully takes into account the effects of the Refinancing as projected on the basis of the term sheet and new Funding Agreements, as updated by Developer (i) for any changes in the East End Crossing and based on the actual performance of the East End Crossing to the date of calculation and other macroeconomic assumptions and (ii) with projections for the cash flow of Developer from the scheduled Refinancing date to the end of the Term, including projected Distributions and all costs incurred in connection with the Refinancing ("**Post-Refinancing Financial Model**");

(h) A calculation of the Refinancing Gain based on the above and the provisions described below; and

(i) Information on the assumptions for the projections in the Pre-Refinancing Model and Post-Refinancing Financial Model.

For the purposes of this Exhibit, "Pre-Refinancing Equity IRR" means the Equity IRR calculated

Formatted: Highlight

in the Pre-Refinancing Financial Model and "Post-Refinancing Equity IRR" means the Equity IRR calculated in the Post-Refinancing Financial Model.

The Pre-Refinancing Equity IRR and Post-Refinancing Equity IRR shall be calculated for the entire Term taking into account:

(a) Timing and amounts of the investment by Equity Members;

(b) Distributions received by Equity Members up to the estimated Refinancing date; and

(c) Projected Distributions as shown in the Financial Model immediately prior to the Refinancing or immediately after the Refinancing, as applicable.

Section 2 Calculation of the Refinancing Gain

The Refinancing Gain for any Refinancing other than an Exempt Refinancing will be equal to the greater of zero and [(A-B)-C] where:

A = the Net Present Value of the Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Post-Refinancing Financial Model, discounted using the Pre-Refinancing Equity IRR;

B = the Net Present Value of the Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Pre-Refinancing Financial Model, discounted using the Pre-Refinancing Equity IRR; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Original Equity IRR as described in Section 3 below.

For purposes of this Exhibit, "Net Present Value" means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Original Equity IRR.

For the avoidance of doubt, "Refinancing Gain" excludes the portion of gain, if any, (calculated as provided above) from the first Refinancing that is less than or equal to that shown in the Financial Model and incorporated into the Financial Model. Any gain from the first Refinancing (calculated as provided above) in excess of the gain therefrom as shown in the Financial Model shall constitute Refinancing Gain.

Section 3 Adjustment to Raise the Pre-Financing Equity IRR to the Equity IRR

If the Pre-Refinancing Equity IRR is lower than the Original Equity IRR, a calculation will be done to determine the amount of Distributions which, if received by Equity Members at the estimated Refinancing date, would increase the Pre-Refinancing Equity IRR to the Original Equity IRR (while the MAP is maintained and the minimum prevailing debt covenants established in the Funding Agreements are not violated). The determination of this amount of Distributions needed to achieve the Original Equity IRR shall be treated as Project Debt, rather than Committed Investment, any initial Committed Investment in excess of the maximum permitted initial Committed Investment under Section 13.7.9 of the Agreement. This amount of Distributions will be deducted as factor C in Section 2 above and IFA will only be entitled to receive 60% of the remaining balance as the Refinancing Gain.

Formatted: Highlight

Section 4 Payment of Department's Portion of Refinancing Gain

IFA will receive payment of its portion of the Refinancing Gain as a reduction in the Availability Payments over all or a portion of the Term, subject to the following provisions:

(a) IFA will not receive its portion of the Refinancing Gain faster than the Equity Members of Developer; and

(b) If the Refinancing involves raising new debt or otherwise increasing the amount of outstanding Project Debt anticipated in any Fiscal Year of the Financial Model, IFA may elect to receive its portion as a lump sum payment concurrently with the close of the Refinancing.

Section 5 Final Calculation and Payment

Developer shall perform a final calculation of the Refinancing Gain and deliver the results to IFA within 15 days after the close of the Refinancing.

Formatted: Highlight

EXHIBIT 15

SUMMARY OF TERMS FOR CUSTODY AGREEMENT

1. Revenues Covered. The Custody Agreement will encompass all Toll Revenues, including payments by cash or check, or electronic funds transfer.

2. Custodial Accounts. The Custody Agreement will provide for the establishment and maintenance of the following separate custodial securities accounts (or separate custodial trust accounts) (collectively "Custodial Accounts"):

(a) An account for all collected Toll Revenues from all sources ("Toll Revenue Collections Account");

(b) An account to hold all funds prepaid by Transponder customers ("Prepaid Customers Account");

(c) Indiana Revenue Share Account;

(d) Kentucky Revenue Share Account.

3. Lockbox Account. The Custody Agreement will provide for establishment and maintenance of a separate lockbox account for incoming Toll Revenue receipts and receipts relating to prepaid accounts of Transponder customers ("Lockbox Account").

4. Withdrawal, Transfer and Replenishment Mechanics. The Custody Agreement will include provisions providing for the mechanics of withdrawals from or transfers among the accounts as well as deposits to the Prepaid Customers Account from account customer replenishments, to occur on a daily basis on all days the Custodian is open for business, including the following:

(a) For daily processing of deposits to the Lockbox Account and daily transfer of cleared deposits to the appropriate Custodial Accounts;

(b) For daily withdrawal of funds in the Prepaid Customers Account and transfer thereof into the appropriate account or to designated customers owed refunds or credits, including upon closure of customer accounts, in accordance with instructions from the Toll Operator;

(c) For daily deposits to the Prepaid Customers Account from payments made by Transponder account customers upon opening or replenishment of their customer accounts; and

(d) IFA's obligation to direct, or cause the Toll Operator to direct, such movement of funds, and the rights of IFA to enforce such obligation, including the right to step-in and direct such movement of funds upon any failure to properly do so.

(e) For daily withdrawal of (i) the Indiana Revenue Share from the Toll Collections Account to the Indiana Revenue Share Account held under the Custody Agreement for transfer from such account to the Project Trustee for deposit in the Toll Revenue Fund held

Formatted: Highlight

under the Project Trust Agreement and (ii) the Kentucky Revenue Share from the Toll Collections Account to the Kentucky Revenue Share Account for transfer from such account directly to the trustee on behalf of the holders of the bond issued by KPTIA or such other account as directed in writing by KPTIA.

5. Custodian Obligations. The Custody Agreement will include the Custodian's agreement to withdraw, transfer and deposit funds in accordance with the provisions set forth in the Custody Agreement.

6. Designated Beneficiaries. IFA with respect to the Indiana Revenue Share held in the Custodial Accounts and the Lockbox Account will be the sole designated beneficiaries of such amounts. KPTIA and the trustee acting on behalf of the holders of bonds issued by KPTIA with respect to the Kentucky Revenue Share KPTIA held in the Custodial Accounts and the Lockbox Account will be the sole designated beneficiaries of such amounts. With respect to such beneficiary interests, the Custody Agreement shall:

(a) Include the Custodian's acknowledgement of the beneficial rights of IFA and KPTIA to pledge their rights as a designated beneficiary to any of their creditors;

(b) Expressly state the intention of the parties that the Custody Agreement and arrangements described therein are intended to keep collected Toll Revenues out of the possession of KPTIA, KPTIA's bond trustee, Developer and IFA, and to isolate them with the Custodian until appropriate allocation pursuant to the Custody Agreement, the Project Trust Agreement with respect to the Indiana Revenue Share and the trust indenture relating to KPTIA's bonds with respect to the Kentucky Revenue Share;

7. Toll Revenue Ownership. The Custody Agreement will include express confirmation by IFA, KPTIA and the Custodian that all Toll Revenues collected by the Toll Operator belong to and are the property of IFA and KPTIA, and are not the property or assets of Developer or the Custodian, and that in performing its collection services the Toll Operator is acting as an intermediary and agent for IFA and KPTIA in respect of all Toll Revenues.

8. Monitoring. The Custody Agreement will include specific provisions designed to enable the beneficiaries to monitor the operation of the Custodial Accounts and Lockbox Account and the Toll Operator's performance of its anticipated functions thereunder, including calculation of Indiana Revenue Share and Kentucky Revenue Share, notice provisions regarding certain events (such as the Toll Operator not providing any required notice, certificate or filing as contemplated by the Custody Agreement).

9. Miscellaneous. The Custody Agreement will include miscellaneous provisions providing for appropriate distribution and treatment of accounting records concerning the accounts, tax treatment, limitation on eligible investments, qualifications of the Custodian and any successor Custodian (including minimum capital, other than borrowed capital, and surplus), waiver of custodial security interests, and rights of the Custodian.

Formatted: Highlight

EXHIBIT 16

FORM OF PROJECT TRUST AGREEMENT

[see attached]

Formatted: Highlight

EXHIBIT 17

EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

1. EXTRA WORK COSTS

At the sole discretion of IFA, Extra Work Costs shall be determined based either on (a) a negotiated lump sum, or (b) force account.

1.1 Negotiated Lump Sum

1.1.1 Lump sum Extra Work Costs shall be negotiated based on estimated costs of:

1.1.1.1 Labor;

1.1.1.2 Material;

1.1.1.3 Equipment;

1.1.1.4 Third party fees and charges (e.g. permit fees, plan check fees, review fees and charges);

1.1.1.5 Extra insurance costs and extra costs of bonds and letters of credit;

1.1.1.6 Other direct costs, and

1.1.1.7 A reasonable contingency for Developer risk associated with the lump sum pricing.

1.1.2 Lump sum Extra Work Costs also shall include a reasonable, negotiated markup for Contractor indirect costs, overhead and profit and Developer indirect costs and overhead. The negotiated lump sum shall not include any home office overhead of Developer or its Contractors or any markup on Contractor or Developer direct or indirect costs for Developer profit. Such indirect costs shall exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

1.1.3 The price of a negotiated lump sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, materials and equipment, as indicated in Exhibit 2-I and other sources of original pricing information (such as the Original Financial Model), whenever possible. If requested by IFA, price negotiations for lump sum Extra Work Costs shall be on an Open Book Basis.

1.1.4 In pricing any negotiated lump sum for Extra Work Costs, Developer shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption under applicable Law.

1.2 Force Account

When Extra Work Costs are determined on a force account basis, Developer will

Formatted: Highlight

be compensated for the direct costs of labor, materials and equipment used in performing the Extra Work, plus markup for indirect costs, overhead and profit. The direct costs of labor, materials and equipment shall be determined as set forth in Sections 1.2.1 below ("Labor"), 1.2.2 below ("Materials"), and 1.2.3 below ("Equipment Rental"), respectively. Markup for overhead and profit shall be determined as set forth in Section 1.2.4 below ("Costs of Delay, Indirect Costs, Overhead and Profit").

1.2.1 Labor

1.2.1.1 Extra Work Costs shall include the cost of labor for workers used in the actual and direct performance of the Extra Work. Workers include foremen actually engaged in the performance of the Extra Work. Workers do not include East End Crossing supervisory personnel or necessary on-site clerical staff, except when the Extra Work is a Controlling Work Item and the performance of such Extra Work actually delays Work on the Critical Path due to no fault of Developer. In such a case, compensation for East End Crossing supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spend on the Extra Work. In no case shall an officer or director of Developer, an Affiliate or any Contractor, nor those persons who own more than one percent of Developer, an Affiliate or any Contractor, be considered as East End Crossing supervisory personnel, direct labor or foremen hereunder.

1.2.1.2 For workers who are not East End Crossing supervisory personnel, the cost of labor, whether the employer is Developer, an Affiliate, or a Contractor, will be the sum of the following.

(a) Actual Wages

The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes.

(b) Labor Surcharge

A labor surcharge, added to the actual wages as set forth in Section 1.2.1.2(a) above. The labor surcharge shall be as set forth in the Blue Book, which is in effect on the date upon which the Extra Work is accomplished. The labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 1.2.1.2(a) above and subsistence and travel allowance as specified in Section 1.2.1.2(c) below.

(c) Subsistence and Travel Allowance

The actual subsistence and travel allowance paid to the workers.

1.2.2 Materials

1.2.2.1 IFA-Furnished Materials

IFA reserves the right to furnish any materials it deems advisable, and Developer shall have no claim for costs and markup on those materials.

Formatted: Highlight

1.2.2.2 Developer-Furnished Materials

Only materials furnished by Developer and necessarily used in the performance of the Extra Work may be included in Extra Work Costs. The cost of those materials will be the cost to the purchaser — whether the purchaser is Developer, an Affiliate, or a Contractor — from the Supplier thereof, except as the following are applicable.

(a) Discounts

If a cash or trade discount by the actual Supplier is offered or available to the purchaser, it shall be credited to IFA notwithstanding the fact that the discount may not have been taken.

(b) Non-direct Purchases

If materials are procured by the purchaser by any method which is not a direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual Supplier as determined by IFA plus the actual costs, if any, incurred in the handling of the materials.

(c) Purchaser-supplied Materials

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from that source on contract items or the current wholesale price for those materials delivered to the Site, whichever price is lower.

(d) Excessive Costs

If the cost of the materials is, in the opinion of IFA, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the Site, less any discounts as provided in Section 1.2.2.2(a) above.

(e) Evidence of Cost

If Developer does not furnish satisfactory evidence of the cost of the materials from the actual Supplier thereof within 60 days after the date of delivery of the materials or within 15 days after the acceptance of the contract with the Supplier, whichever occurs first, IFA reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the Extra Work, less any discounts as provided Section 1.2.2.2(a) above.

1.2.3 Equipment Rental

1.2.3.1 General Equipment Rental Provisions

(a) Extra Work Costs for the use of equipment shall be

Formatted: Highlight

determined at the rental rates listed for that equipment in the current edition and appropriate volume of the Rental Rate Blue Book as published by EquipmentWatch®, which is in effect on the date upon which the Extra Work is accomplished, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Developer or any Contractor; provided that for those pieces of equipment with a rental rate of $10.00 per hour or less as listed in the Blue Book and which are rented from a local equipment agency, other than Developer- owned or Affiliate-owned, Extra Work Costs for use of the equipment shall be determined at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 1.2.3.2 below ("Equipment on the Site"). If a minimum equipment rental amount is required by the local equipment rental agency, Extra Work Costs shall be determined at the actual amount charged. The $10 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(b) If IFA concurs that it is necessary to use equipment not listed in the Blue Book, a suitable rental rate for that equipment will be established by IFA. Developer may furnish any cost data which might assist IFA in the establishment of the rental rate. If the rental rate established by IFA is $10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply. The $10 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(c) The rental rates as provided above shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

(d) The cost of labor for operators of rented equipment shall be determined as provided in Section 1.2.1 above ("Labor").

(e) For costs of equipment to be eligible for Extra Work Costs, the equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

(f) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(g) Extra Work Costs exclude the costs of small tools. Individual pieces of equipment or tools not listed in the Blue Book and having a replacement value of $500 or less, regardless of whether consumed by use, shall be considered to be small tools ineligible for Extra Work Cost compensation. The $500 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(h) Rental time will not be allowed while equipment is inoperative due to breakdowns.

1.2.3.2 Equipment on the Site

Formatted: Highlight

(a) The rental time to be included in Extra Work Costs for equipment on the Site shall be the time the equipment is in operation on the Extra Work being performed, and in addition, shall include the time required to move the equipment to the location of the Extra Work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the Extra Work on other than the Extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no loading and transporting costs will be allowed if the equipment is used at the site of the Extra Work on other than the Extra Work.

(b) The following shall be used in computing the rental time of equipment on the Site.

(1) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5 hour of operation.

(2) When daily rates are listed, less than 4 hours of operation shall be considered to be 0.5 day of operation.

1.2.3.3 Equipment Not on the Site

For the use of equipment moved onto the Site from elsewhere to perform Extra Work and used exclusively for Extra Work, the force account Extra Work Costs shall be determined at the rental rates listed in the Blue Book, which is in effect on the date upon which the Extra Work is accomplished, or, at IFA's election, determined as provided in Section 1.2.3.1 above ("General Equipment Rental Provisions") and at the cost of transporting the equipment to the location of the Extra Work and its return to its original location, all in accordance with the following provisions.

(a) The original location of the equipment to be hauled to the location of the Extra Work shall be subject to IFA's prior approval.

(b) The Extra Work Costs will include the costs of loading and unloading the equipment.

(c) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.

(d) The rental period shall begin at the time the equipment is unloaded at the site of the Extra Work, shall include each day that the equipment is at the site of the Extra Work, excluding Saturdays, Sundays and Holidays unless the equipment is used to perform the Extra Work on those days, and shall terminate at the end of the day on which the use of the equipment ceases. The rental time per day allowable as Extra Work Costs will be in accordance with the following.

(1) Hours includable in Extra Work Costs shall be determined as follows:

Hours Equipment	Hours Includable in

Formatted: Highlight

is in Operation	Extra Work Costs
0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	5.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75
8	8
Over 8	hours in operation

(2) The hours includable in Extra Work Costs for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

(3) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5 hour of operation.

(4) When daily rates are listed, 0.5 day will be includable in Extra Work Costs if the equipment is not used. If the equipment is used, one day is includable in Extra Work Costs.

(5) The minimum rental time to be paid for the entire rental

Formatted: Highlight

period on an hourly basis shall not be less than 8 hours or if on a daily basis shall not be less than one day.

(e) Should Developer desire the return of the equipment to a location other than its original location, IFA will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the Extra Work.

(f) Costs of transporting, and loading and unloading equipment, as above provided, will not be allowed as Extra Work Costs if the equipment is used in any way in addition to or other than upon Extra Work accounted for on a force account basis.

1.2.3.4 Owner-Operated Equipment

When owner-operated equipment is used to perform Extra Work, the force account Extra Work Costs for the equipment and operator shall be determined as follows:

(a) Extra Work Costs for the equipment will be determined in accordance with Section 1.2.3.1 above ("General Equipment Rental Provisions");

(b) Extra Work Costs for labor and subsistence or travel allowance will be determined at the rates paid by Developer to other workers operating similar equipment already on the Site or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the work, regardless of whether the owner operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with Section 1.2.1.2(b) above ("Labor Surcharge"); and

(c) To the direct cost of equipment rental and labor, computed as provided herein, there will be added the markups for equipment rental and labor as provided in Section 1.2.4.1 below ("Overhead and Profit").

1.2.3.5 Dump Truck Rental

Dump truck rental shall conform to the provisions in Section 1.2.3.1 above ("General Equipment Rental Provisions"), Section 1.2.3.2 above ("Equipment on the Site") and Section 1.2.3.3 above ("Equipment Not on the Site"), except as follows:

(a) Force account Extra Work Costs for fully maintained and operated rental dump trucks used in the performance of Extra Work shall be determined at the same hourly rate paid by Developer for use of fully maintained and operated rental dump trucks in performing the Work;

(b) In the absence of Work requiring dump truck rental, IFA will establish an hourly rental rate for determining the Extra Work Costs of fully maintained and operated rental dump trucks. Developer shall provide IFA with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks;

Formatted: Highlight

(c) The provisions in Section 1.2.1 above ("Labor") shall not apply to operators of rented dump trucks;

(d) The rental rates listed for dump trucks in the Blue Book shall not apply;

(e) To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup in accordance with Section 1.2.4 below ("Costs of Delay, Indirect Costs, Overhead and Profit"); and

(f) The provisions in Section 1.2.3.4 above ("Owner Operated Equipment") shall not apply to dump truck rentals.

1.2.4 Costs of Delay, Indirect Costs, Overhead and Profit

1.2.4.1 Contractor Markups for Delay, Indirect Costs, Overhead and Profit

(a) To the total direct costs of a Contractor's labor, materials, and equipment other than rented dump trucks, there will be added a markup of 20 percent to the Contractor's cost of labor; 12 percent to the Contractor's cost of materials; and 12 percent to the Contractor's cost of equipment. To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 12 percent; there will be no separate markup for labor. These markups shall constitute full compensation for all the Contractor's costs of delay, indirect costs, overhead costs and profit associated with the Extra Work, which shall be deemed to include all expense items not specifically designated as direct costs of labor in Section 1.2.1 above, materials in Section 1.2.2 above, and equipment in Section 1.2.3 above. Such expense items include third party fees and charges (e.g. permit fees, plan check fees, review fees and charges, extra insurance costs, and extra costs of bonds and letters of credit). Such expense items exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

(b) IFA will not pay any markup for the Lead Contractor or any other Prime Contractor where it subcontracts labor, materials or equipment for Extra Work to a Contractor at a tier lower than the Lead Contractor or other prime Contractor. However, payment to the Lead Contractor or other prime Contractor for a markup on such subcontracted Extra Work may be obtained from Developer (see Section 1.2.4.2(a) below).

1.2.4.2 Developer Markups for Delay, Indirect Costs and Overhead

(a) IFA will pay Developer, for distribution as Developer deems appropriate, a 5 percent markup on the total direct costs of labor, materials, and equipment for the Extra Work performed by a Contractor at any tier (but before any Contractor markups thereon).

(b) There will be added a markup of 20 percent to the total direct cost of Developer's own labor; 12 percent to the total direct cost of Developer's own materials; and 12 percent to the total direct cost of Developer's own rental of equipment.

Formatted: Highlight

To the total of the rental costs paid directly by Developer for fully maintained and operated dump trucks, including labor, there will be added a markup of 12 percent; there will be no separate markup for labor.

(c) These markups shall constitute the full compensation for all Developer's costs of delay, indirect costs and overhead costs associated with the Extra Work, which shall be deemed to include all expense items not specifically designated as directs costs of labor in Section 1.2.1 above, materials in Section 1.2.2 above, and equipment in Section 1.2.3 above. Such expense items include third party fees and charges (e.g. permit fees, plan check fees, review fees and charges, extra insurance costs, and extra costs of bonds and letters of credit). Such expense items exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Extra Work Costs.

(d) There shall be paid no markup on the total or any portion of the direct or indirect costs of Developer or its Contractors for Developer profit.

1.2.4.3 No Charge or Markup for Home Office Overhead

There shall be no home office overhead added for Developer or any of its Contractors.

1.2.5 Affiliate Extra Work Costs

1.2.5.1 The direct costs of an Affiliate's labor, materials, and equipment used in performing Extra Work shall be limited in accordance with Section 7.6.1 of the Agreement.

1.2.5.2 If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

1.2.6 Subcontractor Extra Work Costs

There will be added a markup of 5 percent to the total direct cost of each subcontractor.

2. DELAY COSTS

Delay Costs shall be determined as follows:

2.1 Direct Cost of Idle Labor

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.2.1 above ("Labor").

2.2 Direct Cost of Idle Equipment

Compensation for the direct cost of the actual idle time of equipment will be determined in the same manner as determinations are made for force account Extra Work

Formatted: Highlight

Costs for equipment used in the performance of Extra Work, as provided in Section 1.2.3 above ("Equipment Rental"), with the following exceptions:

2.2.1 If the Delay Cost is attributable to the Relief Event set forth in clause (i) of the definition of Relief Event (IFA's lack of good and sufficient title to or right to enter and occupy any parcel in the Project Right of Way), then the right of way delay factor for each classification of equipment shown in the Blue Book will be applied to that equipment rental rate;

2.2.2 The Delay Costs will be determined for the actual normal working time during which the Delay condition exists, but in no case will exceed 8 hours in any one day; and

2.2.3 The Delay Costs will be determined for the calendar days, excluding Saturdays, Sundays and Holidays, during the existence of the Delay, except that when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.2.3.3 above ("Equipment Not on the Site "), Delay Costs shall not include equipment rental costs for equipment not located on the Site.

2.2.4 If IFA determines that idle equipment should not remain on the Site during a delay, then IFA will pay the actual, reasonable costs, without markup, to (a) demobilize the equipment during the delay period and (b) remobilize the equipment at the end of the delay period. Compensation for idle equipment will not be paid while the subject equipment is demobilized from the Site during a delay period.

2.3. Where Delay is to Controlling Work Item

In the case of a Relief Event Delay, Delay Costs shall include the following percentage markups, which shall constitute full compensation for all indirect delay costs (including delay overhead costs), delay expenses and delay profit related to such Relief Event Delay:

2.3.1 The percentage markups for the direct costs of a Contractor's labor and equipment set forth in Section 1.2.4.1(a) above ("Contract Markups for Delay, Indirect Costs, Overhead and Profit") as applied to the Contractor's costs of idle time of labor and equipment as determined under Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"); and

2.3.2 The percentage markups for the direct costs of Developer's labor and equipment set forth in Section 1.2.4.2(b) above (" Contract Markups for Delay, Indirect Costs, Overhead and Profit") as applied to Developer's costs of idle time of labor and equipment as determined under Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"). There shall be no added markup to Developer's or any Contractor's cost of idle time of labor and equipment for Developer profit.

2.3.3 Such markups exclude cost of funds (whether debt or equity), and Lender charges, damages and penalties, which are not allowable as Delay Costs. For avoidance of doubt, such exclusion does not affect Developer's right to receive compensation for a Relief Event Delay that extends the date of Substantial Completion as provided in Section 15.3 of the PPA.

2.4 Where Delay is to Non-Controlling Work Item

Formatted: Highlight

If the Delay is to a non-Controlling Work Item, then no indirect costs and expenses, and no profit, of Developer or any Contractor are allowable as Delay Costs.

2.5 Home Office Idled Labor and Equipment

There shall be no home office costs of idled labor or idled equipment added for Developer or any of its Contractors.

2.6 Delay Costs in respect of the Extension of the Date for Financial Close by IFA

If the Delay is due to IFA giving Notice to Developer of the extension of the date for Financial Close as provided in Section 13.7.2, Developer shall be entitled to receive the cost of extending the Financial Close Security for the period from the original date of Financial Close as set forth in the Developer FC Notice as provided in Section 13.7.2 to the new date for Financial Close. Such payment shall be due and payable with 45 days of an invoice therefor from Developer. Developer shall also be entitled to receive payment of the compensation for certain escalation costs and the costs related to achieving Financial Close and certain breakage fees as provided in Section 13.7.2.3.

2.7 Delay Costs in respect of Certain Relief Events relating to Environmental Litigation

If the Delay is due to an undisputed Relief Event under clause (s) of the definition thereof, and in such case, arising solely out of, or solely relating to, Environmental Litigation, then notwithstanding anything to the contrary in this Section 2, but still subject in all respects to Sections 2.4 and 2.5 of this Exhibit 17, Developer shall be entitled to receive the costs determined pursuant to Sections 2.7.1 to 2.7.3 below for the period from the effective date of such Relief Event until the earlier of conclusion of such Relief Event or the end of the Term:

Payment for escalation costs due to an undisputed Relief Event under clause (s) of the definition thereof shall be limited to the escalated cost of labor, materials, and equipment on that portion of the Work which is delayed beyond an original intermediate completion date or Project Schedule Deadline and is caused to be performed during a period when the costs were higher than when such portion of the Work was planned to be performed as shown on the accepted schedule prior to the delay. Developer shall submit satisfactory documentation of escalation costs in a format approved by IFA or its designee.

2.7.1 *Labor Escalation*. Payment for escalated labor costs will be calculated as the difference in labor cost between the time the work was performed and the time the work was planned. Labor costs will be calculated in accordance with Section 1.2.1 of this Exhibit 17, except that no markup will be paid for labor escalation. Payment for escalated labor costs will be calculated as the difference in labor cost between the time the work was performed and the time the work was planned.

2.7.2 *Materials Escalation or Storage*. Payment for escalated material costs will be calculated as the difference in the material cost between the time a portion of the Work was performed and the time such portion of the Work was planned. No material escalation cost will be paid for any item covered by a separate escalation or indexing clause under the PPA Documents. IFA will pay for storage of materials due to the delay. Only the actual cost of storing the materials will be paid. No markup will be

Formatted: Highlight

paid for materials storage.

2.7.3 *Equipment Escalation*. Payment for eligible equipment escalation costs will be calculated as the difference between the Rental Rate Blue Book FHWA hourly rate at the time the work was performed and the Rental Rate Blue Book FHWA hourly rate at the time the work was planned. No markup will be paid for equipment escalation costs.

Formatted: Highlight

EXHIBIT 18

INITIAL PROJECT DEBT COMPETITION

1. Overview

1.1. IFA seeks to ensure that the Project secures the most competitive financing terms at Financial Close, which generates an affordable MAP and provides best value given the Project's risk profile as established in the Agreement, PPA Documents, Principal Project Documents, detailed term sheet(s) for the Funding Agreements attached to the commitment letters from the Core Lender(s) and / or the Lead Underwriter contained in the bid submission (the "Term Sheet(s)").

1.2. Set out below is the process for the initial project debt competition ("Financing Competition" or "Financing Competition Protocol") in order for Developer to place the Initial Project Debt included in its Financial Plan. Developer shall undertake the Financing Competition prior to Financial Close if directed to do so by IFA as provided in Section 13.7.2 of the Agreement. The Financing Competition shall be under the control and responsibility of Developer subject to IFA's comments and review and/or approval as provided in the Financing Competition Protocol, and right to observe, monitor and audit, as set forth in the Financing Competition Protocol.

1.3. No changes to the Agreement, the other PPA Documents or the Principal Project Documents, including no changes in the risk allocation between IFA and Developer or between the parties to such other documents, nor any changes to Developer's risk profile with respect to the financing of the Project as documented in the Term Sheet(s), shall occur as a result of the Financing Competition, unless each of IFA and Developer give their consent to such changes each acting reasonably.

2. Principles of the Financing Competition

Developer shall conduct the Financing Competition according to the following principles (the "Key Principles"):

2.1. The Financing Competition shall be transparent and open to observation by IFA and its advisors. Developer shall conduct, at a minimum, monthly meetings with IFA and its advisors to discuss progress against Financing Competition milestones with the understanding that weekly meetings may be required as progress is made leading to Financial Close.

2.2. Developer shall compete and evaluate both bank and capital market bond solutions.

2.3. Developer will be responsible for managing and controlling all operational aspects of the Financing Competition. Developer's Core Lender(s) and / or Lead Underwriter(s), as identified in Developer's proposal, shall participate in the Financing Competition, while in any case retaining any option to match terms for a specified portion of the loan or issuance as described in Section 4.9 below.

Formatted: Highlight

2.4. Developer shall ensure that the process is efficient while achieving the key objective of achieving the most competitive financing terms for the Project, given the Agreement, PPA Documents, Principal Project Documents, and the Term Sheet(s), and the risk allocation contained in each of them. With respect to the delivery of financing, this could include Developer granting right-to-match lending terms to Developer's Core Lender(s) and/or secure a Lead Managing Underwriter position for the Lead Underwriter subject to the limits set out herein.

3. Phase 1: Preparatory Phase

3.1. Developer will develop a schedule and schedule milestones including setting specific dates when review drafts of deliverables will be provided to IFA no later than 5 days after issuance of the IPDC Commencement Notice by IFA. Such schedule shall be subject to IFA's review, comment and approval (in its reasonable discretion) which shall be given within 5 business days after receipt of the draft schedule.

3.2. The schedule milestones shall be consistent with all completion deadlines and shall allow Developer sufficient time to reach Financial Close by the Financial Close Deadline.

3.3. Developer shall meet with IFA and its advisors on a monthly basis, at a minimum, to discuss the status of financing for the Project and the financing markets, in general.

3.4. The Preparatory Phase will conclude with finalization of the schedule and schedule milestones as provided in this Section 3.

4. Phase 2: Financing Competition Phase

4.1. During Phase 2, Developer shall identify and solicit a wide-range of potential bank lenders and capital market underwriters/broker-dealers, and/or derivative product providers (collectively referred to as "Lenders") in order to receive the most competitive terms possible for both bank and bond financing solutions (including PABs), such terms to be consistent with the Agreement, the PPA Documents, the Principal Project Documents, and the Term Sheets. Developer will provide this list of potential Lenders to IFA for its review and comment prior to solicitation to the Lenders.

4.2. Developer shall request and obtain from Lenders preliminary financing terms and conditions for banks and bonds financing solutions in order to evaluate:

4.2.1. the most competitive financing solution (bank versus bond solution) and

4.2.2. the most competitive terms for each financing solution.

4.3. None of the potential Lenders shall be Affiliates of any Developer-Related Entity and IFA will provide review and, if appropriate, comments on the list of Lenders proposed by Developer. IFA shall have the right, acting reasonably, to require Developer to increase the number of potential Lenders under consideration.

Formatted: Highlight

4.4. All Lenders shall be required to execute a non-disclosure agreement in form and substance reasonably satisfactory to Developer and IFA. Any material information and clarifications about the Financing Competition that are communicated to one potential Lender shall be promptly shared with all other identified potential Lenders (except for such questions that Developer and IFA agree are commercially sensitive and confidential). Responses to potential Lender questions, comments and requests for clarifications, and any clarifications to be requested from potential Lenders, will be prepared by Developer and subject to review and comment by IFA (acting reasonably and without delay).

4.5. In connection with Phase 2, Developer will prepare a Preliminary Information Memorandum ("PIM") concerning the Project and the financing. The PIM will be submitted to IFA for review, comment and approval (in its reasonable discretion) prior to submittal to any Lender. IFA's response to the PIM shall be provided within 10 business days after receipt thereof for any initial submittal and 5 business days after receipt of any re-submittal.

4.6. Upon receipt of responses by potential Lenders, Developer shall evaluate the responses with the goal of identifying the most competitive financing terms at that point in time which generates a MAP no greater than the Annual MAP Limit and provides overall best value given the Project's risk profile as established in the Agreement, PPA Documents, Principal Project Documents, and the Term Sheet(s).

4.7. IFA expects the following information, at a minimum, to be evaluated for each potential Lender:

4.7.1. For a bond financing solution, a par amount and indicative price proposal (as a margin from the identified Benchmark Index);

4.7.2. For a bank financing solution, preliminary pricing based on either underwriting or club basis or both; and

4.7.3. Commitment by the potential Lender (whether bank or bond solution) to use the identified and approved Benchmark Interest Rate Index as the market reference rate at Financial Close.

4.8. Developer must demonstrate to IFA's reasonable satisfaction that it has given due consideration to both bank and bond financing solutions (including PABs).

4.9. The Core Lender(s) and/or the Lead Underwriters may, at Developer's discretion, have the option to match the terms of up to 50% of the total Initial Project Debt that is offered and generated by the Financing Competition. The right to match is not mandatory and Developer is not obligated to offer it. Developer will provide prompt Notice to IFA as to whether the Core Lender(s) and/or the Lead Underwriters has exercised said option or declined to exercise said option.

4.10. Upon approval by IFA, the process will proceed to Phase 3 as described below.

Formatted: Highlight

4.11. Potential Lenders are to provide preliminary financing terms and conditions based on the Agreement, other PPA Documents, the Principal Project Documents, the Term Sheet(s) and draft legal, technical and insurance due diligence reports. If Developer believes that a change to the Agreement or the other PPA Documents may result in a material and beneficial change to financing terms (and therefore a material beneficial change to the MAP from IFA's perspective), then, Developer may also deliver to IFA a written and detailed description of the changes that would be required and an estimation of the change to the MAP. Within 10 business days after receipt of such information, IFA shall then elect, in its sole discretion, whether and to what extent to allow changes to the Agreement or the other PPA Documents.

4.12. The outputs and outcome of Phase 2 will be:

4.12.1. A report to IFA describing the actions taken by Developer during Phase 2, qualitative and quantitative analyses of the structuring and pricing, and implications raised by the information and responses received, particularly on the MAP in each year of the Term;

4.12.2. Updated Term Sheet(s), incorporating the most competitive financing terms for both bank and bond financing solutions in accordance with Section 1.3;

4.12.3. A recommendation by Developer on which financing solution provides the most competitive financing terms without changes to the risk profile as described in Section 2.4 above (other than those agreed pursuant to Section 4.12); and

4.12.4. Agreement by Developer and IFA on the preferred financing approach.

These outputs and outcomes shall be submitted to IFA and shall be subject to IFA comment, review and approval (in its reasonable discretion) regarding the preferred financing approach. IFA's response to such submittals shall be provided within 10 business days after receipt thereof for any initial submittal and 5 business days after receipt of any re-submittal.

Formatted: Highlight

5. Phase 3: Final Submission Phase – Bank Financing Solution

5.1. Developer shall finalize the financing structure for the bank financing solution such that the financing structure has been approved by the Lender's credit committee(s) against a target price. Developer shall submit to IFA: (a) confirmation that there are no further comments on the Agreement or other PPA Documents; (b) confirmation that credit committee approval has been received and firm commitment letter(s) have been issued for a commitment period of at least 120 days or a period consistent with market practice at the time of Phase 3 of the IPDC as reasonably approved by IFA; such commitment subject only to market commitment conditions approved by Developer and IFA; and (c) the documentation referred to in Section 5.2 below (collectively referred to as the "Bank Final Submission"). The Bank Final Submission shall be submitted to IFA for review and approval (in its reasonable discretion). IFA's response to the Bank Final Submission shall be provided within 10 business days after receipt thereof for any initial submittal and 5 business days after receipt of any re-submittal.

5.2. The Bank Final Submission is expected to require the following documentation:

5.2.1. Substantially final legal, insurance, and technical due diligence reports;

5.2.2. Firm commitment letters and executed Updated Term Sheet(s), including draft interest rate hedging or other derivative product documentation, if applicable;

5.2.3. Final Contracts (and amendments thereof, if any) with Contractors;

5.2.4. Pro forma update to the Financial Model, including any sensitivities, using the financing terms agreed from Phase 2. This updated financial model will not become a Financial Model Update until Financial Close. The pro forma updated financial model described in this Section 5.2.4 will be used for analysis purposes only; and

5.2.5. Model auditor report (including tax and accounting sign off).

5.3. Within three days after IFA's approval of the Bank Final Submission, if Developer has elected to include a right to match for the Core Lender(s), Developer shall deliver to the Core Lender(s) Notice setting forth all the material financing terms to be matched and informing the Core Lender(s) that it has ten days from delivery of the Notice to exercise its right to match.

5.4. The right to match shall be capable of exercise only by the Core Lender(s) delivered to Developer within such ten-day period Notice setting forth: (a) an unconditional election to match, (b) the total amount of the financing they elect to match (which amount is subject to the constraints set forth herein), (c) confirmation that all the financing terms have received credit committee approval, and (d) confirmation that the Notice constitutes a firm commitment valid for at least 120 days (or a period consistent with market practice at the time of Phase 3 of the IPDC as reasonably approved by IFA) from the deadline for offer

Formatted: Highlight

submission subject only to the commitment conditions allowed under the terms established for the Bank Final Submission.

5.5. Developer shall submit a quantitative assessment, based on the financing terms included in the Bank Final Submission, of the impact on the MAP, based on the interest rate, credit spread, and structure adjustment provisions pursuant to Section 13.7.8 of the Agreement. The quantitative assessment should be conducted through pro forma updates to the Financial Model.

6. Phase 3: Final Submission Phase – Bond Financing Solution

6.1. Developer and its Lead Underwriter shall work to finalize the financial structure, preliminary official statement, bond prospectus or other offering documentation. Developer shall submit to IFA: (a) confirmation that there are no further comments on the Agreement or other PPA Documents; (b) confirmation that volume underwriting is committed for a period of at least 120 days or a period consistent with market practice at the time of Phase 3 of the IPDC as reasonably approved by IFA; and (c) the documents outlined in Section 5.2 (collectively referred to as the "Bond Final Submission"). The Bond Final Submission shall be submitted to IFA for review and approval (in its reasonable discretion). IFA's response to the Bond Final Submission shall be provided within 10 business days after receipt thereof for any initial submittal and 5 business days after receipt of any re-submittal.

6.2. The Bond Final Submission is expected to require the following documentation:

6.2.1. Draft preliminary official statement or bond prospectus;

6.2.2. Draft rating letter(s);

6.2.3. Draft Initial Financing Documents and Initial Security Documents, including draft interest rate hedging or other derivative product documentation, if applicable;

6.2.4. Final Contracts (and amendments thereof, if any) with Contractors;

6.2.5. A *pro forma* update to the Financial Model, including any sensitivities, using the financing terms agreed from Phase 2. This updated financial model will not become a Financial Model Update until Financial Close. The pro forma updated financial model described in this Section 6.2.5 will be used for analysis purposes only; and

6.2.6. Model auditor report (including tax and accounting sign off).

6.3. Within three days after IFA's approval of the Bond Final Submission, if Developer has elected to include a right to match for the Core Underwriter(s), Developer shall deliver to the Core Underwriter(s) written notice setting forth all the material financing terms to be matched and informing the Core Underwriter(s) that it has ten days from delivery of the written notice to exercise its right to match.

Formatted: Highlight

6.4. Developer shall submit a quantitative assessment, based on the financing terms included in the Bond Final Submission, of the impact on the MAP, based on the interest rate, credit spread, and structure adjustment provisions pursuant to Section 13.7.8 of the Agreement. The quantitative assessment should be conducted through pro forma updates to the Financial Model.

7. Phase 4: Financial Close Phase

7.1. During Phase 4, Developer shall require Lenders to submit their credit approval and proceed to Financial Close by the Financial close deadline (subject to Section 13.7.7). No new information will be presented during Phase 4 except for:

7.1.1. Further updates to the Financial Model, including any sensitivities, updated using financing terms agreed from Phase 3. This updated financial model will not become a Base Case Financial Model Update until Financial Close. The updated financial model will be used for analysis purposes only;

7.1.2. Updated financial model audit report (on the Financial Close Financial Model) – any errors or omissions identified which change the MAP, will be borne by Developer; and

7.1.3. Final Initial Funding Agreements and Initial Security Documents.

7.2. If a bond financing solution is selected by Developer and approved by IFA, Developer shall actively include IFA and its advisors in the marketing and pricing activities related to the bond underwriting process.

7.3. During the final pricing of any interest rate hedging instruments. IFA and its advisors shall have the right to monitor and verify the pricing of those instruments.

7.4. Subject to Section 13.7.10 of the Agreement, the Financial Model, or Base Case Financial Model Update, if applicable, will be updated to reflect final Initial Financing Agreements and fluctuations in Benchmark Interest Rate(s), Credit Spread Fluctuations, and changes to Other Financing Terms, if any.

Formatted: Highlight

EXHIBIT 19

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance during Construction

At all times during the period from the commencement of Construction Work until the Substantial Completion Date, Developer shall procure and keep in force, or cause to be procured and kept in force, a builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the East End Crossing under construction, with no exclusions or restrictions for terrorism, earthquake, earth movement, volcanic activity, tsunami, flood, storm, tempest, windstorm, hurricane, tornado, ice flow, subsidence, or loss of materials while waterborne or under the water. The policy shall contain extensions of coverage that are typical for a project of the nature of the East End Crossing and shall contain only those exclusions that are typical for a project of the nature of the East End Crossing. Any limitations or extensions of coverage to the tunnel exposure shall be described in the response to the RFP.

(b) The policy shall cover (i) all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the East End Crossing under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Project Right of Way, in storage or in the course of transit to the Project Right of Way and all improvements that are within the Project Right of Way.

(c) The policy shall provide coverage per occurrence up to the full replacement cost or a loss limit based on a Probable Maximum Loss (PML) study of the covered property loss, and will include reasonable sublimits for professional fees, demolition and debris removal, without risk of co-insurance; provided, however, that the policy may include appropriate sublimits for earthquake, earth movement, tsunami and flood but in no event less than $50,000,000 aggregate each for earthquake and flood. If a PML option is used, then the study supporting the PML must be provided to IFA, and the PML may only be used as an alternative if it is approved, in writing, by IFA.

(d) Developer, IFA and the Design-Build Contractor shall be the named insureds on the policy as their respective interests appear. Developer also may, but is not obligated to, include other Contractors and interested parties as additional insureds as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other named insureds. Developer may name itself or the Collateral Agent as loss payee under the policy. The proceeds of the policy shall be held by the loss payee and timely applied to the cleanup, repair and reconstruction of the East End Crossing.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making

Formatted: Highlight

good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof). The sublimit for coverages (vii) and (ix) shall be not less than $10,000,000.

(f) The policy shall provide a deductible not exceeding $1,000,000 per occurrence. If a $1,000,000 per-occurrence deductible is not available for catastrophe perils such as earthquake, windstorm or flood; then a percentage deductible, not to exceed 3%, shall be acceptable. Also, see 15.7.11 of the Public Private Agreement, Seismic Event, for IFA responsibilities for the earthquake (seismic event) deductible.

2. Property Insurance

Commencing on the Substantial Completion Date and continuing through the Operating Period, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of property insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the O&M Limits, with no restrictions or exclusions (except certain sublimits as noted below) for terrorism, earthquake, earth movement, volcanic activity, tsunami, flood, storm, tempest, windstorm, hurricane, tornado, ice flow, subsidence, or loss of property while waterborne or under the water. The policy shall contain extensions of coverage that are typical for a project of the nature of the East End Crossing, and shall contain only those exclusions that are typical for a project of the nature of the East End Crossing.

(b) The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the East End Crossing and within the O&M Limits.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property for a limit not less than the probable maximum loss, and will include reasonable sublimits for professional fees, demolition and debris removal, without risk of co-insurance. Developer and its insurance consultant shall perform the maximum probable loss analysis using industry standard underwriting practices. The probable maximum loss analysis and recommended policy limit based thereon shall be subject to the review and comment by IFA to verify reasonableness under industry standard underwriting practices, prior to issuance of the policy or renewal of any policy. Developer and its insurance consultant shall review every two years the probable maximum loss values for the covered property and shall adjust the coverage limit accordingly for the period during which the property Insurance Policy is required hereunder.

(d) Developer and IFA shall be the named insureds on the policy. Developer also may, but is not obligated to, include Contractors and other interested parties as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. IFA and/or the Collateral Agent shall be named as loss payee under the policy. If IFA receives proceeds of such insurance for insured loss or damage, IFA shall hold such proceeds available to pay and reimburse Developer for reasonable costs it incurs to repair and replace the loss or damage (i)

Formatted: Highlight

first, to the East End Crossing and (ii) second, from remaining proceeds, if any, to property described in Sections 15.7.9.1 and 15.7.9.2 of the Agreement. However, at Developer's request, IFA will negotiate an amendment to the Project Trust Agreement for the purpose of establishing a property insurance proceeds account under the Project Trust Agreement, on commercially reasonable terms that shall include joint control of funds therein, into which such proceeds during the last five years of the Term will be deposited and held available for use to pay for restoration and repair of the damage or loss (with unspent proceeds, if any, to be disposed of in the same manner as proceeds in the Handback Requirements Reserve).

(e) To the extent available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) physical damage resulting from mechanical breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, (viii) the increased replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x) building ordinance compliance, with the building ordinance exclusion deleted, (xi) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof) and (xii) an automatic limit of $20,000,000 or larger if needed for construction during the Operating Period (unless the value of construction is less than $20,000,000, in which case the required sublimit can be less than $20,000,000 so long as such sublimit is no less than the value of construction). The sublimit for coverages (vii) and (xi) shall be not less than $10,000,000.

(f) The policy shall provide a deductible not exceeding $1,000,000 per occurrence. If a $1,000,000 per-occurrence deductible is not available for catastrophe perils such as earthquake, windstorm or flood; then a percentage deductible, not to exceed 3%, shall be acceptable. Also, see 15.7.11 of the Public Private Agreement, Seismic Event, for IFA responsibilities for the earthquake (seismic event) deductible.

3. Delayed Opening and Business Interruption Insurance

Developer shall procure, either as part of the builder's risk and property policies or as a separate business interruption policy procured concurrently with the builder's risk and property policies, and shall keep in effect or cause to be kept in effect, delayed opening insurance coverage (from the date of NTP2 until the Substantial Completion Date, and business interruption insurance coverage from and after the Substantial Completion Date through the remainder of the Term that satisfies the following requirements.

(a) Such Delayed Opening and Business Interruption coverage shall insure against interruption or loss of Availability Payments and, where applicable, additional interest costs due to delayed Milestone Payments resulting from physical loss or damage to any portion of the East End Crossing caused by occurrence of any risk which is required to be insured under the builder's risk or property insurance policies specified in Sections 1 and 2 above.

(b) The Delayed Opening and Business Interruption insurance shall cover interruption or loss of Availability Payments and, where applicable, additional interest costs due to delayed Milestone Payments for up to one full year for the coverage after the deductible

Formatted: Highlight

period from the following: (i) for the coverage against occurrences that take place prior to the Substantial Completion Date, the date Substantial Completion would have occurred absent occurrence of the insured risk; or (ii) for the coverage against occurrences that take place on or after to the Substantial Completion Date, the date of the interruption.

(c) (d) For policies issued after the Substantial Completion Date, the amount of coverage shall be adjusted annually to reflect the estimated Availability Payments for the next 12-month period.

IFA and Developer shall be named insureds with respect to such coverages. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds.

(d) The policy shall provide a deductible per occurrence not exceeding the first 90 days of loss following the date of interruption.

(e) The policy shall be in form and substance as is then standard in the State for policies of like coverage.

(e) Any limitations or extensions of coverage to the tunnel exposure, shall be described in the response to the RFP.

4. Commercial General Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below.

(a) The policy shall provide the latest form of ISO standard or greater wording, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of the East End Crossing, and shall contain only those exclusions that are typical for a project of such nature.

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d) below, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations;

(v) Broad form property damage;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee exclusion deleted;

Formatted: Highlight

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) No professional services exclusion except the latest ISO form CG 22 79;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 5 of this Exhibit 19 (Insurance Coverage Requirements).

(c) The policy shall have limits of not less than $100,000,000 per occurrence and in the aggregate per policy period, except as noted in Section 15 below. Such limits shall be shared by all insured and additional insured parties. As noted in Section 17.1.6 of the Agreement, Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the Agreement for the applicable type of coverage.

(d) Developer shall be a named insured and IFA and the Indemnified Parties including the Collateral Agent shall be additional insureds with respect to the acts, omissions, and activities of Developer and its contractors and subcontractors and subconsultants of every tier. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insureds.

(e) Each policy shall provide for a deductible up to $1,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to pay on behalf of the insured on a first dollar basis and to later be reimbursed by the insured.

(f) With respect to any portion of the East End Crossing that Developer designs and/or builds, but does not operate, maintain or otherwise manage during the Operating Period, the completed operations portion of commercial general liability insurance shall remain in place for no less than ten (10) years after the Substantial Completion Date. For all other parts of the East End Crossing, commercial general liability insurance, including completed operations, shall remain in place for the entire Operating Period.

5. Automobile Liability Insurance

At all times during the Term, Developer shall procure and keep in force or shall cause to be procured and kept in force commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the East End Crossing, and shall contain only those exclusions that are typical for a project of the nature of the East End Crossing.

Formatted: Highlight

(b) Developer and Design-Build Contractor shall be the named insured under its automobile liability policy.

(c) Developer's policy shall have limits not less than $25,000,000 each accident or shall be scheduled under the umbrella required in Section 13 below (Project-Specific Limits / On-Project Right of Way Coverage) or as required in Section 14 below (All Other Limits / Off-Project Right of Way Coverage), except as noted in Section 15 below. As noted in Section 17.1.6 of the Agreement, Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the Agreement for the applicable type of coverage.

(d) Each policy shall provide a deductible not exceeding $50,000 per occurrence.

(e) A deductible of $500,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to pay on behalf of the insured on a first dollar basis and later be reimbursed by the insured.

6. Contractor's Pollution Liability Insurance

At all times during the period from the commencement of Construction Work until the Substantial Completion Date, Developer shall procure and keep in force, or cause to be procured and kept in force, contractor's pollution liability insurance on an occurrence basis as specified below.

(a) The policy shall cover sums that the insured becomes legally obligated to pay to a third party or for the investigation, removal, remediation (including associated monitoring) or disposal of soil, surface water, groundwater or other contamination to the extent required by environmental laws (together "clean-up costs") caused by pollution conditions resulting from covered operations, subject to the policy terms and conditions, including bodily injury, property damage (including natural resource damages), clean-up costs, and legal defense costs. Such policy shall cover claims related to pollution conditions to the extent such are caused (i) by the performance of Work, (ii) by transportation, including loading and unloading, by owned and non-owned vehicles or (iii) by other activities performed by or on behalf of Developer that occur on the East End Crossing during the period from the commencement of Construction Work until the Substantial Completion Date. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway.

(b) Developer shall be a named insured and the Indemnified Parties shall be the additional insureds under such policy. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. The insured vs. insured exclusion shall not apply to additional insureds named to the policy.

(c) The policy shall have a limit of not less than $50,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements and except as noted in Section 15 below.

(d) The policy shall contain no exclusions that will restrict coverage for loss on, about or under water.

Formatted: Highlight

(e) The policy shall provide a deductible not exceeding $500,000 per occurrence.

7. Professional Liability Insurance

At all times during the Term that professional services are rendered respecting design and construction of the East End Crossing (which services are conclusively presumed to start on the Effective Date) until the first to occur of (1) ten years after the professional services have concluded for the East End Crossing or (2) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the East End Crossing, Developer shall cause the Design-Build Contractor and the Lead Engineering Firm (in the case of the Design Work) and each Contractor that is under direct contract with Developer and provides professional services to Developer respecting such design and construction (in the case of any other design or engineering work) to procure and keep in force professional liability insurance as specified below.

(a) Each policy shall provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the East End Crossing.

(b) The Design-Build Contractor and the Lead Engineering Firm shall each have a limit of not less than $20,000,000 per claim and in the aggregate. For all other Contractors performing professional services, the policy shall have the limits specified in Table 7:

Table 7

CONTRACT AMOUNT	LIMITS OF LIABILITY	YEARS COVERAGE TO REMAIN IN PLACE AFTER COMPLETION
$ 100,000 - $ 3,000,000	$ 1,000,000 Each Claim $ 1,000,000 Aggregate	3 Years
$ 3,000,001 - $ 5,000,000	$ 2,000,000 Each Claim $ 2,000,000 Aggregate	5 Years
Over $ 5,000,000	$ 5,000,000 Each Claim $ 5,000,000 Aggregate	5 Years

(c) If the policy is project-specific, then the policy limit shall be $20,000,000 per claim and in the aggregate for all firms insured on the policy.

(d) Each annual practice policy shall provide a deductible, as evidenced on a certificate of insurance, not exceeding $250,000 per claim. Any project-specific policy shall provide a deductible not exceeding $1,000,000 per claim.

Formatted: Highlight

(e) If a project-specific policy is purchased and it does not include a ten-year extended reporting period after Substantial Completion, then the annual practice policies of the Design-Build Contractor and the Lead Engineering Firm shall each be required to remain in place at the limits required in Section 7(b) above for the balance of the ten year period or expiration of all applicable statutes of limitation and repose applicable to professional services performed for the East End Crossing. If the project-specific policy is purchased in the name of a joint venture or other special purpose entity formed by the Developer and or its team, and if the project-specific policy has an extended reporting period of five years, and such entity will not maintain its own separate professional liability coverage after the expiration of the project-specific policy, then this requirement can be satisfied by having the Key Contractor(s) and the Lead Engineering Firm(s) that were members of the joint venture or special purpose entity maintain the required coverage for the balance of the ten-year reporting period.

(f) All project-specific or annual practice policies shall maintain a retroactive date that shall be no later than the first date that the Design-Build Contractor or Lead Engineering Firm or any other firm required to maintain professional liability insurance began providing professional services for any Developer-Related Entitywith respect to the East End Crossing.

8. Workers' Compensation Insurance

At all times when work is being performed by any employee of Developer, all Contractors, subcontractors and subconsultants, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance in conformance with applicable Law. Developer and/or the Contractors, subcontractors and subconsultants, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation Insurance Policy shall contain the following endorsements:

(a) A voluntary compensation endorsement;

(b) An alternative employer endorsement; and

(c) An endorsement extending coverage to all states operations on an "if any" basis.

The workers compensation policy shall also include, by separate policy or by endorsement, U.S. Longshoremen's and Harbor Workers coverage, including, if applicable, Jones Act and Federal Employer's Liabilities Act coverage.

9. Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance for Developer, each Contractor and each Contractor's subcontractors as specified below.

(a) The policy/ies shall insure against liability for death, bodily injury, illness or disease for all employees of Developer, the Contractor and all subcontractors and subconsultants working on or about any Project Right of Way or otherwise engaged in the Work.

(b) Developer and/or the Contractor and all subcontractors and subconsultants, whichever is the applicable employer, shall be the named insured.

Formatted: Highlight

(c) The policy shall have a limit of not less than $100,000,000 per accident, except as noted in Section 15 below. As noted in Section 17.1.6 of the Agreement, Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the Agreement for the applicable type of coverage.

(d) The policy may include commercially reasonable deductibles to the extent permitted by applicable Law. Prior to commencement of Work, Developer shall submit to IFA and obtain its approval of the deductible amounts for all Key Contractors under the policy.

10. Primary Vessel Hull and Machinery Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, where applicable, a policy or policies of primary vessel hull and machinery protective and indemnity insurance providing property and liability coverage for damage or destruction to or caused by all vessels and machinery used in the performance, maintenance, inspection or other purposes in respect of the Work and for maintenance, inspection or other purposes throughout the Operating Period.

(a) Each policy shall be maintained during the period starting on the date of the first shipment of any materials or equipment for the East End Crossing and ending at the conclusion of the Term.

(b) The hull and machinery insurance shall provide coverage for not less than the actual cash value.

(c) The protection and indemnity insurance shall provide coverage of no less than $25,000,000 combined single limit of liability for bodily injury, property damage and personal injury per occurrence, except as noted in Section 15 below. Such limit shall be shared by all insured and additional insured parties. As noted in Section 17.1.6 of the Agreement, Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the Agreement for the applicable type of coverage.

(d) IFA and the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of the named insured on the policy, whether occurring on or off of the Project Right of Way. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(e) The insurance shall include commercially reasonable deductibles. Prior to commencement of Work, Developer shall submit to IFA and obtain its approval of the deductible amounts under each such Insurance Policy.

11. Aviation Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force for each of its Contractors, where applicable, a policy or policies of aviation physical damage and liability insurance providing property and liability coverage for damage or destruction to or caused by any type of aircraft used in the performance of the Work through the Term.

Formatted: Highlight

(a) Each policy shall be maintained during the period starting on the date of the first shipment of any materials or equipment for the East End Crossing and ending on the Final Acceptance Date.

(b) The physical damage insurance shall provide coverage for not less than the actual cash value. The liability insurance shall provide coverage of no less than $25,000,000 combined single limit of liability for bodily injury, property damage and personal injury per occurrence, except as noted in Section 15 below. Such limit shall be shared by all insured and additional insured parties. As noted in Section 17.1.6 of the Agreement, Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the Agreement for the applicable type of coverage.

(c) IFA and the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of the named insured on the policy, whether occurring on or off of the Project Right of Way. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(d) The insurance shall include commercially reasonable deductibles. Prior to commencement of Work, Developer shall submit to IFA and obtain its approval of the deductible amounts under each such Insurance Policy.

12. Contractors' Insurance

(a) At all times during the Term, Developer shall cause each Contractor that performs Work on the Project Right of Way to provide commercial general liability insurance that complies with Section 17.1 of the Agreement, with policy limits as required in Sections 14 or 15 below, whichever is applicable, and commercially reasonable deductibles, in circumstances where the Contractor is not covered by Developer-provided or lead Design-Build Contractor provided liability insurance. Developer shall cause each such Contractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Contractor's liability Insurance Policies. Such insurance need not be East End Crossing-specific. IFA shall have the right to contact the Contractors directly in order to verify the above coverage.

(b) At all times during the Term, Developer shall cause each Key Contractor that has vehicles on the Project Right of Way or uses vehicles in connection with the Work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the East End Crossing, and shall contain only those exclusions that are typical for a project of the nature of the East End Crossing.

(ii) Each such Key Contractor shall be the named insured under its respective automobile liability policy.

Formatted: Highlight

(iii) Each policy shall have a policy limit of $24,000,000 each accident, except as noted in Sections 14 and 15 below. As noted in Section 17.1.6 of the Agreement, Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in the Agreement for the applicable type of coverage.

(iv) Each policy shall provide a deductible not exceeding $50,000 per occurrence.

(v) A deductible of $500,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to pay on behalf of the insured on a first dollar basis and later be reimbursed by the insured.

(vi) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times during the Term, Developer shall cause each Contractor that has vehicles on the Project Right of Way or uses vehicles in connection with the Work (other than Key Contractors subject to subsection (b) above) to maintain an automobile liability policy which provides at least the minimum coverage for its employees and automobiles that is required by Law or as required in Section 14, whichever is higher. Developer shall cause each such Contractor to include in the policy each of the Indemnified Parties as additional insureds.

13. Project-Specific Limits / On-Project Right of Way Coverage

Developer, either directly or through its Contractor(s) shall provide project-specific limits for all of the following coverages:

(a) Builders Risk/Property Insurance

(b) Commercial General Liability Insurance

(c) Workers Compensation and Employers Liability

(d) Umbrella/Excess liability insurance (to be no less broad than all scheduled primary insurance)

(e) Pollution Insurance

Providing professional liability coverage on a project-specific basis is optional.

If the above coverages are provided as part of an overall Controlled Insurance Program (CIP) sponsored by Developer or a Contractor, then any Contractor required coverages listed above shall be satisfied by the CIP program as long as the CIP program meets the overall requirements described in this Exhibit 19. For coverages (b), (c), and (d) above, the total limits provided shall be not less than $100,000,000 each occurrence and in the aggregate, except as noted in Section 15 below. For coverage (e), Pollution Liability, the limit shall be not less than $50,000,000 each occurrence and in the aggregate, except as noted in Section 15 below. For professional liability, if provided on a project-specific basis, the limit shall not be less than

Formatted: Highlight

$20,000,000 each claim and in the aggregate, except as noted in Section 15 below. For those project participants working on the Project Right of Way and not included in the CIP, they shall provide limits in accordance with Section 14 or 15 below, whichever is applicable.

With respect to loss arising from the operation of watercraft, the CIP Umbrella/Excess liability coverage shall be not less than $75,000,000 each occurrence and in the aggregate in limits excess of the underlying required protection and indemnity insurance of $25,000,000 each occurrence, except as noted in Section 15 below. If the CIP insurer is not capable of providing such an extension, then the CIP sponsor shall provide an alternative approach to provide not less than $75,000,000 in excess limits for liability arising from the operation of watercraft on behalf of the project, except as noted in Section 15 below.

The term "On-Project Right of Way" shall be defined as follows: With respect to the portion of the project that is on land, that which is "On-Project Right of Way" shall include all areas within the borders shown on the maps in set forth in ROW Maps. With respect to the portion of the East End Crossing that is over the river, that which is "On-Project Right of Way" shall include all elements of the bridge and its foundations including any temporary structures.

14. All Other Limits / Off-Project Right of Way Coverage

Any Contractor or other contractor, subcontractor, design firm, fabricator or other entity that is not included in the CIP and/or is performing work off Project Right of Way shall maintain the following coverages:

(a) Commercial General Liability/Completed Operations Insurance

(b) Business Auto including liability and physical damage

(c) Workers Compensation and Employers Liability

(d) Primary Vessel Hull and Machinery Insurance (if applicable)

(e) Aviation Insurance (if applicable)

(f) Umbrella/Excess liability insurance

(g) Professional liability (if applicable and if not insured on a project-specific policy)

(h) Pollution Insurance

For contracts with Contractors, other contractors, subcontractors, firms or entities not included in the CIP and in excess of $10,000,000 or contracts of any amount that involve demolition, utility relocation, or transportation of hazardous waste, the limits required shall not be less than $10,000,000 each occurrence or in the aggregate. An umbrella or excess policy may be used to achieve the required policy limit of not less than $10,000,000 each occurrence or in the aggregate. For all contracts with Contractors, other contractors, subcontractors, firms or entities not included in the CIP and valued under $10,000,000 and not involving demolition, utility relocation or transportation of hazardous waste, the required limits are outlined in Table 14. For all contracts with Contractors, other contractors, subcontractors, firms or entities not included in the CIP and valued under $10,000,000 and not involving demolition, utility relocation or transportation of hazardous waste, Commercial General Liability/Completed Operations must

Formatted: Highlight

only be maintained until completion of such Contractor's work or services. An umbrella or excess policy may be used to achieve the required policy limits. Professional liability limits requirements are outlined in Section 7(b) above.

Table 14

CONTRACT AMOUNT	LIMITS OF LIABILITY	YEARS COVERAGE TO REMAIN IN PLACE AFTER COMPLETION
$ 100,000 - $ 3,000,000	$ 1,000,000 Each Claim $ 1,000,000 Aggregate	3 Years
$ 3,000,001 - $ 5,000,000	$ 2,000,000 Each Claim $ 2,000,000 Aggregate	5 Years
Over $ 5,000,000	$ 5,000,000 Each Claim ($ 3,000,000 Each Claim for 14(b) policies) $ 5,000,000 Aggregate ($ 3,000,000 Aggregate for 14(b) policies)	5 Years

15. Policy Limits From the Effective Date Until NTP2.

From the Effective Date until NTP2, for the following policies, the policy limits shall be no less than $10,000,000 each claim and in the aggregate or per accident, as applicable:

- Commercial General Liability Insurance
- Automobile Liability Insurance
- Professional Liability Insurance
- Employer's Liability Insurance
- Primary Vessel Hull and Machinery Insurance, if and when applicable
- Aviation Insurance, if and when applicable
- Contractors' Insurance

If the limits required in Section 15 exceed what is required in Section 14, then the lesser amount required in Section 14 shall be acceptable.

For purposes of clarity, Developer shall be deemed to have acquired and maintained the policies required under this Section 15 if its, and its relevant Contractors', corporate/institutional insurance programs (a) contain each of these prescribed policies, (b) at or in excess of the policy limits prescribed under this Section 15 and (c) otherwise are on the terms and subject to

Formatted: Highlight

conditions substantially similar to those prescribed for each such policy (excepting policy limits) under this Exhibit 19.

16. Contractor Tools and Equipment

None of the builders risk or property insurance policies described above shall apply to Contractors' tools or any equipment used by any Contractor to perform their work. All Contractors and Subcontractors shall be responsible for loss to their tools or any equipment used to perform their work and shall be responsible for purchasing insurance coverage for loss to such tools including loss of use over water and underwater.

Formatted: Highlight

EXHIBIT 20

FORMS OF PAYMENT BOND AND PERFORMANCE SECURITY

20-A Form of Payment Bond*
20-B Form of Performance Bond*
20-C Form of Multiple Obligee Rider for Payment Bond**
20-D Form of Multiple Obligee Rider for Performance Bond**
20-E Form of Performance Letter of Credit

*If the bond is to secure the payment or performance obligations of Developer rather than the Design-Build Contractor or other prime Contractor, then the form of bond shall be revised to reflect Developer as the "Principal" or "Contractor", IFA and KYTC in place of Developer as the bond obligee, and the Agreement as the "Contract".

** If the bond is to secure the payment or performance obligations of Developer rather than the Design-Build Contractor or other prime Contractor, then the form of multiple obligee rider shall be revised to reflect IFA and KYTC as the "Primary Obligee" and the Collateral Agent as the "Additional Obligee".

Formatted: Highlight

EXHIBIT 20-A

FORM OF PAYMENT BOND

Bond No. _____

For

The East End Crossing

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana ("IFA") has awarded to _____ (the "Developer" or "Obligee"), a Public-Private Agreement, East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) (the "Agreement") to design, build, finance, operate and maintain the East End Crossing (the "East End Crossing") through a public-private partnership;

AND WHEREAS, _____ [Contractor Name] an entity duly authorized to do business in the State of Indiana (the "Principal" or "Contractor") has entered into a contract (the "Contract") with Developer bearing the date of _____, related to the performance of design and construction work for the East End Crossing, which Contract is specifically incorporated by reference herein, said work to be done according to the terms of the Contract;

AND WHEREAS, it is one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Obligee, in the penal sum of _____ Dollars ($_____) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. If the Principal shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under the Contract, whether said labor be performed and said materials and supplies be furnished under the original Contract, any subcontract, or any and all duly authorized modifications thereto, then these presents shall become null and void; otherwise they shall remain in full force and effect.

2. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the East End Crossing, or in the specifications or plans, or any

Formatted: Highlight

change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

3. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____."

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ _____ on this _____ day of_____, A.D., 20__.

Principal (full legal name): _____

_____

Address: _____

_____

By: _____

Contact Name: _____

Phone: ( ) _____

Surety (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: ( ) _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

Formatted: Highlight

EXHIBIT 20-B

FORM OF PERFORMANCE BOND

Bond No. _____

For

The East End Crossing

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana ("IFA") has awarded to _____ (the "Developer" or "Obligee"), a Public-Private Agreement, East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) (the "Agreement") to design, build, finance, operate and maintain the East End Crossing through a public-private partnership;

AND WHEREAS, _____ [Contractor Name] an entity duly authorized to do business in the State of Indiana (the "Principal" or "Contractor") has entered into a contract (the "Contract") with Developer bearing the date of _____, related to the performance of design and construction work for the East End Crossing, which Contract is specifically incorporated by reference herein, said work to be done according to the terms of the Contract;

AND WHEREAS, it is one of the conditions of the Contract and the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Obligee, in the penal sum of _____ Dollars ($_____) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and work under the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless the Obligee, its directors, officers and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Obligee any sums paid the Principal which exceed the final payment determined to be due upon completion of the East End Crossing, then these presents shall become null and void; otherwise they shall remain in full force and effect.

Formatted: Highlight

2. The obligations covered by this Bond specifically include liability for liquidated damages and warranties as specified in the Contract, but not to exceed the bonded sum.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the East End Crossing, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

5. Whenever the Principal shall be, and is declared by Developer to be, in default under the Contract, provided that Developer is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or

(c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by IFA as required by the Agreement (provided, however, that the Surety may not select the Principal or any affiliate of the Principal to complete the work for and on behalf of the Surety without Developer's express written consent), arrange for a contract meeting the requirements of the Agreement between such contractor or contractors and Developer, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

6. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____."

Formatted: Highlight

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ _____ on this _____ day of_____, A.D., 20__.

Principal (full legal name): _____

_____

Address: _____

_____

By: _____

Contact Name: _____

Phone: ( ) _____

Surety (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: ( ) _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

Formatted: Highlight

EXHIBIT 20-C

FORM OF MULTIPLE OBLIGEE RIDER

(**Payment Bond)**

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. _____.

WHEREAS, on or about the _____day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of design and construction work for the East End Crossing; and

WHEREAS, the Primary Obligee requires that Principal provide a payment bond and that the Indiana Finance Authority, a public agency of the State of Indiana ("IFA"), _____ and _____ be named as additional obligees under the payment bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Payment Bond No. _____ (hereinafter referred to as "Payment Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

IFA, _____, and _____ _____ are hereby added to the Payment Bond as named obligees (hereinafter referred to as "Additional Obligees").

The Surety shall not be liable under the Payment Bond to the Primary Obligee, the Additional Obligees, the claimants under the Payment Bond, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Payment Bond. The Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee and/or the claimants under the Payment Bond, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract.

Formatted: Highlight

The Surety may, at its option, make any payments under the Payment Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this ____ day of _____, 20__.

_____

(Principal)
(Seal)

By: _____

(Title)

_____

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

Formatted: Highlight

EXHIBIT 20-D

FORM OF MULTIPLE OBLIGEE RIDER

(Performance Bond)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. _____.

WHEREAS, on or about the _____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of design and construction work for the East End Crossing; and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and that the Indiana Finance Authority, a public agency of the State of Indiana ("IFA"), _____ and _____ be named as additional obligees under the performance bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Performance Bond No._____ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

IFA, _____, and _____ _____ are hereby added to the Performance Bond as named obligees (hereinafter referred to as "Additional Obligees").

The Surety shall not be liable under the Performance Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

Formatted: Highlight

The Surety may, at its option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this _____ day of _____, 20__.

_____

(Principal)
(Seal)

By: _____

(Title)

_____

(Surety)
(Seal)

By: _____

, Attorney-in-Fact

Formatted: Highlight

EXHIBIT 20-E

FORM OF PERFORMANCE LETTER OF CREDIT

* If the letter of credit is to secure the performance obligations of the Design-Build Contractor or other prime Contractor rather than Developer, then:

(1) Developer or the Collateral Agent shall be named as the beneficiary;

(2) The letter of credit shall include provisions, in form and substance acceptable to IFA, expressly authorizing assignment and transfer of the beneficiary rights to IFA without condition or limitation and expressly permitting IFA to draw without presentation of the original letter of credit;

(3) The letter of credit shall include provisions, in form and substance acceptable to IFA, naming IFA as automatic and exclusive transferee beneficiary upon Final Acceptance; and

(4) The draw conditions in paragraph 2 of the form of letter of credit shall be revised to reflect a failure of the Contractor to perform its contract obligations under the Contract between Developer and such Contractor.

Formatted: Highlight

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: _____

PLACE FOR PRESENTATION OF DRAFT: _____

_____

(Name and Address of Bank/Branch -- MUST be a United States Bank/Branch)

APPLICANT: [Name of Developer]

BENEFICIARY: INDIANA FINANCE AUTHORITY

Address: _____

_____

Contact Person: _____

Phone No. _____

LETTER OF CREDIT NUMBER: _____

PLACE AND DATE OF ISSUE: _____

AMOUNT: _____ United States Dollars (US$_____)

EXPIRATION DATE: _____, 20__

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the Indiana Finance Authority ("IFA"), for any sum or sums up to the aggregate amount of _____ United States Dollars (US$_____), available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and

2. State one of the following:

   "This drawing is due to the failure of _____(Developer's name)_____ ("Developer") to perform certain obligations under the certain Public-Private Agreement, East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between IFA and Developer dated _____, 2012 (the "Agreement")."

   or

   "This drawing is due to the failure of _____(Developer's name)_____ ("Developer") to deliver to IFA a new or replacement letter of credit, on the same terms, by the deadline set forth in the certain Public-Private Agreement, East End

Formatted: Highlight

Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between IFA and Developer dated _____, 2012."

or

"This drawing is due to the fact that the Issuer does not meet the requirements set forth in the certain Public-Private Agreement, East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between IFA and _____(Developer's name)_____ ("Developer") dated _____, 2012 (the "Agreement") and Developer has failed to provide a substitute letter of credit issued by a qualified institution within the deadline set forth in the Agreement."

or

[Include another withdrawal condition if established under agreement or applicable law]."

All drafts will be honored if the original sight draft is physically presented to (United States Bank/Branch - Name & Address) on or before (Expiration Date) or any extended expiration date.

This Letter of Credit shall be automatically extended for successive periods of one year, without amendment, from the stated expiration date and each extended expiration date unless we send IFA written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to IFA at the address for IFA stated above or any other address specified in writing from an executive officer of IFA to the Issuer at the Issuer's address stated above.

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by New York law.

Issuer:

By:_____

(Authorized Signature of Issuer

Formatted: Highlight

EXHIBIT 21

FORM OF DIRECT AGREEMENT

THIS DIRECT AGREEMENT dated as of [_____] (this "**Direct Agreement**"), is made by and [between]/[among] the Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the state of Indiana ("**IFA**"), [_____], a [_____] ("**Developer**") [and] [_____], a [_____] ("**Lender**") [and Lender's Collateral Agent or Indenture Trustee], as Trustee or Collateral Agent (in such capacity, together with its successors in such capacity, the "**Collateral Agent**") [for Lender]] for the purpose of facilitating Lender's financing or Refinancing of the East End Crossing (as such term is defined below).

RECITALS

A. IFA and Developer have entered into that Public-Private Agreement (the "**PPA**") for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges East End Crossing) (the "**East End Crossing**"), which PPA contemplates Developer obtaining financing or Refinancing for the East End Crossing from third parties.

B. In order to enable Developer, and to induce Lender, to provide certain financing or Refinancing necessary for the East End Crossing, Lender requires certain assurances from IFA regarding Lender's rights in the event of a default by Developer.

C. IFA and Developer have previously set forth such assurances in the PPA for the benefit of Lender as an express third-party beneficiary thereof.

D. In reliance on such assurances, and on this Direct Agreement, Lender has agreed to make available such financing or Refinancing facilities for the purpose of financing or Refinancing all or part of the East End Crossing.

E. The execution of this Direct Agreement by IFA in favor of the Collateral Agent is a condition precedent to such financing or Refinancing facilities being made available to Developer by Lender.

NOW, THEREFORE, in consideration of the foregoing and the mutual terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, each of IFA, Developer[,]/[and] [Lender] Collateral Agent hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized terms used and not otherwise defined and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the PPA. In addition, the following terms have the meanings specified below:

Collateral Agent has the meaning given to it in the Preamble.

Cure Period means:

Formatted: Highlight

(a) With respect to a Developer Default set forth in an IFA Notice that is curable by the payment of money to IFA, a period starting on the date of the receipt of such IFA Notice and ending 60 days after the later of (i) Lender's receipt of such IFA Notice or (ii) expiration of Developer's cure period (if any) under the PPA;

(b) With respect to a Developer Default set forth in an IFA Notice other than Incurable Developer Defaults and those under clauses (a) above and (c) below, a period starting on the date of the receipt of such IFA Notice and ending 60 days after the later of (i) receipt of such IFA Notice or (ii) expiration of Developer's cure period (if any) under the PPA; and

(c) With respect to a Developer Default set forth in an IFA Notice, other than Incurable Developer Defaults, that by its nature is not capable of cure unless and until the Step-in Party, the Collateral Agent or a court receiver has possession and control of the East End Crossing, a period starting on the date of the receipt of such IFA Notice and ending 180 days after the later of (i) receipt of such IFA Notice or (ii) expiration of Developer's cure period (if any) under the PPA; provided, however, that (i) during such cure period the Step-in Party cures all Developer Defaults which may be cured by the payment of money within the Cure Period under clause (a) above, (ii) during such cure period the Step-in Party cures all Developer Defaults governed by clause (b) above within the Cure Period available under clause (b) above, and (iii) within the later of (A) five days after expiration of Developer's cure period, if any, and (B) 30 days after the Collateral Agent receives such IFA Notice, the Step-in Party initiates and thereafter pursues with good faith, diligence and continuity lawful processes and steps to obtain possession and control of the East End Crossing. This Cure Period is subject to extension in accordance with Section 6.4 below.

Notwithstanding the foregoing, neither a Notice nor opportunity to cure shall be required for a Developer Default under Sections 19.1.1.3(a), 19.1.1.16 or 19.1.1.17 of the PPA.

In no case, however, shall a Cure Period extend beyond the expiration of the Term.

Default means an Event of Default as defined in the Funding Agreement for any senior Project Debt or any event or circumstance specified in such Funding Agreement that would (with the expiration of a grace period, the giving of notice, the lapse of time, the making of any determination under the Funding Agreement or any combination of any of the foregoing) be an Event of Default.

Developer has the meaning given to it in the Preamble.

Direct Agreement has the meaning given to it in the Preamble.

Discharge Date means the date on which all of the obligations of Developer under all Funding Agreements have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

East End Crossing has the meaning given to it in the Recitals.

Event of Default means an "Event of Default" (or its terminological equivalent) as defined in the Funding Agreement for senior Project Debt.

Formatted: Highlight

Incurable Developer Default means:

(a) A Developer Default under Section 19.1.1.11 of the PPA (wrongful transfer of Developer's Interest; wrongful Equity Transfer or wrongful Change of Control);

(b) A Developer Default under Section 19.1.1.3(a) of the PPA (missed Long Stop Date); and

(c) A Developer Default under Section 19.1.1.16 or 19.1.1.17 of the PPA (bankruptcy-type events).

IFA has the meaning given to it in the Preamble.

IFA Notice has the meaning given to it in Section 4.1 below.

Lender has the meaning given to it in the Preamble.

Lender Notice has the meaning given to it in Section 5.1 below.

PPA has the meaning given to it in the Recitals.

Revival Date has the meaning given to it in Section 12.1 below.

Step-in Date has the meaning given to it in Section 8 below.

Step-in Notice has the meaning given to it in Section 7.1 below.

Step-in Party has the meaning given to it in Section 7.2 below.

Step-in Period means the period from and including the Step-in Date until the earliest of:

(a) The Substitution Effective Date;

(b) The Step-out Date;

(c) The date of termination of the PPA by IFA in accordance with the PPA and this Direct Agreement);

(d) The date of the expiration or early termination of the Term under the PPA;

(e) Expiration of the applicable Cure Period without cure of the Developer Default to which it relates, and

(f) The date an Incurable Developer Default occurs.

provided, however, that if there occurs a preceding Incurable Developer Default, there shall be no Step-in Period.

Step-out Date means the effective date a Step-in Party designates for ceasing its step-in as set forth in any Step-out Notice served by the Step-in Party pursuant to Section 9 below.

Step-out Notice has the meaning given to it in Section 9 below.

Formatted: Highlight

Substituted Entity has the meaning given to it in the PPA.

Substitute Accession Agreement means the agreement to be entered into by a Substituted Entity pursuant to Section 11.1 below.

Substitution Effective Date has the meaning given to it in Section 11.1 below.

Substitution Notice has the meaning given to it in Section 10.1 below.

1.2 Interpretation

Unless the context otherwise clearly requires:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

(b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

(c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(d) The word "will" shall be construed to have the same meaning and effect as the word "shall";

(e) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and permitted assigns or such Person's successors in such capacity, as the case may be;

(f) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;

(g) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement, unless otherwise specified herein. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement shall prevail over the provisions of any Schedules to the extent of any inconsistency;

(h) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement;

(i) References herein to this Direct Agreement or to any other agreement or document relating to the East End Crossing includes a reference to this Direct Agreement, or, as the case may be, such other agreement or document as amended from time to time;

(j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or "reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator" "sequestrator" or

Formatted: Highlight

"trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors; and

(k) Any definition or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in such agreement, instrument or other document).

2. REPRESENTATIONS AND WARRANTIES

2.1 IFA represents and warrants to the Collateral Agent that:

(a) ***Organization; Power and Authority***. IFA is a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana, and IFA has the power and authority to execute this Direct Agreement and the PPA, and to perform the provisions hereof and thereof.

(b) ***Authorizations, Enforceability***. This Direct Agreement and the PPA have been duly authorized by IFA, and this Direct Agreement constitutes a legal, valid and binding obligation of IFA enforceable against IFA in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) ***No Default***. There is no IFA Default; IFA is not aware of any Developer Default, and there exists no event or condition of which IFA is aware that would, with the giving of notice or passage of time or both, constitute such a Developer Default or IFA Default.

(d) ***Initial Funding Agreements***. IFA acknowledges and agrees that the documents referred to in Schedule B attached hereto are deemed to constitute Initial Funding Agreements for purposes of the PPA.

(e) ***No Conflicts***. The execution and delivery by IFA of this Direct Agreement, and the performance by IFA of its obligations hereunder, will not conflict with any Laws applicable to IFA that are valid and in effect on the date of execution and delivery.

(f) ***No Litigation***. As of the date of the execution of this Direct Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on IFA which challenges IFA's authority to execute, deliver or perform, or the validity or

Formatted: Highlight

enforceability of, this Direct Agreement.

(g) ***Compliance with Mandatory Requirements.*** The Funding Agreements comply with the provisions of Section 13.3 of the PPA.

2.2 Developer represents and warrants to IFA and the Collateral Agent that::

(a) ***Organization: Power and Authority.*** The Developer is a limited liability company duly organized validly existing and in good standing under the laws of the State of [Delaware], is registered to transact business in the State of Indiana, and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the PPA and this Direct Agreement.

(b) ***Authorization: No Conflicts.*** The execution, delivery and performance by the Developer of this Direct Agreement has been duly authorized by all necessary corporate action, and does not and will not (i) require any consent or approval of the Developer's board of directors, shareholders, members, or any other person or entity that has not been obtained, (ii) violate any provision of the Developer's organizational documents or any Law, order, writ, judgment, injunction, decree or award having applicability to the Developer, or (iii) result in a breach of or constitute a default under any agreement to which the Developer is a party.

(c) ***Enforceability.*** This Direct Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Assignor enforceable against Assignor in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.

(d) ***No Default.*** There is no Developer Default, the Developer is not aware of any IFA Default, and there exists no event or condition of which the Developer is aware that would, with the giving of notice or passage of time or both, constitute a Developer Default or an IFA Default.

(e) ***Purpose of Loan***. The purposes of the Project Debt evidenced and secured by the Funding Agreements are solely to (a) fund Developer's costs of acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing and replacing the East End Crossing, (b) fund reserves relating to the East End Crossing, and (c) pay closing costs with respect to the Initial East End Crossing Debt, financing costs and fees, the costs of financial advisors, technical advisors, legal advisors, and the collateral agent/trustee and interest costs,

(f) ***Initial Funding Agreements***. Schedule B lists all the Initial Funding Agreements.

(g) ***Compliance with Mandatory Requirements***. The Funding Agreement complies with the provisions of Section 13.3 of the PPA.

2.3 The Collateral Agent represents and warrants to IFA and Developer that:

(a) The Collateral Agent is a [_____] duly organized, validly existing and in

Formatted: Highlight

good standing under the laws of the [_____], and has all requisite power and authority to conduct, execute, deliver and perform its obligations under this Direct Agreement.

(b) This Direct Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of the Collateral Agent enforceable again the Collateral Agent in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.

3. AGREEMENTS AND CONSENT TO SECURITY; NOTICES TO IFA

3.1 IFA acknowledges notice and receipt of the Funding Agreements, and, notwithstanding anything in the PPA to the contrary but in reliance on Developer's and Collateral Agent's representations and warranties, consents to the assignment by Developer to the Collateral Agent of all of Developer's Interests pursuant to the terms and provisions of, the Security Documents.

3.2 If the Security Documents listed in Schedule B include a pledge of equity interests in Developer held by initial Equity Members, IFA acknowledges notice and receipt of such Security Documents, and in reliance on Developer's and Collateral Agent's representations and warranties, consents to the granting by each of the initial Equity Members to the Collateral Agent of a security interest in such equity interests in Developer pursuant to the terms and provisions of such Security Documents.

3.3 In reliance on Developer's and Collateral Agent's representations and warranties, IFA agrees that the assignment of, and the grant of the security interest in and first lien over, all of the Developer's Interest pursuant to the Security Documents, the grant of the security interest by each initial Equity Member in its equity interests in Developer pursuant to the Security Documents, the execution by Developer and IFA of this Direct Agreement and the performance of their respective obligations hereunder and the enforcement by the Collateral Agent of its rights under the Security Documents, in each case, shall neither constitute a Developer Default, Default Termination Event or any other breach by Developer of the PPA Documents nor would, with the giving of notice or lapse of time or both, constitute a Developer Default, Default Termination Event or any other breach by Developer of the PPA Documents, nor require the consent of IFA, other than as provided herein.

3.4 Collateral Agent shall deliver to IFA together with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice under any requirement of Law or of any Funding Agreement in connection with the exercise of remedies under this Direct Agreement or any other Funding Agreement. The Collateral Agent agrees to be bound by the provisions of Section 13.3.7 of the PPA.

3.5 IFA acknowledges and confirms that the Funding Agreements and Security Documents do not conflict with any of the terms, conditions, or restrictions contained in Section 13.3 of the PPA.

4. IFA NOTICE OF TERMINATION AND EXERCISE OF REMEDIES

4.1 Except as provided otherwise in Section 12.2 below, IFA shall give the Collateral Agent

Formatted: Highlight

written notice (an "**IFA Notice**") promptly upon giving Notice to Developer of:

(a) A Developer Default (other than an Incurable Developer Default under clause (c) of the definition thereof);

(b) IFA's right to terminate, or IFA's election to terminate, the PPA under Sections 19.2 and 20.3 of the PPA;

(c) IFA's exercise of any rights under Sections 19.2.3 (except under 19.2.3.5), 19.2.4 or 19.2.8.1 of the PPA; or

(d) IFA's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the PPA.

4.2 An IFA Notice shall specify:

(a) The unperformed obligations of Developer under the PPA that are the grounds for termination of the PPA, or for suspension of performance or for exercise of the other rights all as referred to in Sections 19.2.8.1, 19.2.3 (except 19.2.3.5), 19.2.4 and 19.2.1 of the PPA in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;

(b) To the extent known to IFA, all amounts due and payable by Developer to IFA under the PPA on or before the date of such IFA Notice and which remain unpaid at such date and the nature of Developer's obligation to pay such amounts; and

(c) The estimated amount of Developer's payment obligation to IFA that IFA reasonably foresees will arise during the applicable Cure Period.

4.3 Upon the Collateral Agent's request made not more frequently than monthly, IFA shall update the statements and information in its IFA Notice.

4.4 Following receipt of an IFA Notice, the Collateral Agent shall have the rights set forth in Section 6.2 and the right to deliver to IFA a Step-in Notice as provided in Section 7 below.

5. LENDER NOTICE; PAYMENTS TO COLLATERAL AGENT

5.1 The Collateral Agent shall give IFA written notice (a "**Lender Notice**"), with a copy to Developer, promptly upon the occurrence of any Default or Event of Default (whether or not an IFA Notice has been served relating to the same event).

5.2 The Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Default or Event of Default to which the Lender Notice relates.

5.3 IFA shall, following receipt of a Lender Notice relating to an Event of Default and until further notification from the Collateral Agent, pay to an account designated by the Collateral Agent in the Lender Notice any payments required to be made by IFA to Developer under the PPA including any termination compensation required to be paid to Developer under the PPA,

Formatted: Highlight

but subject to all rights, defenses, adjustments, deductions and offset respecting payment available to IFA under the PPA. The Collateral Agent shall provide to IFA the following information: (a) the individual responsible for administering the account, including his or her position; (b) the mailing address of such individual; and (c) the telephone, fax and e-mail address of such individual.

5.4 All sums paid as provided in Section 5.3 above shall be deemed paid to Developer under the PPA. IFA shall have no liability, whatsoever, for any delay in processing any payment request pursuant to Section 5.3 above, provided that such delay does not extend 14 Business Days beyond the date of IFA's certified, return-receipt or registered mail receipt of the Lender Notice. In no event shall any payment be due to the Collateral Agent earlier than it is due under the PPA.

5.5 Developer and the Collateral Agent agree that any payment made in accordance with Section 5.3 above shall constitute a complete discharge of IFA's relevant payment obligations to Developer. IFA shall have the unconditional right to rely upon any Lender Notice purported to be signed and delivered by or for the Collateral Agent, without IFA obligation or liability to ascertain or investigate its authenticity, truth or accuracy.

5.6 The Collateral Agent shall promptly provide Notice to IFA of any decision to accelerate amounts outstanding under the Funding Agreements or to exercise any enforcement remedies under the Funding Agreements.

5.7 The Collateral Agent's or Lender's exercise of any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents shall be subject to compliance with the requirements of Section 13.4 of the PPA to the extent such exercise of rights would constitute a Refinancing.

6. LIMITATIONS ON IFA REMEDIES DURING CURE PERIOD; CURE PERIOD EXTENSION

6.1 Prior to the expiration of any applicable Cure Period (except if there exists an Incurable Developer Default) and provided IFA has given an IFA Notice relating to a Developer Default if required under this Direct Agreement**,** IFA agrees not to terminate the PPA under Section 20.3 of the PPA or take or support any legal action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Interest**;** provided that IFA shall not be prevented from (i) taking any such action on a Revival Date in respect of any prior Developer Default, or (ii) exercising any other rights and remedies available to IFA under the PPA Documents with respect to the subject Developer Default or any other breach by the Developer of the PPA Documents.

6.2 If:

(a) IFA exercises any step-in rights under Section 19.2.4 or suspension rights under Section 19.2.8.1 of the PPA,

(b) The Collateral Agent delivers a Step-in Notice; and

Formatted: Highlight

(c) There does not exist and does not occur any Incurable Developer Default;

then, IFA shall cease exercising its step-in and suspension rights at such time as:

(i) The Step-in Party obtains possession or control of the East End Crossing from Developer;

(ii) The Collateral Agent notifies IFA that the Step-in Party stands ready to immediately commence good faith, diligent curative action; and

(iii) IFA is fully reimbursed for IFA's Recoverable Costs in connection with IFA's performance of any act or Work authorized by Section 19.2.4 of the PPA.

6.3 Except if there exists an Incurable Developer Default, during any Cure Period, without giving a Step-in Notice, the Collateral Agent shall have the right (but shall have no obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty, or obligation required of Developer under the PPA, or to cure any default of Developer thereunder at any time (whether or not a Default Termination Event has occurred or been declared), which performance by the Collateral Agent shall be accepted by IFA in lieu of performance by Developer and in satisfaction of Developer's obligations under the PPA. To the extent that any default of Developer under the PPA is cured and/or any payment liabilities or performance obligations of Developer are performed by the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Developer to IFA.

6.4 If the Collateral Agent or another Step-in Party (i) shall have succeeded to the Developer's Interest and obtained possession in accordance with the terms of this Direct Agreement, (ii) shall have delivered to IFA within 15 days after obtaining possession and control a Substitute Accession Agreement in accordance with Section 11 below, and (iii) shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Collateral Agent or other Step-in Party shall have time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 120 days after the date it obtains possession, and the Cure Period shall be extended accordingly; provided that in no event shall the Term be extended.

7. STEP-IN NOTICE

7.1 Upon the issuance of a Lender Notice or an IFA Notice, except for an Incurable Developer Default, the Collateral Agent may give a written notice (a "**Step-in Notice**") under this Section 7 to IFA at any time during the Cure Period in the case of the issuance of an IFA Notice or at any time following the receipt by IFA of a Lender Notice.

7.2 The Collateral Agent shall nominate, in the Step-in Notice, (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any Person approved by IFA as a Substituted Entity in accordance with Section 21.6 of the PPA and Section 10 below, and the person so nominated being referred to as the "Step-in Party."

7.3 IFA shall have the unconditional right to rely upon any Step-in Notice purported to be signed and delivered by or for the Collateral Agent, without IFA obligation or liability to ascertain or investigate its authenticity, truth or accuracy.

Formatted: Highlight

8. RIGHTS AND OBLIGATIONS ON STEP-IN

8.1 On and from the date of the receipt of the Step-in Notice and the approval of IFA to the appointment of the Step-in Party if required by Section 7.2 above ("**Step-in Date**") and during the Step-in Period, the Step-in Party shall be entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement.

8.2 Without prejudice to Section 12 below (Revival of Remedies), unless there exists an Incurable Developer Default, from and after commencement of any applicable Cure Period and during the applicable Step-in Period, IFA shall:

(a) Not terminate or give Notice terminating the PPA under Sections 19.2 or 20.3 (Termination for Developer Default) of the PPA unless such Cure Period shall expire without cure of the Developer Default to which it relates or the grounds for termination or giving notice of termination or otherwise exercising its rights under Section 20.3 of the PPA in accordance with such section are a subsequent Developer Default, subject to the Cure Period applicable to such subsequent Developer Default;

(b) Not suspend its performance (including in connection with any insolvency, bankruptcy or similar proceeding in relation to Developer) under the PPA, unless such Cure Period shall expire without cure of the Developer Default to which it relates or the grounds for suspension of performance are failure by the Step-in Party to perform Developer's obligations under the PPA (other than the Developer Default to which such Cure Period relates), subject to the Cure Period applicable to such failure, or unless the PPA has been rejected;

(c) Not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Interest;

(d) Continue to make payments pursuant to Section 5.3 above; and

(e) Endorse over as may be directed by the Collateral Agent any checks received by IFA with respect to the Performance Security if, in each case, such security is in the form of a surety bond; provided that the Collateral Agent reimburse IFA for any Losses incurred by IFA in attempting to cure the Developer Default as and to the extent: (i) IFA is entitled to such reimbursement pursuant to the PPA; (ii) IFA has promptly notified the Collateral Agent of such Losses at or prior to the time of endorsement and (iii) the Collateral Agent's obligation to reimburse IFA for such Losses do not exceed the proceeds from any such security.

8.3 IFA, Collateral Agent and Developer agree that:

(a) The performance by IFA in favor of either the Step-in Party or Developer shall be a good and effective discharge of IFA's obligations under this Direct Agreement and the PPA;

Formatted: Highlight

(b) IFA's receipt of performance from either the Step-in Party or Developer shall be a good and effective discharge of Developer's corresponding obligations under the PPA;

(c) The Collateral Agent shall be entitled at any time by Notice to IFA to direct (such direction being binding on the Collateral Agent, IFA and Developer) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with IFA under the PPA. IFA shall be entitled to conclusively rely on any such decisions, directions, approvals or consents, without any duty whatsoever to ascertain or investigate the validity thereof, and any such decisions, directions, approvals or consents shall be as binding on Developer as if made or given by Developer itself;

(d) Any amount due from Developer to IFA under the PPA or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date shall be paid to IFA on the Step-in Date, failing which IFA shall be entitled to exercise its rights under the PPA in respect of the amount so due and unpaid; and

(e) Developer 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 Party exercising the rights provided herein, except to the extent provided in Section 6.3 above and Section 9 below.

9. STEP-OUT

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice **("Step-out Notice")** to IFA, terminate its obligations to IFA under this Direct Agreement respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under this Direct Agreement respecting the event giving rise to the Step-in Notice, except for any obligation or liability of the Step-in Party arising on or before the effective date set forth in the Step-out Notice. The obligations of IFA to the Step-in Party under this Direct Agreement respecting the event giving rise to the Step-in Notice shall also terminate upon the effective date set forth in the Step-out Notice. If the Step-in Party giving the Step-out Notice is a Substituted Entity that is not a Lender, then such Step-in Party shall be released from all obligations under this Direct Agreement arising from and after the effective date contained in the Step-out Notice and its relinquishment of possession and control of the East End Crossing.

10. SUBSTITUTION PROPOSAL BY THE LENDERS

10.1 The Collateral Agent may give a notice ("**Substitution Notice**") under this Section 10 in writing to IFA at any time:

(a) During any Cure Period;

(b) During any Step-in Period; or

(c) After delivery of a Lender Notice.

10.2 In any Substitution Notice, the Collateral Agent shall provide Notice to IFA that it intends

Formatted: Highlight

to designate a Substituted Entity.

10.3 The Collateral Agent shall, as soon as practicable, provide to IFA the information, evidence and supporting documentation regarding the proposed Substituted Entity and any third party entering into a material subcontract with such Substituted Entity, including:

(a) The name and address of the proposed Substituted Entity and its proposed Key Contractors;

(b) The names of the proposed Substituted Entity'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 Substituted Entity in its performance of the balance of the Work and the extent to which such financing is committed;

(d) Copies of the proposed Substituted Entity and its proposed Key Contractors' most recent financial statements (and if available such financial statements shall be for the last three financial years) or in the case of a newly-formed special purpose company its opening balance sheet;

(e) A copy of the proposed Substituted Entity's and its proposed Key Contractors' formation documents, and other evidence of each of their organization and authority, including organizational documents, resolutions and incumbency certificates;

(f) Details of the resources available to the proposed Substituted Entity and its proposed Key Contractors, and the appropriate qualifications, experience and technical competence available to the proposed Substituted Entity and its proposed Key Contractors to enable the proposed Substituted Entity to perform the obligations of Developer under the PPA;

(g) The names of the proposed Substituted Entity's and its proposed Key Contractors' directors/managers/members and any key personnel who will assume substantially-similar roles as the Key Personnel and otherwise have responsibility for the day-to-day management of its participation in the East End Crossing;

(h) Disclosure of any actual or potential conflicts of interest of the proposed Substituted Entity and its proposed Key Contractors; and

(i) All certificates, including certificates regarding debarment or suspension, forms, statements, representations and warranties and opinion(s) of counsel that IFA may reasonably request, signed by the proposed Substituted Entity and, where applicable, proposed Key Contractors, in each case not at IFA's cost or expense.

10.4 IFA shall not be required to give its approval to the proposed Substituted Entity if:

(a) There are unremedied breaches under the PPA and there is no rectification plan reasonably acceptable to IFA with respect to the breaches which are capable of

Formatted: Highlight

being cured by the Substituted Entity; or

(b) Any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or Lender under the Initial Funding Agreements or Initial Security Documents materially and adversely affect the ability of the Substituted Entity to perform Developer's obligations under the PPA Documents or have the effect of increasing any liability of IFA, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Project Debt Termination Amount may increase by up to 10%).

10.5 If IFA fails to give its approval within 45 days of the date on which IFA has confirmed it has received the information specified in Section 10.3 above in respect of any proposed Substituted Entity, or any extension thereof by mutual agreement of IFA and the Collateral Agent, then the approval of IFA shall be deemed to have been given.

11. SUBSTITUTION

11.1 If IFA approves (or is deemed to have approved) a Substitution Notice pursuant to Section 10 above, then the Substituted Entity named therein shall execute a duly completed Substitute Accession Agreement substantially in the form attached hereto as Schedule A and submit it to IFA (with a copy thereof to the other parties to this Direct Agreement). The assignment set forth in the Substitute Accession Agreement shall become effective on and from the date on which (a) the Collateral Agent or the Substituted Entity lawfully succeeds to all the Developer's Interest through exercise of foreclosure rights and actions on security interests or through transfer from Developer in lieu of foreclosure, (b) IFA receives all payments described in Section 11.4 below and (c) IFA countersigns the Substitute Accession Agreement (the "**Substitution Effective Date**"), or the date that is ten days after the date IFA receives the completed Substitute Accession Agreement if IFA fails to sign the Substitute Accession Agreement.

11.2 As of the Substitution Effective Date:

(a) Such Substituted Entity shall become a party to the PPA Documents and this Direct Agreement in place of Developer;

(b) All of Developer's obligations and liabilities under the PPA Documents and under this Direct Agreement arising from and after the Substitution Effective Date shall be immediately and automatically transferred to the Substituted Entity, without release of Developer from any such obligations and liabilities to IFA. Notwithstanding the foreclosure or other enforcement of any security interest created or perfected by any Funding Agreement, and notwithstanding occurrence of the Substitution Date, Developer shall remain liable to IFA for the payment of all sums owing to IFA under the PPA and for the performance and observance of all of Developer's covenants and obligations under the PPA;

(c) Such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Developer under the PPA Documents and this Direct Agreement, and

Formatted: Highlight

(d) IFA shall owe its obligations (including any undischarged liability with respect to any loss or damage suffered or incurred by Developer prior to the Substitution Effective Date) under the PPA Documents and this Direct Agreement to such Substituted Entity in place of Developer, subject to IFA's right to offset any losses or damages suffered or incurred by IFA as provided under the PPA, which when such obligations are performed by IFA shall be, and be deemed to be, a release by Developer of its entitlement to such performance.

11.3 IFA shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Developer's obligations under the PPA and this Direct Agreement.

11.4 The Substituted Entity shall pay to IFA on the Substitution Effective Date any amount due to IFA under the PPA and this Direct Agreement, including IFA's reasonable costs and expenses incurred in connection with (a) Developer's default and termination, (b) IFA's activities with respect to the East End Crossing during any period IFA was in possession of the East End Crossing, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. IFA's receipt of the payment pursuant to this Section 11.4 shall be a condition precedent to the Substitution Effective Date.

11.5 The occurrence of the Substitution Effective Date shall not extinguish prior Developer Defaults that remain uncured, and IFA shall continue to have all rights and remedies available under the PPA with respect to such Developer Defaults, including any applicable termination rights, subject to (a) the limitations on IFA's exercise of such rights and remedies set forth in this Direct Agreement during any applicable Cure Period that continues after the Substitution Effective Date (b) the limitations on termination due to accumulation of Noncompliance Points prior to the Substitution Effective Date to the extent provided in Section 21.4.5 of the Agreement and (c) Section 13 below.

11.6 As of the Substitute Effective Date, IFA shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer shall be replaced as a party by the Substituted Entity.

12. REVIVAL OF REMEDIES; INCURABLE DEVELOPER DEFAULT

12.1 If:

(a) An IFA Notice has been given;

(b) The grounds for such IFA Notice are continuing and have not been remedied or waived; and

(c) The Step-in Period ends without cure of the Developer Defaults that were the subject of IFA Notice,

Then, from and after the date such Step-in Period expires (the "**Revival Date**"), IFA shall be entitled:

(i) Except as provided otherwise in Section 6.4 above, to act upon any and all grounds for termination or suspension available to it in relation to the PPA in respect of defaults under the PPA not remedied or waived;

Formatted: Highlight

(ii) To pursue any and all claims and exercise any and all remedies against Developer; and

(iii) To take or support any action of the type referred to in Section 20.7 of the PPA if and to the extent that it is then entitled to do so under the PPA.

12.2 IFA may terminate the PPA without providing an IFA Notice, Step-in Period or Cure Period to the Collateral Agent in the event of an Incurable Developer Default. Upon the occurrence of an Incurable Developer Default, IFA's termination and suspension rights shall be effective without regard to any limitations set forth in this Direct Agreement, subject to and except to the extent provided otherwise in Section 13 below.

13. NEW AGREEMENTS

13.1 The provisions of this Section 13 shall apply only if:

(a) There occurs an Incurable Developer Default under clause (a) or (c) of the definition of Incurable Developer Default; or

(b) (i) there occurs a Developer Default governed by clause (c) of the definition of Cure Period, (ii) the Collateral Agent pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the East End Crossing and possession, custody and control of the East End Crossing, (iii) despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the East End Crossing within the 180-day Cure Period set forth in clause (c) of the definition of Cure Period and (iv) no Step-out Notice has been given.

13.2 If this Section 13 is applicable and either (i) IFA terminates the PPA or (ii) IFA receives notice that the PPA is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (a) IFA shall deliver to the Collateral Agent Notice of such event, and (b) the Collateral Agent or other Step-in Party, to the extent then permitted by Law, shall have the option to obtain from IFA agreements to replace the PPA Documents, and, to the extent necessary, new ancillary agreements (e.g. escrow agreements) (together the "**New Agreements**") in accordance with and upon the terms and conditions of this Section 13.

13.3 In order to exercise such option, the Collateral Agent or other Step-in Party must deliver to IFA, within 60 days after IFA delivers its Notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Step-in Party will enter into the New Agreements and pay all the amounts described in Sections 13.5(a) and (c) below, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Step-in Party. If any of the foregoing is not delivered within such 60-day period, the option in favor of the Collateral Agent and all other Step-in Parties shall automatically expire.

13.4 Within 30 days after timely receipt of the Notice, written commitment and New Agreements duly executed, IFA shall enter into the New Agreements to which IFA is a party with the Collateral Agent or other Step-in Party, subject to any extension of such 30-day period as IFA deems necessary to clear any claims of Developer to continued rights and possession.

13.5 Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Step-in Party shall perform all of the following:

Formatted: Highlight

(a) Pay to IFA:

(i) Any and all sums which would, at the time of the execution of the New Agreements, be due under the PPA Documents but for such termination; and

(ii) The amount of any Termination Compensation previously paid by IFA under the PPA, with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points from the date the termination compensation was paid until so reimbursed;

(b) Otherwise fully remedy any existing Developer Defaults under the PPA Documents (provided, however, that Incurable Developer Defaults need not be remedied and with respect to any Developer Default which cannot be cured until the Collateral Agent or other Step-in Party obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 120 days after the date it obtains possession);

(c) Without duplication of amounts previously paid by Developer, pay to IFA all reasonable costs and expenses, including IFA's Recoverable Costs, incurred by IFA in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession of the East End Crossing, (iv) all IFA activities during its period of possession of, and respecting, the East End Crossing, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of Availability Payments, if any, that would have been paid during such period had the PPA not been terminated and had there been no adjustments to such Availability Payments, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Step-in Party, IFA will provide a written, documented statement of such costs and expenses; and

(d) Deliver to IFA a new Payment Bond and Performance Security and new letters of credit and guarantees to the extent then required under the PPA.

13.6 Upon execution of the New Agreements and payment of all sums due IFA, IFA shall:

(a) Assign and deliver to the Collateral Agent or other Step-in Party, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to IFA upon termination of the PPA; and

(b) If applicable, transfer into a new Handback Requirements Reserve Account established by the Collateral Agent or other Step-in Party in accordance with the PPA, all funds IFA received from the Handback Requirements Reserve Account pursuant to Section 6.13.3 of the PPA (or from draw on a Handback Requirements Letter of Credit) less so much thereof that IFA spent or is entitled to as reimbursement for costs of Rehabilitation Work IFA performed prior to the effectiveness of the New Agreements.

Formatted: Highlight

13.7 The New Agreements shall be effective as of the date of termination of the PPA and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the PPA Documents and ancillary agreements and documents that were binding on IFA and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 18.1 of the PPA (and any equivalent provisions of the other PPA Documents) shall be revised to be particular to the Collateral Agent or other Step-in Party).

13.8 If the holders of more than one Security Document make written requests upon IFA for New Agreements in accordance with this Section 13, IFA shall grant the New Agreements to, as applicable, the holder whose Security Documents have the most senior priority of record. Priority shall be established as follows.

(a) IFA shall submit a written request to the Collateral Agent to designate the Security Documents having the most senior priority of record. IFA shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by IFA and without liability to any Lender; and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.

(b) If IFA does not receive the Collateral Agent's written designation within ten days after delivering written request, then IFA may conclusively rely, without further inquiry and without liability to any Lender, on the seniority indicated by a then-current title report that IFA obtains from one of the four largest title insurance companies doing business in the State of Indiana (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.

(c) If the holders of more than one Security Document share *pari passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon IFA for New Agreements in accordance with this Section 13, IFA shall grant the New Agreement to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other Security Documents shall be deemed to be void.

14 GENERAL

14.1 Neither Lender nor the Collateral Agent shall have any obligation hereunder to extend credit to IFA or any contractor to IFA at any time, for any purpose.

14.2 For so long as any amount under the Funding Agreements is outstanding, IFA shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the PPA or any interest therein by Developer, other than as specified in the PPA or this Direct Agreement.

14.3 Notwithstanding anything to the contrary contained herein, the Collateral Agent is acting hereunder, not in its individual capacity but solely as collateral agent, on behalf of the secured parties identified in the Security Documents. The Collateral Agent shall not be required to take any action whatsoever hereunder unless and until it is specifically directed to do so in writing as specified in the Security Documents. The Collateral Agent shall not be liable for acting in

Formatted: Highlight

accordance with such directions or for failing to act if it does receive any such written directions. Under no circumstances (other than in respect of gross negligence or willful misconduct of the Collateral Agent) shall the Collateral Agent be liable for any and all claims, liabilities, obligations, losses, damages, penalties, costs and expenses that may be imposed on, incurred by, or asserted against the Collateral Agent at any time or in any way relating to or arising out of the execution, delivery and performance of this Direct Agreement by the Collateral Agent. Under no circumstances shall the Collateral Agent be liable for any indirect, special, consequential or punitive damages for any action it takes pursuant to the authority or directions given under the Security Documents. For the avoidance of doubt, under no circumstances shall the Collateral Agent be required to perform any activity related to the construction of the East End Crossing including, without limitation, directing or supervising any portion of the construction of the East End Crossing. Nothing contained herein shall require the Collateral Agent to advance or risk its own funds.

15. TERMINATION

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of IFA's obligations and liabilities have expired or have been satisfied in accordance with the terms of the PPA Documents and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 11 above and IFA shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer has been replaced as a party by the Substituted Entity.

16. EFFECT OF BREACH

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the PPA.

17. NO PARTNERSHIP

Nothing contained in this Direct 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 17.

18. REMEDIES CUMULATIVE

No failure or delay by IFA, Lender or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by Lender, the Collateral Agent or any designee, transferee or permitted assignee thereof from time to time.

19. AMENDMENT AND WAIVER

No amendment, modification or waiver of any provision of this Direct Agreement shall be effective against any party hereto unless the same shall be in writing and signed by the party against whom enforcement is sought, and then such amendment, modification or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

Formatted: Highlight

20. SUCCESSORS AND ASSIGNS

20.1 No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that (a) the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Funding Agreements, and (b) IFA may assign or transfer its rights and obligations hereunder as provided in Section 22.4.1 of the PPA.

20.2 This Direct Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21. COUNTERPARTS

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile or electronic ("email") delivery of an executed counterpart of this Direct Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart.

22. SEVERABILITY

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired. The illegal, invalid or unenforceable provision shall be deemed replaced by such provisions as shall be legal, valid and enforceable in the relevant jurisdiction.

23. NOTICES

23.1 Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a "**Notice**") to a party must be given in writing (including by fax or electronic mail). All Notices will be validly given if on a Business Day to each party at the following address:

To IFA:

Public Finance Director
Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204
Telephone. (317) 233-4332
Fax: (317) 232-6786

with copy to:
General Counsel
Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204
Telephone. (317) 233-4332
Fax: (317) 232-6786

Formatted: Highlight

To Developer:

[Developer's name]
[Street number]
[City, State, zip code]
Telephone: [_____]
Fax: [_____]
E-Mail:[_____]

To the Collateral Agent:

[Collateral Agent's name]
[Office or department (e.g., Corporate Trust Administration)]
[Street number]
[City, State, zip code]
Telephone. [_____]
Fax: [_____]
E-Mail:[_____]

23.2 A Notice shall be deemed to have been given:

(a) Upon receipt, if delivered in person;

(b) Upon receipt (confirmed by automatic answer back or equivalent evidence of receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;

(c) Upon receipt, if delivered by overnight courier; or

(d) Four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States Postal Service certified or registered mail.

23.3 Each of the parties will provide Notice to each other in writing of any change of address, such Notice to become effective 15 days after dispatch.

24. GOVERNING LAW AND JURISDICTION

24.1 This Direct Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana applicable to contracts to be performed within such State. The Parties consent to exclusive jurisdiction of and venue in the federal and state courts located in Marion County, Indiana.

24.2 Each of Developer, IFA and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier, and waives any different statutory requirements for service of process. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

Formatted: Highlight

24.3 Each of IFA, Developer and the Collateral Agent hereby (a) certifies that no representative, agent or attorney of another party has represented, expressly or otherwise, that the other party would, in the event of a proceeding, seek to attack the enforceability of the foregoing waiver and (b) acknowledges that it has been induced to sign, and to change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers in this Section 24.

25. CONFLICT WITH AGREEMENT

In the event of any irreconcilable conflict or inconsistency between the provisions of this Direct Agreement and the PPA, including, without limitation, Sections 13 and 21 of the PPA, the provisions of this Direct Agreement shall control and prevail.

Formatted: Highlight

IN WITNESS WHEREOF, each of the parties hereto has caused this Direct Agreement to be duly executed by its duly authorized officer as of the date first written above.

INDIANA FINANCE AUTHORITY

By:_____

Name:_____
Title:_____

[COLLATERAL AGENT BANK], AS COLLATERAL AGENT

By:_____

Name:_____
Title:_____

[DEVELOPER]

By:_____

Name:_____
Title:_____

Formatted: Highlight

SCHEDULE A
Form of Substitute Accession Agreement

[Date]

To: **Indiana Finance Authority**
For the attention of: [_____]
[Lender and other parties to Funding Agreements to be listed]
[insert address]
For the attention of: [_____]

From: ***[Substituted Entity]***

EAST END CROSSING –
LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT:
SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Public-Private Agreement, dated as of [_____], 20[__] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "***Agreement***") between the Indiana Finance Authority (the "***IFA***") and [Developer's name] ("***Developer***") and the Direct Agreement, dated as of [_____], 20[__] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "***Direct Agreement***") among IFA, Developer and [_____] [Collateral Agent Bank or Trustee], as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein have the respective meanings set forth in or incorporated into in the Direct Agreement.

1. The undersigned ("we") hereby confirms that it is a Substituted Entity pursuant to Sections 10 and 11 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 Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Developer under the Agreement and the Direct Agreement.

3. We hereby assume all duties, obligations and liabilities of Developer under the PPA Documents.

4. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substituted Entity]

5. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the law of the State of Indiana applicable to contract to be performed within such State.

The terms set forth herein are hereby agreed to:

Formatted: Highlight

[Substituted Entity]

By: _____
Name: _____
Title: _____

Accepted:

INDIANA FINANCE AUTHORITY

By: _____
Name: _____
Title:

Formatted: Highlight

SCHEDULE B
Initial Funding Agreements

Funding Agreements

Document	Party 1	Party(ies) 2

Security Documents

Document	Party 1	Party(ies) 2

Formatted: Highlight

EXHIBIT 22

EARLY TERMINATION DATES AND TERMS FOR TERMINATION COMPENSATION

All Section references in this Exhibit 22 are to the Sections of the Agreement unless expressly provided otherwise.

1. Termination for Convenience

1.1 If IFA exercises its right of Termination for Convenience pursuant to Section 20.1, the Early Termination Date shall be as specified in the Notice of Termination for Convenience, but in no event earlier than 30 days after the date such Notice is delivered.

1.2 If IFA exercises its right of Termination for Convenience pursuant to Section 20.1, IFA shall pay compensation to Developer in an amount equal to either (a) the Backward Looking Termination for Convenience Amount, or (b) the Forward Looking Termination for Convenience Amount, as selected by Developer in Exhibit 2-J.

1.3 The Backward Looking Termination for Convenience Amount shall be calculated as follows (calculated at the Early Termination Date and without duplicative-counting):

1. The Project Debt Termination Amount; plus

2. An amount which, when added to all Distributions described in clause (a) of the definition thereof actually paid to Equity Members or their Affiliates on or before the Early Termination Date:

   (a) Yields as of the Early Termination Date at an internal rate of return on Committed Investment described in clause (a) of the definition thereof, other than Subordinate Debt (taking into account the timing of such Distributions and Committed Investment), equal to the Original Equity IRR; plus

   (b) Repays as of the Early Termination Date outstanding Subordinate Debt (excluding Breakage Costs) with interest thereon accrued up to the Early Termination Date at a rate equal to the lesser of (i) the non-default interest rate provided in the Funding Agreements for the Subordinate Debt or (ii) the Original Equity IRR; plus

3. Redundancy Payments for employees of Developer that have been or will be reasonably incurred by Developer as a direct result of termination of the Agreement; plus

4. Subject to Section 19.4.4, any Losses that have been incurred and will be incurred by Developer as a direct result of termination of the Agreement arising out of the termination of contracts with Contractors, including reasonable and documented out-of-pocket costs to demobilize, but only to the extent that:

   (a) Such Losses are incurred in connection with the East End Crossing and in respect of the provision of services or the completion of work required to be

Formatted: Highlight

provided by Developer;

(b) Such Losses are incurred under arrangements and/or agreements that are consistent with terms of the Agreement, have been entered into in the ordinary course of business and, in the case of contracts with Affiliates, are on commercially reasonable terms, and

(c) Each of Developer and the relevant Contractors has used reasonable efforts to mitigate the Losses; minus

5. All amounts standing to the credit of any bank or trust account held by or on behalf of Developer as of the Early Termination Date, except in the Handback Requirements Reserve Account (governed by Section 6.13.4) and the Relief Events Allowance Account (governed by Section 15.6.1); minus

6. The portion of any previous payments to Developer that compensated Developer for Extra Work Costs and Delay Costs accruing after the Early Termination Date and attributable to Relief Events that occurred prior to termination.

1.4 The Forward Looking Termination for Convenience Amount shall be calculated as follows (calculated at the Early Termination Date and without duplicative-counting):

1. The Project Debt Termination Amount; plus

2. The amount of all Distributions described in clause (a) of the definition thereof to Equity Members or their Affiliates anticipated in the Financial Model to be paid on Committed Investment and outstanding Subordinate Debt (excluding Breakage Costs) between the Early Termination Date until the date of expiration of the Term, each amount discounted back (i) for Committed Investment, at the Original Equity IRR, and (ii) for outstanding Subordinate Debt, at the lesser of the non-default interest rate provided in the Funding Agreements or the Original Equity IRR, with the discounting in each case to be from the date on which it is shown to be payable in the Financial Model to the Early Termination Date; plus

3. Redundancy Payments for employees of Developer that have been or will be reasonably incurred by Developer as a direct result of termination of the Agreement; plus

4. Subject to Section 19.4.4, any Losses that have been incurred and will be incurred by Developer as a direct result of termination of the Agreement arising out of the termination of contracts with Contractors, including reasonable and documented out-of-pocket costs to demobilize, but only to the extent that:

(a) Such Losses are incurred in connection with the East End Crossing and in respect of the provision of services or the completion of work required to be provided by Developer;

(b) Such Losses are incurred under arrangements and/or agreements that are consistent with terms of the Agreement, have been entered into in the ordinary course of business and, in the case of contracts with Affiliates, are on commercially reasonable terms, and

Formatted: Highlight

(c) Each of Developer and the relevant Contractors has used reasonable efforts to mitigate the Losses; minus

5. All amounts standing to the credit of any bank or trust account held by or on behalf of Developer as of the Early Termination Date, except in the Handback Requirements Reserve Account (governed by Section 6.13.4) and the Relief Events Allowance Account (governed by Section 15.6.1); minus

6. The portion of any previous payments to Developer that compensated Developer for Extra Work Costs and Delay Costs accruing after the Early Termination Date and attributable to Relief Events that occurred prior to termination.

1.5 The Termination Compensation under Section 1.3 or 1.4 above, as applicable, shall be due and payable by IFA in immediately available funds within 90 days after:

1. IFA gives its Notice of its election to terminate;

2. The Collateral Agent provides IFA with a written statement as to the Project Debt Termination Amount, with documentation reasonably required by IFA to support such statement; and

3. Developer provides IFA with a written statement as to the amounts payable and deductible pursuant to subsections 2 through 6 of Section 1.3 or 1.4 above, as applicable, with documentation reasonably required by IFA to support such statement and a certification that such amounts are true and correct.

1.6 The Termination Compensation shall bear interest from the later of the Early Termination Date or the date that is five days after IFA receives the statements and documentation set forth in subsections 2 and 3 of Section 1.5 above, until the date paid, at an annual rate equal to Developer's then weighted average cost of Project Debt and Committed Investment, assuming, however, (a) non-default rates of interest, (b) a cost of Committed Investment other than Subordinate Debt equal to that set forth in Section 1.3 or 1.4 above, as applicable, and (c) a cost of Subordinate Debt equal to that set forth in Section 1.3 or 1.4 above, as applicable. Payments shall be applied first to accrued unpaid interest and second to the outstanding Termination Compensation amount.

2. Termination for Extended Relief Events, Extended Permitted Closure or Insurance Unavailability

2.1 If the Agreement is terminated pursuant to Section 20.2, the Early Termination Date shall be 60 days after, as the case may be:

1. The date of acceptance of the conditional election to terminate;

2. The date IFA delivers Notice of election to terminate pursuant to Section 20.2.2; or

3. The date either Party delivers Notice of its unconditional election to terminate pursuant to Section 20.2.5.

Formatted: Highlight

2.2 If the Agreement is terminated pursuant to Section 20.2, IFA shall pay compensation to Developer calculated as follows (calculated at the Early Termination Date and without double-counting):

1. The Project Debt Termination Amount; plus

2. Amounts paid by the Equity Members or their Affiliates to Developer in the form of Committed Investment described in clause (a) of the definition thereof or in the form of Subordinate Debt up until the Early Termination Date, less any amounts actually received by the Equity Members or their Affiliates from Developer as Distributions described in clause (a) of the definition thereof, provided if the amounts calculated pursuant to this subsection 2 are less than zero, then, for purposes of the calculation of the termination amount, they shall be deemed to be zero; provided, further, that if the termination under Section 20.2.1.1(a) is due to Environmental Litigation, amounts payable under this Section 2.2(2) shall include a rate of return (i) with respect to Committed Investment equal to the Original Equity IRR and (ii) with respect to Subordinate Debt equal to the lesser of the Original Equity IRR or the non-default interest rate owing on the Subordinate Debt.; plus

3. Redundancy Payments for employees of Developer that have been or will be reasonably incurred by Developer as a direct result of termination of the Agreement; plus

4. Subject to Section 19.4.4, any Losses that have been or will be incurred by Developer as a direct result of termination of the Agreement arising out of the termination of contracts with Contractors, including reasonable and documented out-of-pocket costs to demobilize, but only to the extent that: such

   (a) Such Losses are incurred in connection with the East End Crossing and in respect of the provision of services or the completion of work required to be provided by Developer;

   (b) Such Losses are incurred under arrangements and/or agreements that are consistent with terms of the Agreement, have been entered into in the ordinary course of business and, in the case of contracts with Affiliates, are on commercially reasonable terms, and

   (c) Each of Developer and the relevant Contractors has used reasonable efforts to mitigate the Losses; minus

5. All amounts standing to the credit of any bank or trust account held by or on behalf of Developer as of the Early Termination Date, except in the Handback Requirements Reserve Account (governed by Section 6.13.4) and the Relief Events Allowance Account (governed by Section 15.6.1); minus

6. The portion of any previous payments to Developer that compensated Developer for Extra Work Costs and Delay Costs accruing after the Early Termination Date and attributable to Relief Events that occurred prior to termination.

Formatted: Highlight

2.3 Payment of the Termination Compensation is conditioned upon IFA's receipt of the following:

1. From the Collateral Agent, a written statement as to the Project Debt Termination Amount, with documentation reasonably required by IFA to support such statement; and

2. From Developer, a written statement as to the amounts payable and deductible pursuant to subsections 2 through 6 of Section 2.2 above, with documentation reasonably required by IFA sufficient to support such statement and a certification that such amounts are true and correct.

2.4 Provided that IFA has received the statements and documentation set forth in Section 2.3 above, the Termination Compensation under Section 2.2 above shall be due and payable by IFA in immediately available funds as follows:

1. If the termination Notice has been given by Developer:

   First, from all amounts held in the MP Relief Event and Termination Compensation Fund or the AP Relief Event and Termination Compensation Fund, as applicable; and;

   The remaining balance, in any, in full, not later than (a) July 1 immediately following the date IFA receives the statements and documentation set forth in Section 2.3 above, if such date occurs before August 1, or (b) the second July 1 immediately following the date IFA receives the statements and documentation set forth in Section 2.3 above, if such date occurs on or after August 1.

2. If the termination Notice has given by IFA, Termination Compensation shall be due and payable by IFA no later than 90 days after receipt of the written statements referred to in Section 2.3 above.

2.5 The Termination Compensation shall bear interest from the later of the Early Termination Date or the date that is five days after IFA receives the statements and documentation set forth in Section 2.3 above, until the date paid. The annual interest rate shall equal Developer's then weighted average cost of Project Debt (including Subordinate Debt, if any) and Committed Investment, assuming however, (a) non-default rates of interest, (b) a cost of Committed Investment other than Subordinate Debt (if any) equal to the Original Equity IRR, and (c) a cost of Subordinate Debt (if any) equal to the lesser of its non-default interest rate or the Original Equity IRR. Payments shall be applied first to accrued unpaid interest and second to the outstanding Termination Compensation amount. Interest shall be due and payable (a) on the dates when interest is required to be paid to Lenders under the Funding Agreements if paid pursuant to Section 2.4(1) above, or (2) on the date of payment of the Termination Compensation if paid pursuant to Section 2.4(2) above.

3. Termination for Developer Default

3.1 If the Agreement is terminated due to a Default Termination Event pursuant to Section 20.3, the Early Termination Date shall be effective immediately upon delivery of Notice of termination to Developer and the Collateral Agent, or such other date as IFA may specify in the termination Notice.

Formatted: Highlight

3.2 If the Agreement is terminated due to a Default Termination Event pursuant to Section 20.3 (but excluding a termination due to a Default Termination Event under Section 19.1.1.16 or 19.1.1.17) before the Substantial Completion Date, and if and only if no Lender has duly exercised an option to obtain New Agreements from IFA pursuant to Section 21.4.4, then IFA shall pay compensation to Developer (calculated at the Early Termination Date and without duplicative-counting) equal to the greater of:

1. The amount calculated as follows:

   (a) The amount of the Project Adjusted Costs; plus

   (b) The amount of any compensation accrued under Section 15.3 but not yet paid; minus

   (c) The amount of any Losses that have been or will be incurred by IFA resulting from the Developer Default, including the damages described in Section 19.2.5; minus

   (d) The portion of any lump sum amounts previously paid (excluding the Milestone Payment and Availability Payments) by IFA to Developer under the Agreement as compensation for Extra Work Costs or Delay Costs not yet incurred by Developer relating to a Relief Event that occurred prior to termination; and

2. The amount calculated as follows:

   (a) 80% of the Project Debt Termination Amount; minus

   (b) The portion of any lump sum amounts previously paid (excluding the Milestone Payment and Availability Payments) by IFA to Developer under the Agreement as compensation for Extra Work Costs or Delay Costs not yet incurred by Developer relating to a Relief Event that occurred prior to termination, except there shall not be subtracted the portion of previous payments by IFA to Developer that Developer applied to reduce the principal amount of the Project Debt.

3.3 If the Agreement is terminated due to a Default Termination Event pursuant to Section 20.3 (but excluding a termination due to a Default Termination Event under Section 19.1.1.16 or 19.1.1.17) on or after the Substantial Completion Date, and if and only if no Lender has duly exercised an option to obtain New Agreements from IFA pursuant to Section 21.4.4, then IFA shall pay compensation to Developer (calculated at the Early Termination Date and without duplicative-counting) equal to the greater of:

1. The amount calculated as follows:

   (a) The amount of the Project Adjusted Costs; minus

   (b) The value of the accrued amortization of the Project Adjusted Costs funded with Committed Investment, calculated as the greater of (i) the total accrued amortization through the Early Termination Date determined using a straight line amortization schedule over 35 years commencing on the

Formatted: Highlight

Substantial Completion Date, and (ii) the total accrued amortization through the Early Termination Date as shown in the Financial Model; minus

(c) The value of the accrued amortization of the Project Adjusted Costs funded with Project Debt, calculated as the total accrued amortization of Project Debt through the Early Termination Date as shown in the Financial Model; minus

(d) The amount of any Losses recoverable by IFA under the PPA Documents resulting from the Developer Default, including the damages described in Section 19.2.5; minus

(e) The portion of any lump sum amounts previously paid (excluding the Milestone Payment and Availability Payments) by IFA to Developer under the Agreement as compensation for future Extra Work Costs or Delay Costs not yet incurred by Developer relating to a Relief Event that occurred prior to termination; and

2. The amount calculated as follows:

(a) 80% of the Project Debt Termination Amount; minus

(b) The portion of any lump sum amounts previously paid (excluding the Milestone Payment and Availability Payments) by IFA to Developer under the Agreement as compensation for future Extra Work Costs or Delay Costs not yet incurred by Developer relating to a Relief Event that occurred prior to termination, except there shall not be subtracted the portion of previous payments by IFA to Developer that Developer applied to reduce the principal amount of the Project Debt.

3.4 If the Agreement is terminated due to a Default Termination Event under Section 19.1.1.16 or 19.1.1.17, or if the Agreement is terminated due to a Default Termination Event and any Lender duly exercises an option to obtain New Agreements from IFA pursuant to Section 13.2 of any Direct Agreement, if any, then no compensation shall be due to Developer.

3.5 Payment of the Termination Compensation is conditioned upon IFA's receipt of the following:

1. From the Collateral Agent, a written statement as to the Project Debt Termination Amount, with documentation reasonably required by IFA to support such statement; and

2. From Developer, a written statement as to the amounts described in subsections 1(a) and 1(b) of Section 3.2 above or subsections 1(a), (1(b) and 1(c) of Section 3.3 above, as the case may be, with written documentation sufficient to support such statement and a certification that such amounts are true and correct.

3.6 The Termination Compensation under Section 3.2 or 3.3 above, as applicable, shall be due and payable by IFA in immediately available funds as follows:

1. First from all amounts in the MP Relief Event and Termination Compensation

Formatted: Highlight

Fund or the AP Relief Event and Termination Compensation Fund, as applicable. If, however, any Lender continues to have the option to obtain New Agreements from IFA pursuant to Section 21.4.4, then installments of the Termination Compensation shall not commence until the first Monthly Disbursement Date after the earlier of (a) the date IFA receives written waivers of all such options from all applicable Lenders or (b) all such options expire without exercise; and

2. The remaining balance, if any, in full, not later than (a) July 1 of the year immediately following the date IFA receives the statements and documentation set forth in Section 2.3 above, if such date occurs before August 1, or (b) the second July 1 immediately following the date IFA receives the statements and documentation set forth in Section 2.3 above, if such date occurs on or after August 1.

3.7 The Termination Compensation shall bear interest from the later of the Early Termination Date or the date that is five days after IFA receives the statements and documentation set forth in Section 3.5 above, until the date paid, at an annual rate equal to Developer's then weighted average cost of Project Debt, excluding however, Subordinate Debt (if any) and assuming non-default rates of interest. Payments shall be applied first to accrued unpaid interest and second to the outstanding Termination Compensation amount.

4. Termination for IFA Default, Suspension of Work or Delayed Notice to Proceed

4.1 If the Agreement is terminated pursuant to Section 20.4, the Early Termination Date shall be effective 30 days after Developer's delivery of Notice of termination to IFA.

4.2 If the Agreement is terminated pursuant to Section 20.4, IFA shall pay compensation to Developer in an amount equal to the amount described in Section 1.2 above.

4.3 Payment of the Termination Compensation is conditioned upon IFA's receipt of the following:

1. From the Collateral Agent, a written statement as to the Project Debt Termination Amount, with documentation reasonably required by IFA to support such statement; and

2. From Developer, a written statement as to the amounts payable and deductible pursuant to subsections 2 through 6 of Section 1.3 or 1.4, as applicable, with documentation reasonably required by IFA sufficient to support such statement and a certification that such amounts are true and correct.

4.4 The Termination Compensation under Section 4.2 above shall be due and payable by IFA in immediately available funds no later than 90 days after receipt of the written statements referred to in Section 4.3 above.

4.5 The Termination Compensation shall bear interest from the later of the Early Termination Date or the date that is five days after IFA receives the statements and documentation set forth in Section 4.3 above, until the date paid, at an annual rate equal to Developer's then weighted average cost of Project Debt and Committed Investment, assuming, however, (a) non-default rates of interest, (b) a cost of Committed Investment other than Subordinate Debt equal to that set forth in Section 1.3 or 1.4 above, as applicable, and (c) a cost of Subordinate Debt equal to that set forth in Section 1.3 or 1.4 above, as applicable.

Formatted: Highlight

Payments shall be applied first to accrued unpaid interest and second to the outstanding Termination Compensation amount.

5. Termination by Court Ruling

5.1 Termination by Court Ruling under Section 20.5 becomes effective, and automatically terminates the Agreement, upon issuance of the final, non-appealable court order by a court of competent jurisdiction.

5.2 If the Agreement is terminated pursuant to Section 20.5, IFA shall pay compensation to Developer in an amount equal to the amount described in Section 2.2 above, provided that for purposes of calculating the amount of termination compensation payable under this Section 5.2, amounts payable under Section 2.2(2) shall include a rate of return on such amounts paid by the Equity Members or their Affiliates in the form of Committed Investment or drawn under Subordinate Debt from the date paid or drawn under the Subordinate Debt until the Early Termination Date equal to 5% per annum; provided, that for avoidance of doubt, if the Termination by Court Ruling is due to Environmental Litigation, such rate of return (i) with respect to Committed Investment shall equal the Original Equity IRR and (ii) with respect to Subordinate Debt shall equal to the lesser of the Original Equity IRR or the non-default interest rate owing on the Subordinate Debt.

5.3 Payment of the Termination Compensation is conditioned upon IFA's receipt of the following:

1. From the Collateral Agent, a written statement as to the Project Debt Termination Amount, with documentation reasonably required by IFA to support such statement; and

2. From Developer, a written statement as to the amounts payable and deductible pursuant to subsections 2 through 6 of Section 2.2 above, with documentation reasonably required by IFA sufficient to support such statement and a certification that such amounts are true and correct.

5.4 The Termination Compensation under Section 5.2 above shall be due and payable by IFA in immediately available funds as follows:

1. First from all amounts held in the MP Relief Event and Termination Compensation Fund or the AP Relief Event and Termination Compensation Fund, as applicable; and

2. The remaining balance, if any, in full, not later than (a) July 1 of the year immediately following the date IFA receives the statements and documentation set forth in Section 2.3 above, if such date occurs before August 1, or (b) the second July 1 immediately following the date IFA receives the statements and documentation set forth in Section 2.3 above, if such date occurs on or after August 1.

5.5 The Termination Compensation shall bear interest from the later of the Early Termination Date or the date that is five days after IFA receives the statements and documentation set forth in Section 5.3 above, until the date paid. The annual interest rate shall equal Developer's then weighted average cost of Project Debt (including Subordinate Debt, if any) and Committed Investment, assuming however, (a) non-default rates of interest, (b) a cost

Formatted: Highlight

of Committed Investment other than Subordinate Debt (if any) equal to the Original Equity IRR, and (c) a cost of Subordinate Debt (if any) equal to the lesser of its non-default interest rate or the Original Equity IRR. Payments shall be applied first to accrued unpaid interest and second to the outstanding Termination Compensation amount. Interest shall be due and payable on the dates when interest is required to be paid to Lenders under the Funding Agreements.

6. Termination for Failure of Financial Close

6.1 If the Agreement is terminated pursuant to Section 20.6.1, IFA shall pay compensation to Developer an amount calculated as follows (calculated at the Early Termination Date and without double-counting):

1. The lesser of (a) (i) Developer's documented, actual, reasonable external costs incurred, without mark-up by Developer for overhead or profit, for the satisfaction of conditions precedent to each of issuance of NTP1 and to the commencement of the Design Work and for the preparation of Design Documents between the date of satisfaction of the conditions precedent to commencement of the Design Work and the date of delivery of the Notice of termination, plus (ii) Developer's documented, actual, reasonable external costs incurred for the work necessary to achieve Financial Close and the conditions precedent to issuance of NTP2, including, without limitation, in connection with conducting the IPDC, if IFA has issued the IPDC Commencement Notice, and to satisfy the conditions precedent to issuance of NTP1, conditions precedent to commencement of the Design Work, and conditions precedent to issuance of NTP2, plus (iii) legal advisor, insurance advisor and technical advisor fees payable or reimbursable to Lenders who provided commitments in connection with the delivery of the Financial Proposal as well as breakage costs and work fees, if any, payable to the Lenders who provided price commitments in connection with the submission of the Financial Proposal in an amount not to exceed 1% of the principal amount of such commitments, that are or were due and payable by Developer upon the expiration of such commitments if IFA gave its Notice extending the period for Financial Close as provided in Section 13.7.2 of the PPA beyond the commitment period set forth in such commitments, or (b) $43,000,000; plus

2. $2,500,000.

6.2 For purposes of this Section 6, "external costs" means only those costs that are payable for work or services performed between the Effective Date and the Termination Date by Contractors, rating agencies, financial advisors, technical advisors, insurance advisors, and legal counsel that are not Equity Members. "External costs" expressly excludes costs of work and services performed by, and the overhead costs of, Developer and Equity Members.

6.3 Payment of the Termination Compensation is conditioned upon IFA's receipt from Developer of a written statement as to the amounts payable pursuant to subsection 1 of Section 6.1 above, with documentation reasonably required by IFA sufficient to support such statement and a certification that such amounts are true and correct. Termination Compensation as provided in this Section 6 shall be due and payable no later than 60 days following IFA's receipt of Developer's written statement as described in this Section 6.3.

Formatted: Highlight

EXHIBIT 23

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	13
Attachment 3 – Federal Prevailing Wage Rates	
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	2
Attachment 6 – Compliance with 23 U.S.C. §129(a)(3)	1

Formatted: Highlight

ATTACHMENT 1 TO EXHIBIT 23

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION EAST END CROSSINGS

GENERAL. The provisions of this Exhibit 23 (Federal Requirements) shall be construed and applied according to Section 24.2 of the Agreement (notwithstanding that they may appear to conflict with Section 24.2). The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 23 (Federal Requirements). Whenever in said required contract provisions, and those at Section 3 of Attachment 4 to this Exhibit 23, references are made to:

(a) "contracting officer" or "authorized representative," such references shall be construed to mean IFA or its Authorized Representative;

(b) "contractor," "prime contractor," "bidder," "proposer," "Federal-aid construction contractor," "prospective first tier participant," or "First Tier Participant," such references shall be construed to mean Developer or its authorized representative and/or the Design-Build Contractor for the Work to which this Exhibit 23 (Federal Requirements) applies or its authorized representative, as may be appropriate under the circumstances;

(c) "contract" "prime contract," "Federal-aid construction contract" or "design-build contract," such references shall be construed to mean the Design-Build Contract for the Work to which this Exhibit 23 (Federal Requirements) applies;

(d) "subcontractor," "supplier," "vendor," "prospective lower tier participant," " lower tier prospective participant," "Lower Tier participant," or "lower tier subcontractor," such references shall be construed to mean, as appropriate, Contractors other than the Design-Build Contractor for the Work to which this Exhibit 23 (Federal Requirements) applies; and

(e) "department," "agency," "department or agency with which this transaction originated," or "department or agency entering into this transaction," such references shall be construed to mean IFA, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Form 1273 required contract provisions, Developer 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 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

Formatted: Highlight

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 this project. Pertinent sections of said Code are incorporated within other sections of the Contract and the IFA DBE Special Provisions (Exhibit 7) 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 projects 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 prison project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

BUY AMERICA REQUIREMENTS — FHWA Federal-aid projects are subject to 23 CFR § 635.410, Buy America requirements. The provisions of 23 CFR § 635.410 are incorporated herein by reference.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)10), Developer 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 Developer and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its Contractor 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. Developer 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.

Formatted: Highlight

ATTACHMENT 2 TO EXHIBIT 23

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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 Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (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 U.S. Department of Labor (US DOL) and FHWA requirements.

Formatted: Highlight

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (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 forth 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

Formatted: Highlight

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 State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, 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 State DOT's U.S. DOT-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 DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the 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

Formatted: Highlight

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 which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

Formatted: Highlight

(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 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 State DOT, the

Formatted: Highlight

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 forth 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 forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 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 State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

Formatted: Highlight

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 U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 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. 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 forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause

Formatted: Highlight

set forth 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 forth 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 forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth 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 forth 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 State 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 forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. 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, State, 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.

Formatted: Highlight

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.

Formatted: Highlight

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, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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.

2. **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.

Formatted: Highlight

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.

Formatted: Highlight

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.

Formatted: Highlight

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Formatted: Highlight

ATTACHMENT 3 TO EXHIBIT 23

FEDERAL PREVAILING WAGE RATE

The prevailing wage rates for the Work through Final Acceptance shall be the rates applicable to each county where any of such Work will be performed. Such prevailing wage rates are set forth below.

[To be supplied; to be updated ten days before Proposal Due Date]

ATTACHMENT 4 TO EXHIBIT 23

EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION
000---006
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:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Indianan 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 the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the 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 forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts 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 toward 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 Contractor 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 advertising in the news media, specifically including minority and female news media, 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 female recruitment and training organizations serving Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of 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 at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the 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. A single goal for minorities and a separate single goal 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 the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

11. The contractor shall not enter into any subcontract with any person or firm debarred from 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 the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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 forth 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 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

ATTACHMENT 5 TO EXHIBIT 23

AFFIRMATIVE ACTION

SPECIAL PROVISION
000—0004
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 forth in Attachment 4 to this Exhibit 23, the contractor's attention is directed to the specific requirements for utilization of minorities and females as set forth 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 (per-cent)	Goals for female participation in each trade (per-cent)
See Table 1	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 the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision 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, the

Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. Subcontracting.

The contractor shall provide written notification to IFA 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 IFA 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 special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Indiana. The geographical area covered by these goals for other minorities are the boroughs or other geographic areas in the State of Indiana 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

[To be provided]

Borough or Other Geographic Area	Goals for Minority Participation	County	Goals for Minority Participation

ATTACHMENT 6 TO EXHIBIT 23

COMPLIANCE WITH 23 U.S.C. §129(a)(3) AND WITH THE AGREEMENT BETWEEN THE INDIANA FINANCE AUTHORITY AND THE FEDERAL HIGHWAY ADMINISTRATION FOR FUNDING FOR THE DEVELOPMENT, DESIGN, AND CONSTRUCTION OF THE EAST END CROSSING (THE "SECTION 129 AGREEMENT")

1. Certification of Adequate Maintenance

a. The Section 129 Agreement requires IFA to annually certify to the FHWA that the project is being adequately maintained.

b. To enable IFA to issue such certifications, Developer shall issue to IFA not later than 15 days after the end of each calendar year, starting with the calendar year in which the Substantial Completion Date occurs, a written certificate, in form reasonably acceptable to IFA, certifying that the project is being adequately maintained. If FHWA prescribes a form of certificate from IFA, then Developer shall deliver to IFA a certificate in the same form.

2. Annual Audit of Records

a. The Section 129 Agreement requires IFA to annually audit the records of the project for compliance with the provisions of the Section 129 Agreement, and to report the audit results to the FHWA. The Section 129 Agreement provides that in lieu of IFA performing the audit, IFA may deliver to the FHWA a report of an independent auditor furnished by Developer.

b. To enable IFA to comply with such annual audit requirement as it relates to compliance with the obligation in the Section 129 Agreement to adequately maintain the project, Developer shall prepare and deliver to IFA a written report of the results of each Performance Inspection and Asset Condition Score by Developer. IFA shall have the right to deliver to the FHWA copies of such reports. In addition, Developer shall permit the FHWA to audit Developer's O&M Records upon request.

EXHIBIT 24

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

[TO BE PROVIDED]